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TITLE 13

Banking and Financial Institutions, Department of



OCTOBER 1990

13-03-15-02. Establishment of a branch.

1. Any North Dakota state-chartered credit union may establish a branch facility subject to approval of the state credit union board and in accordance with the provisions of this chapter.
2. All branch facility advertising and building signs must state the identity of the credit union and facility. For example, (name of credit union) (location of main office) "Branch". Those credit unions that already have a sign on the branch building need not change the sign until actual renovation or a sign change is made if a significant cost is necessary to comply with this section.

History: Effective April 1, 1988; amended effective October 1, 1990.  
General Authority: NDCC 6-01-04  
Law Implemented: NDCC 6-06-06



TITLE 16.5  
Centennial Commission



SEPTEMBER 1990

STAFF COMMENT: Article 16.5-04 contains all new material but is not underscored so as to improve readability.

ARTICLE 16.5-04

CENTENNIAL DECADE TREES COMMITTEE

Chapter	
16.5-04-01	Organization of Committee
16.5-04-02	Establishment of Centennial Decade Trees Program Trust Fund

CHAPTER 16.5-04-01  
ORGANIZATION OF COMMITTEE

Section	
16.5-04-01-01	Interpretation of Legislative Action on House Bill No. 1456 and Creation of Centennial Decade Trees Committee

16.5-04-01-01. Interpretation of legislative action on House Bill No. 1456 and creation of centennial decade trees committee.

1. Organization of committee.
  - a. Membership - quorum. Membership of the centennial decade trees committee must consist of seven persons; six members to be appointed by the governor. The lieutenant governor

must be the seventh member and be an ex officio member with full voting privileges. Initially, three members must be appointed for two-year terms and three members must be appointed for one-year terms. Future appointments must be for two-year terms unless the appointee is filling an uncompleted term. Vacancies must be filled by appointment of the governor. Four members constitute a quorum for the transaction of business. A majority vote of the members present is required for any committee action.

- b. Executive director. The committee may employ a full-time or part-time executive director and other full-time or part-time persons if funds permit and the committee deems it necessary to carry out the committee's duties and responsibilities.
- c. Advisors and advisory committees. The centennial decade trees committee may create advisory committees for special studies or purposes and may request nonmembers to serve as advisors to the committee. Compensation of committee advisors may be provided at a rate determined by the centennial decade trees committee.
- d. Committee meetings. The committee shall meet at least once during the first three months of each calendar year and as often as the work of the committee may require.

## 2. Committee officers - Functions and duties.

- a. Chairperson, vice chairperson, and secretary. The committee shall elect from its membership a chairperson, vice chairperson, and secretary-treasurer. The term of officers must be for one year. All officers must be elected at the first meeting held in each calendar year and shall serve until the officer's successor is elected and qualifies.
- b. Duties of chairperson. The chairperson shall preside at all meetings of the committee. The chairperson shall perform the duties usually pertaining to the position of chairperson and those that are specified by statute or in bylaws adopted by the committee. The chairperson may be an ex officio member of all committees.
- c. Duties of vice chairperson. The vice chairperson shall preside in the absence of the chairperson and shall perform other duties assigned by the chairperson or committee.
- d. Duties of secretary-treasurer. The secretary-treasurer shall keep a correct record of all meetings and a correct

account of all funds for which the committee is responsible.

- e. Bylaws. The bylaws shall include the powers of the chairperson: to appoint special committees for special studies or duties; to call special meetings upon the chairperson's own motion or at the request of three members; and to enforce compliance with the rules, statutes, and bylaws pursuant to which the committee is established or functions.
- f. Compensation. The members of the centennial decade trees committee shall receive mileage and travel expenses at the rate provided for in North Dakota Century Code sections 54-06-09 and 44-08-04 for attending committee meetings or in the performance of committee duties or functions.

Such expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid.

History: Effective March 2, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, Ch. 27, § 1

#### CHAPTER 16.5-04-02 ESTABLISHMENT OF CENTENNIAL DECADE TREES PROGRAM TRUST FUND

##### Section

16.5-04-02-01            Establishment and Functions of the Centennial  
Tree Program Trust Fund

16.5-04-02-01. Establishment and functions of the centennial tree program trust fund. The centennial decade trees committee may receive funds from all sources. The principal and interest from private funds must be used to promote the planting of trees during the period of the committee's existence. Designated funds donated or received from private sources may be expended by the committee only in the manner designated. Unexpended funds must be placed in a permanent trust fund to be made available to the North Dakota bicentennial commission, or similar commission as may be designated by the North Dakota legislative assembly, for the promotion of and the actual planting and replanting of trees in North Dakota.

History: Effective March 2, 1990.

General Authority: NDCC 28-32-02

Law Implemented: S.L. 1989, Ch. 27, § 2



TITLE 30  
Game and Fish Department



NOVEMBER 1990

30-03-02-04. Species authorized. Species of fish which may be authorized by the game and fish commissioner for raising or holding in a licensed private fish hatchery shall be limited to tilapia, trout, largemouth bass, walleye, northern pike, crappie, and bluegills.

History: Amended effective September 1, 1989; November 1, 1990.

General Authority: NDCC 20.1-06-12

Law Implemented: NDCC 20.1-06-12



TITLE 33

Health and Consolidated Laboratories, Department of



OCTOBER 1990

33-06-01-01. Reportable diseases. All reportable diseases shall be confidential and not open to inspection. The following diseases are hereby declared to be reportable in this state.

1. Acquired immune deficiency syndrome (A.I.D.S.).
2. Amebiasis.
3. Anthrax.
4. Blastomycosis.
5. Botulism.
6. Brucellosis.
7. Campylobacter enteritis.
8. Chancroid.
9. Chickenpox (varicella).
10. Chlamydial infections.
11. Cholera.
12. Diphtheria.
13. Encephalitis (specify etiology).
14. Foodborne or waterborne outbreaks.
15. Giardiasis.

16. Gonorrhoea.
17. Granuloma inguinale.
18. Haemophilus influenzae b.
19. Hepatitis (specify type).
- ~~19.~~ 20. Herpes simplex (genital).
- ~~20.~~ 21. Histoplasmosis.
- ~~21.~~ 22. Human immunodeficiency virus infection.
- ~~22.~~ 23. Influenza.
- ~~23.~~ 24. Legionellosis.
- ~~24.~~ 25. Leprosy.
- ~~25.~~ 26. Leptospirosis.
- ~~26.~~ 27. Lyme disease.
- ~~27.~~ 28. Lymphogranuloma venereum.
- ~~28.~~ 29. Malaria.
- ~~29.~~ 30. Measles (rubeola).
- ~~30.~~ 31. Meningitis (specify etiology).
- ~~31.~~ 32. Mumps.
- ~~32.~~ 33. Nosocomial infections.
- ~~33.~~ 34. Ornithosis (Psittacosis).
- ~~34.~~ 35. Pertussis.
- ~~35.~~ 36. Plague.
- ~~36.~~ 37. Poliomyelitis.
- ~~37.~~ 38. Rabies.
- ~~38.~~ 39. Reye's syndrome.
- ~~39.~~ 40. Rocky Mountain spotted fever.
- ~~40.~~ 41. Rubella.
- ~~41.~~ 42. Salmonellosis.

- ~~42.~~ 43. Scabies (in institutions).
- ~~43.~~ 44. Shigellosis.
- ~~44.~~ 45. Syphilis.
- ~~45.~~ 46. Tetanus.
- ~~46.~~ 47. Toxic-shock syndrome.
- ~~47.~~ 48. Trichinosis.
- ~~48.~~ 49. Tuberculosis.
- ~~49.~~ 50. Tularemia.
- ~~50.~~ 51. Typhoid fever.

History: Amended effective May 1, 1984; December 1, 1986; January 1, 1988; January 1, 1989; October 1, 1990.

General Authority: NDCC 23-07-01

Law Implemented: NDCC 23-07-01

33-33-01-01. Definitions. As used in this chapter:

1. "Department" means the state department of health and consolidated laboratories.
2. "Occupied area" means the total of all of the lot area covered by a mobile home and roofed mobile home accessory buildings and structures on a mobile home lot.
- ~~2.~~ 3. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.

History: Effective August 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC ~~23-10-01~~ 23-10-02

33-33-01-02. Application for license. A complete scaled plan and list of specifications for new construction or for altering or enlarging of an existing mobile home park must be submitted to the department for approval. Mobile home parks which are enlarged shall meet all rules and regulations in effect at the time of enlarging for the portion of the park which is enlarged. The application plans or specifications must contain the following:

1. A legal description of the property and a description of the site location with regard to highways, streets, and landmarks.

2. Name and address of developer.
3. Name and address of architect, engineer, or designer.
4. The area and dimensions of the site.
5. The number, location, and dimensions of all mobile home lots and detail of each typical lot for each mobile home.
6. The location and width of roadways, automobile parking facilities, and walkways, including whether they are paved, blacktopped, graveled, etc.
7. The location and details of any service buildings **and any or** other proposed structures.
8. The location and details of lighting and electrical systems.
9. The location and specifications of the water supply, sewer, and refuse disposal facilities, including approved soil testing results and details of wells, pumping stations, and service riser pipes.

History: Effective August 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-03

### 33-33-01-03. Lot sizing and spacing requirements.

1. The occupied area of a mobile home lot may not exceed seventy-five percent of the lot area.
2. ~~No~~ Mobile home parks constructed after July 1, 1977, must be constructed so that no mobile home, attachment, or other structure may be located within fifteen feet [4.57 meters] of any other mobile home, attachment, or structure on a bordering lot. However, for mobile home parks constructed after July 1, 1977, the minimum distance between mobile homes end to end must be ten feet [3.05 meters]. ~~No mobile home, attachment, or structure may be located so as to create hazard to the mobile home or park occupants or restrict emergency vehicles and personnel from performing necessary services. Mobile home courts constructed after August 1, 1984, must be constructed so that no mobile home, attachment, or structure may be located closer than fifteen feet [4.57 meters] of the right-of-way line of any street, nor within ten feet [3.05 meters] of any boundary of the mobile home park.~~
3. No mobile home, attachment, or structure may be located so as to create hazard to the mobile home or park occupants or restrict emergency vehicles and personnel from performing necessary services.

4. Mobile home parks constructed after August 1, 1984, must be constructed so that no mobile home, attachment, or structure is located closer than within fifteen feet [4.57 meters] of the right-of-way line of any street, nor within ten feet [3.05 meters] of any boundary of the mobile home park.

5. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:

- a. Two-way streets with parking on both sides . . . . . 34 feet [10.36 meters]
- b. Two-way streets with parking on one side only . . . . . 27 feet [8.23 meters]
- c. Two-way streets without parking . . 24 feet [7.32 meters]
- d. One-way streets with parking on both sides . . . . . 27 feet [8.23 meters]
- e. One-way streets with parking on one side only . . . . . 18 feet [5.49 meters]
- f. One-way streets without parking . . 14 feet [4.27 meters]

~~4.~~ 6. The street system must give an unobstructed access to the public street, highway, or access road.

History: Effective August 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

33-33-01-04. Facilities provided.

- 1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.
- 2. Streets and walkways must be lighted to provide a minimum average maintained illumination of four-tenths foot-candles [4.31 lux], with a uniformity ratio of no greater than six to one.
- 3. Each lot in a mobile home park must be provided with an ~~adequate and~~ approved electrical service outlet.
- 4. Each lot in a mobile home park must be provided with an ~~adequate and~~ approved plumbing system.
- 5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state

codes, ~~is~~ may be required before issuance of the mobile home license.

6. No shed or attachment may obstruct the exit ways of the mobile home.

History: Effective August 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 23-01-03(2), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

### 33-33-01-05. Noxious plant and animal control.

1. The grounds, buildings, and structures of a mobile home park must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department.
2. All areas must be maintained free of accumulations of debris, ~~the~~. The growth of brush, weeds, and grass must be controlled to prevent harborage or breeding places for noxious insects and vermin. Mobile home parks must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.
3. Storage areas must be maintained so as to prevent rodent harborage, ~~lumber~~. Lumber, firewood, pipe, and other building materials must be stored neatly at least one foot [0.30 meters] above the ground.
4. Any skirting of ~~trailers~~ mobile homes must be of a type and construction which will not provide harborage. Where ~~trailers~~ mobile homes are skirted, an access opening must be provided near service connections.

History: Effective August 1, 1988; amended effective October 1, 1990.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

33-33-01-06. Maintenance of service buildings. Service buildings, sinks, toilets, and other equipment must be kept in a clean and sanitary condition and in good repair at all times.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-02, 23-10-07

TITLE 43

Industrial Commission



OCTOBER 1990

43-02-02-28. Preservation of cores and samples. Sample cuttings of formations, taken at regular intervals, in all wells drilled for subsurface minerals or geological information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn must be placed in proper order in a standard sample box carefully identified as to operator, well name, and location, and depth of sample, and shall be shipped free of cost to the state geologist, if requested.

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

This section ~~shall not be construed as prohibiting~~ does not prohibit the operator from taking such samples of the core as the operator may desire for identification and testing. In the event that it is necessary for the operator to utilize all or any portion of the core to the extent that representative samples, sufficiently large to analyze, are not available for the state, the The operator shall furnish the state geologist with the results of identification or testing procedure.

History: Amended effective October 1, 1990.

General Authority: NDCC 38-12-02

Law Implemented: NDCC 38-12-02

43-02-03-38.1. Preservation of cores and samples. Sample cuttings of formations, taken at regular intervals in all wells drilled

for oil or gas or geologic information in North Dakota, shall be washed and packaged in standard sample envelopes which in turn shall be placed in proper order in a standard sample box; carefully identified as to operator, well name, location, depth of sample; and shall be sent free of cost to the state geologist.

The operator of any well drilled for oil or gas in North Dakota, during the drilling of or immediately following the completion of any well, shall inform the state geologist or the geologist's representative of all intervals that are to be cored, or have been cored. All cores taken shall be preserved and forwarded to the state geologist, free of cost, unless specifically exempted by the state geologist. Those cores requested by the state geologist shall be forwarded to the state geologist within thirty days after completion of drilling operations. If the state geologist does not desire the core, the operator shall advise the state geologist of the final disposition of the core.

This section does not prohibit 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.

History: Effective October 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-60.1. Valuation of flared gas. The value of gas flared from an oil well in violation of North Dakota Century Code section 38-08-06.4 must be deemed one dollar per thousand cubic feet [28.32 cubic meters] (MCF). This valuation will be periodically reviewed by the industrial commission.

History: Effective October 1, 1990.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-06.4

43-02-07-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-19, except:

1. "Commission" means the industrial commission of this state.
2. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
3. "Deep well" means any hole well drilled below one thousand feet [304.8 meters] into rocks older than the greenhorn formation or which encounters brackish or saline formation waters to develop or produce geothermal energy.

4. "Injection well" means a well into which fluids are being injected.
5. "Person" means and includes any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any department, agency or instrumentality of the state, or of any governmental subdivision thereof.
6. "Shallow well" means any hole well drilled to a total depth of less than one thousand feet {304.8 meters} for the purpose of developing or producing geothermal energy into rocks younger than the belle fouche formation and does not encounter saline or brackish formation waters to develop or produce geothermal energy.
7. "Underground source of drinking water" means an aquifer or its portion which supplies drinking water for human consumption or in which the ground water contains fewer than ten thousand milligrams per liter total dissolved solids.
8. "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.
9. "Closed-loop system" means any geothermal energy extraction facility in which a fluid is permanently confined within pipe or tubing and does not come in contact with the outside environment.
10. "Open-loop system" means any geothermal energy extraction facility in which water is extracted for heating or cooling purposes and is reinjected into the subsurface or disposed of at the surface.

History: Effective March 1, 1984; amended effective October 1, 1990.  
 General Authority: NDCC 38-19-03  
 Law Implemented: NDCC 38-19-03

43-02-07-03. Powers and duties. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to geothermal energy extraction facilities. All applications, correspondence, protests, and other communications shall be addressed to the state geologist as follows:

State Geologist  
University Station 600 East Boulevard  
Grand Forks, ND 58202-8156 Bismarck, ND 58505  
~~(701) 777-2231~~ (701) 224-4109

History: Effective March 1, 1984; amended effective October 1, 1990.  
 General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-04. Authority to cooperate with other agencies. The commission may from time to time enter into arrangements with state and federal ~~government~~ agencies, ~~committees from~~ industry, and individuals with respect to special projects, services, and studies relating to geothermal energy.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-05. Prohibition of movement of fluids into underground sources of drinking water. No producer may construct, operate, maintain, convert, plug, or abandon any geothermal energy extraction facility in a manner which causes or allows movement of fluid containing any contaminant into underground sources of drinking water or which may adversely affect the human health of persons. The applicant for a permit has the burden of proof of showing to prove that the requirements of this paragraph section are met.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-06. Permit required. A permit is required prior to the commencement of operations for the drilling, boring, excavating, or construction of a geothermal energy extraction facility. A permit is not required for private residential heating or cooling purposes ~~or for geothermal extraction facilities with a heat exchange rate of less than one hundred twenty thousand Btu per hour~~. The state geologist may grant a permit for up to ten years upon receipt of a permit application on a form provided by the commission, the furnishing of a bond (if required) as provided in section 43-02-07-08, and the payment of a fee of one hundred dollars for each permit. The application for a permit must be accompanied by an accurate plat showing the location of the proposed facility with reference to the nearest lines of a governmental section.

The state geologist may deny an application for permit if the construction of a geothermal energy extraction facility would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, or contaminate underground sources of drinking water. The applicant may appeal the decision of the state geologist to the commission.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03, 38-19-04

43-02-07-07. Modification or revocation and reissuance of permit  
- Termination of permit - Transfer or renewal of permit.

1. Modification or revocation and reissuance of permit.

- a. The commission may modify or revoke and reissue a permit if there are substantial alterations or additions to the permitted facility, or if the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued.
- b. When a permit is modified, only the conditions subject to modification are reopened reviewed. If a permit is revoked and reissued, the entire permit is reopened reviewed and subject to revision and the permit is reissued for a new term.

2. Termination of permit.

- a. The commission may terminate a permit during its term or deny a renewal application for noncompliance by the permittee with any condition of the permit, the rules or regulations, or failure to disclose fully or misrepresent all relevant facts.
- b. A permit may be terminated if the permitted activity endangers human health or the environment, or causes pollution to underground sources of drinking water.

3. Transfer or renewal of permit.

- a. A permit may be renewed or transferred to a new owner or operator if the current permittee notifies the commission at least thirty days in advance of the proposed renewal or transfer date and provided the permit does not need to be modified or revoked and reissued.
- b. A notice of transfer must include a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them. The notice must demonstrate that the financial responsibility requirements of section 43-02-07-09 will be met by the new permittee.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03, 38-19-04

43-02-07-08. Bond. Before any person receives a permit to drill, bore, excavate, or construct a geothermal energy extraction facility, the person shall submit to the commission and obtain its approval of a

bond, on a form approved by the commission, conditioned as provided by law. Each such bond must be executed by a responsible surety company authorized to transact business in this state.

The amount and type of the bond ~~must be commensurate with the number of extraction wells and the type of project.~~ The amount of a bond ~~must be~~ is as follows:

- ~~1. Single shallow well facility - \$1,000.~~
- ~~2. Blanket bond for a two or more shallow wells facility - \$15,000.~~
- ~~3. Single deep well facility - \$5,000.~~
- ~~4. Blanket bond for a two or more deep wells facility - \$25,000.~~

1. Shallow-well facilities. A fifteen thousand dollar facility blanket bond is required for all closed-loop systems using anything other than food grade additives, for all open-loop systems which are deemed by the state geologist to be an environmental risk, and for any other shallow-well system that the state geologist deems necessary.

The installer of all shallow-well facilities which do not require a facility bond shall carry an installation bond. The amount of the installation bond must be as follows:

- a. A ten thousand dollar installation blanket bond for facilities of up to ten shallow wells.
  - b. A twenty-five thousand dollar installation blanket bond for facilities of more than ten wells but less than fifty shallow wells.
  - c. A fifty thousand dollar installation blanket bond for facilities of more than fifty shallow wells.
2. Deep-well facilities. A facility bond is required for all deep well facilities. The amount of the facility bond must be as follows:
    - a. A five thousand dollar bond for a single deep-well facility.
    - b. A twenty-five thousand dollar blanket bond for a facility with two or more deep wells.

Liability on the facility bond is conditioned on compliance with North Dakota Century Code chapter 38-19 and the rules and orders of the commission, and continues until either of the following occurs:

- ~~1-~~ The (1) the wells or loop systems have been satisfactorily plugged as provided in this chapter, the sites restored and disturbed by any method of production of geothermal energy have been reclaimed in a manner approved by the state geologist, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved-
- ~~2-~~ The lands disturbed by any method of production of geothermal energy have been restored and approved by the state geologist-
- ~~3-~~ The or (2) the liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a bond is terminated.

Liability on the installation bond is conditioned on compliance with North Dakota Century Code chapter 38-19 and the rules and orders of the commission, and continues until either of the following occurs: (1) the site disturbed during installation of the geothermal energy extraction facility has been reclaimed in a manner approved by the state geologist and a successful pressure test of the geothermal energy extraction facility has been completed and approved by the state geologist. Such tests shall not be conducted without the state geologist first having been given five days' advanced written notice of the date and approximate time of the test or (2) the liability on the bond has been transferred to another bond and such transfer approved by the commission.

The commission shall advise the surety and the principal when liability on a bond is terminated.

The state geologist is ~~vested with the power~~ authorized to act for the commission as to all matters within this section.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-11. Completion report and basic data collected. Within thirty days after the completion of any geothermal energy extraction facility, a completion report must be filed with the state geologist, on a form prescribed by the commission.

The following basic data developed by the producer must be delivered, free of charge, to the state geologist, if requested, within six months of the filing of the completion report:

1. Washed and packaged sample cuts, core chips, or whole cores minus those portions of cores used for necessary testing or analysis in which case the results of testing, the analysis,

and the description of missing portions shall be submitted to the state geologist upon request. Sample cuttings must be packaged in standard sample envelopes which in turn must be placed in proper order in a standard sample box and carefully identified as to producer, well location, and depth of sample.

2. Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
3. Elevation and location information on the data collection points.
4. Other pertinent information as may be requested by the state geologist.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-12. Production reports. The producer in each and every open-loop geothermal energy extraction facility shall on or before the fifteenth day of the succeeding month following the month in which production of geothermal energy occurs file with the state geologist a sworn statement showing the quantities, temperatures, and nature of products extracted from or by means of any facility during the month and the ultimate disposition of such products.

History: Effective March 1, 1984; amended effective October 1, 1990.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

43-02-07-15. Plugging and abandonment. Notice of intention to abandon any geothermal energy extraction facility must be filed with the state geologist by the producer prior to the commencement of plugging operations, on a form prescribed by the ~~commission~~ state geologist. The notice must state the name and location of the well or well field and the name of the producer.

Before any geothermal energy extraction facility is abandoned, it must be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation must be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist. Casing must be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole must be set at least three feet [.91 meters] below ground level, and the land surface must be restored as nearly as possible to its original condition. Shallow closed-loop systems using an approved food grade additive may, upon approval of the state geologist, be abandoned by permanently sealing all of the loop ends and burying all pipes at least three feet [.91 meters] below ground.

History: Effective March 1, 1984; amended effective October 1, 1990.  
General Authority: NDCC 38-19-03  
Law Implemented: NDCC 38-19-03

43-03-01-01. History - Administration. Pursuant to the authority provided in ~~sections 4 and 7 of chapter 729~~ 735 of the ~~1987~~ 1989 Session Laws, the North Dakota industrial commission (hereinafter referred to in this article as "commission") is making funds available to provide financial assistance for lignite development and land reclamation research projects and hydroelectricity impact studies contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite, as further described in this article. The lignite research council, established by executive order 1987-4, will review and make recommendations to the commission on all applications for financial assistance under this program. The industrial commission concurred in the appointments to the lignite research council. Any and all awards of funds will be at the sole discretion of the commission, after receiving the recommendation of the lignite research council. In all instances, commission decisions will be made solely on the basis of acceptable applications submitted to the commission. The commission reserves the right to deny funds to any applicant not submitting a complete application or to any applicant whose application, in the opinion of the commission, does not meet applicable criteria or provide sufficient justification for a request of funds.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-02. ~~North Dakota project required. Funds will be awarded only projects encouraged. The commission encourages applications for projects conducted entirely or largely within the boundaries of the state of North Dakota. The commission may consent to a portion of the project being conducted outside North Dakota, if necessary for the success of the overall project.~~

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-04. Acceptance and rejection of proposals. The rules in this article do not commit the commission to award funds. The commission reserves the right to accept or reject any or all proposals received as a result of the program, to negotiate with any and all qualified applicants, to cancel or amend any part of this program, or to waive any requirement contained in this article, except the provisions of section 43-03-04-02 and chapter 43-03-06, if it is in the commission's best interests to do so.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-01-06. Statement of intent. The commission's sole interest in issuing the rules in this article is to further the development and use of North Dakota's lignite resources through the financial support of projects proposed and executed by qualified sponsors. The intent of this program is financial assistance for ~~lignite development and land reclamation research and hydroelectricity impact studies, projects proposing research, development, or marketing of lignite or products derived from lignite and land reclamation research projects~~ without regard to particular applicants. Projects which may be proposed are deemed to be activities of the respective applicants and not the commission.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-02-02. Eligible and ineligible projects. In general, any ~~lignite research project, land reclamation research project, or hydroelectricity impact study project~~ proposing research, development, or marketing of lignite or products derived from lignite, or ~~land reclamation research project~~ may be eligible for a contract under this program. The following are examples of eligible topics:

1. Eligible lignite research projects include, but are not limited to:
  - a. Conversions to lignite use.
  - b. Lignite cleaning or beneficiation.
  - c. Lignite desulfurization and emission control.
  - d. Lignite-water mixtures or lignite-methanol mixtures and other lignite-derived fuels.
  - e. Lignite-based cogeneration projects.
  - f. Development of markets for liquids or other byproducts derived from lignite.
  - g. Research and development into ash derived from lignite.
  - h. Studies of legal, regulatory, and economic factors affecting lignite use and development.
  - i. Development of materials for use in lignite market promotion.

- j. Development of commercial programs to treat effluent, emissions, solid waste, or hazardous waste from lignite conversion plants, chemical spills and oil spills, using bioremediation technology.
  - k. Resource characterization and evaluation studies.
  - l. In general, any project which will utilize or enhance the development or use of lignite resources.
2. Eligible land reclamation research projects include, but are not limited to:
- a. Prime farmland soil productivity research.
  - b. Development of productivity indices for reclaimed land.
  - c. Soil respreading and depth of soil replacement research.
  - d. Research relating to root zone hydrology, runoff and erosion on reclaimed land.
  - e. Other projects that may reduce unnecessary regulatory costs and assist in effectively reclaiming mined land to its original or better productivity.
3. ~~Eligible hydroelectricity impact studies include, but are not limited to:~~
- ~~a. Studies comparing North Dakota and Canadian electricity production methods, pricing, marketing, and environmental practices.~~
  - ~~b. Studies which involve coordination with energy producers and states to secure markets for lignite and lignite byproducts as they relate to the long-term energy needs of the United States.~~
  - ~~c. Studies which assist in the development of international markets for lignite and its byproducts.~~
4. The following activities or uses are ineligible for funding under this program:
- a. Business startup capital.
  - b. Business working capital.
  - c. Business advertising or promotional expenses pertaining to a specific company or cooperative.

History: Effective February 1, 1988; amended effective October 1, 1990.  
 General Authority: S.L. 1987, ch. 729, § 4

Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-03-02. Matching funds - Equity requirements. Funds received from any contract with the commission may not exceed fifty percent of the total project cost. Documentation demonstrating the matching funds, including letters of commitment from other funding sources, must be included with the application submitted to the commission within sixty days of the approval of a project by the commission. Indirect costs (contributed equipment, materials, or services) may be used by any applicant to supply the required funding match or contribution.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-04-02. Application deadline. ~~To be considered in the first review and award process, applications must be received by the commission within thirty days of February 1, 1988. To be considered in the second review and award process, applications must be received by the commission on or before April 1, 1988. Thereafter, applications~~ Applications for the first review and award process in each succeeding fiscal year must be received by the commission postmarked on or before October first, and applications for the second review and award process in each succeeding fiscal year must be received by the commission postmarked on or before April first.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-01. Application evaluation - Constraints and criteria. All applications will be evaluated according to the constraints imposed by ~~sections 4 and 7 of chapter 729~~ 735 of the ~~1987~~ 1989 Session Laws, and the criteria established by the commission as stated in this section.

1. North Dakota lignite related. The commission desires that funded projects be applicable to research, development, or marketing of lignite development and or products derived from lignite or land reclamation research or hydroelectricity impact studies. The projects need not be unique to North Dakota's lignite resources but must be applicable to them. The commission therefore requires the following:
  - a. Development. All proposals must state how the project will assist in the development of North Dakota's lignite resources.

- b. ~~Project location.~~ All projects must be located entirely or largely within the boundaries of the state of North Dakota. If necessary, the commission may consent to a portion of the project being conducted out of state if necessary for the success of the project.
- c. Consistency with state policy. All proposals must state how the proposed project is consistent with sections 4 and 7 of chapter ~~729~~ 735 of the ~~1987~~ 1989 Session Laws.

2. Financial related.

- a. Matching funds. All proposals must contain ~~documentation establishing that funds from information identifying all other funding sources, including the sponsor and federal, state, or other private sources, are firmly committed.~~ Preference will be given to projects with a greater than fifty percent participation from matching or other funding sources and a smaller participation by the commission. Preference will also be given to projects with minimal or no use of indirect costs to meet the required funding match.
- b. Project costs compared to benefits. All proposals must show the costs of the proposed project as compared with the benefits. All proposals must show ancillary or indirect benefits from the project, such as new business creation, increased employment opportunities, ~~community conservation,~~ and other ancillary or indirect benefits from the research effort.
- c. Funding level necessary for effect. All proposals must show that the level of funding is necessary in order to achieve the project objectives, how long will project funding need to continue, and whether there are logical evaluation points along the project timetable. All proposals must show, if less funding is available than requested, whether the results will be delayed or unattainable.

3. Proposal related.

- a. Project objectives. The commission requires that the project objectives and the budget and work plan be concisely stated and have a reasonable probability of success.
- b. Research methodology. The commission requires that the proposal describe the facilities and techniques to be employed, their availability and capability, and disposition of any facilities or equipment acquired during the course of the project once the project is concluded.

- c. Personnel qualifications. The commission requires that all proposals contain a statement of the qualifications and experience of the project director and key staff and estimate of the time to be committed by each.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-03. Contracts. All successful applicants will be required to enter into a contract with the commission and submit any supporting documentation required by the attorney general. The application will form an integral part of the contract. The commission shall provide proposed contracts to successful applicants within sixty days of commission approval of the project. The successful applicant will then have sixty days to execute a contract. If a contract is not executed by the successful applicant within one hundred twenty days of commission approval of the project, the award will be canceled unless an extension of time is granted by the commission or its authorized agent.

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

43-03-05-06. Partially funded or delayed projects. If the commission award to a project is less than the amount requested, the applicant may elect to decline the award or proceed with the project as proposed, notwithstanding the reduced award. Failure of an applicant to proceed with the project in a timely manner or comply with contract terms may result in cancellation of the award by the commission.

History: Effective October 1, 1990.  
General Authority: NDCC S.L. 1987, ch 729, § 4  
Law Implemented: NDCC S.L. 1987, ch 729 §§ 4, 7

43-03-06-02. Rights to technical data. Rights to technical data, including software developed under the terms of a grant resulting from proposals submitted, shall remain with the grantee, **except that the state of North Dakota shall have the limited right to use such data for state government purposes.**

History: Effective February 1, 1988; amended effective October 1, 1990.  
General Authority: S.L. 1987, ch. 729, § 4  
Law Implemented: S.L. 1987, ch. 729, §§ 4, 7

STAFF COMMENT: Article 43-04 contains all new material but is not underscored so as to improve readability.

ARTICLE 43-04

GEOLOGICAL SURVEY PALEONTOLOGICAL RESOURCE PROTECTION

Chapter	
43-04-01	Definitions
43-04-02	Permit Program

CHAPTER 43-04-01  
DEFINITIONS

Section	
43-04-01-01	Definitions

43-04-01-01. Definitions.

1. "Large scale excavation permit" is a permit issued by the state geologist that allows large scale excavation or quarrying of paleontological resources (excavations that disturb a surface area of more than eighteen square feet [1.67 square meters] of material).
2. "Minimum excavation and surface collecting permit" is a permit issued by the state geologist that allows the collection of paleontological resources found at the surface or removal of specimens with hand tools without extensive excavation.
3. "Modified minimum excavation and surface collecting permit" is a permit issued by the state geologist to amateur collectors that allows collection only of paleontological resources that have completely weathered out of the rock or sediment.
4. "Paleontological resource" must be defined as in North Dakota Century Code section 54-17.3-01.
  - a. Vertebrate fossils and the localities in which they are found are assumed to be paleontological resources unless they are determined not to be significant by the state geologist (bison remains would generally not be considered significant except when found in cultural context).
  - b. Invertebrate, plant and trace fossils and the localities in which they are found are not considered paleontological resources unless they are determined to be significant by the state geologist (sites of unusually fine preservation and type localities, the places from which the first

specimens of new fossil species were described would generally be considered paleontological resources).

History: Effective October 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-17.3-03

#### CHAPTER 43-04-02 PERMIT PROGRAM

##### Section

43-04-02-01	Qualifications of Applicants
43-04-02-02	Procedure of Application
43-04-02-03	Requirements for Permitholders

43-04-02-01. Qualifications of applicants. Permits will be issued only to applicants who can demonstrate that they are qualified and have experience in conducting those activities. The general standards for a qualified applicant will be determined by the state geologist.

History: Effective October 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-17.3-03, 54-17.3-06

43-04-02-02. Procedure of application. Anyone wishing to collect paleontological resources on lands owned by the state or any of its political subdivisions must obtain a paleontological collecting permit. Whether or not a permit is required, the state geologist shall be contacted prior to paleontological mapping or collecting of fossils other than those defined as paleontological resources on lands owned by the state or its political subdivisions. Fossils found during those activities that are believed to be paleontological resources shall be reported to the state geologist.

Commercial collecting of paleontological resources from lands owned by the state or its political subdivisions is prohibited.

1. Information required on the permit application (available from the state geologist) is determined by the state geologist and may include, but is not limited to, the following:
  - a. Name, mailing address, and telephone number of the applicant.
  - b. Information to evaluate the qualifications of the applicant including a resume.

- c. Type of permit requested (modified minimum excavation and surface collecting permit, minimum excavation and surface collecting permit, or large scale excavation permit).
  - d. Purpose of the proposed activity.
  - e. Location of the proposed activity.
  - f. Date (start and end of the proposed activity).
  - g. Names and affiliations of other individuals that will be involved in the proposed activity.
- 2. No permit processing fee will be charged.
  - 3. The state geologist will review and respond to the permit application within thirty days after all the application materials have been submitted.

History: Effective October 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-17.3-03, 54-17.3-06

43-04-02-03. Requirements for permitholders. Requirements for permitholders are to be determined by the state geologist and must include, but not be limited to, the following:

- 1. Permits will be effective until December thirty-first of the year in which they are issued.
- 2. Permits will generally be issued for paleontological activities in geographically restricted areas. Individuals affiliated with North Dakota institutions may obtain a statewide permit. The names of students or field assistants under supervision of these statewide permitholders must be reported to the state geologist.
- 3. All paleontological resources collected from state-owned lands remain the property of North Dakota.
  - a. Permitholders not affiliated with a North Dakota institution must return to the geological survey a representative sample of the paleontological resources collected after an appropriate period of study.
  - b. What constitutes a representative sample and an appropriate period of study will be determined upon proposal and request by the collector at the end of the field activity and approved by the state geologist.
  - c. The representative sample is to be permanently repositied in the state fossil collection or, if preferred by the

collector, into the paleontological collection of one of North Dakota's universities.

- d. Remaining specimens must be deposited in a suitable repository, presumably the institution where the permit holder is affiliated, where they will be available for study and public display.
  - e. North Dakota resident permit holders affiliated with state institutions having a paleontological collection will be expected to curate specimens into that collection but, if they so desire, can deposit the specimens with the North Dakota geological survey for curation into the state fossil collection.
4. Upon termination of field activity or expiration or revocation of the permit, the permittee shall restore the site (remove all collecting equipment, fill in excavations, and so forth).
  5. The state geologist may revoke the permit at any time if it appears that the circumstances warranting revocation as stated in North Dakota Century Code section 54-17.3-04 exist.
  6. The permit holder will not be released from the requirements of the permit until all the outstanding obligations of the permit have been satisfied even if the term of the permit has expired.
  7. The state geologist or the state geologist's representative has the right to visit the permit area at any time and inspect all paleontological resources collected under the permit.
  8. A paleontological resource site record form, supplied by the state geologist, must be filled out for each fossil site identified.
  9. Six months after the termination date of the permit, a final report, containing at least the following information must be submitted to the state geologist:
    - a. Paleontological collecting permit number.
    - b. Names and affiliations of all individuals involved with the permitted activity.
    - c. Discussion of the purpose of the activity.
    - d. Description of the area where the activity took place, including the plotting of site locations on 1:24,000 United States geological survey topographic maps.
    - e. Methods employed during the activity.

- f. Preexcavation and postexcavation photographs of the site in the case of large-scale excavation permits.
  - g. Discussion of the results of the activity.
  - h. Description of the paleontological resources collected during the activity. This includes specimen accession or catalog numbers or both.
  - i. All paleontological resource site record forms.
- 10. A copy of all publications, such as journal publications or reports, resulting from the activity conducted under the permit must be submitted to the state geologist.
  - 11. Upon request, copies of all field notes and other data relating to the permitted activity must be made available to the state geologist.

History: Effective October 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-17.3-03, 54-17.3-06



TITLE 45  
Insurance, Commissioner of



SEPTEMBER 1990

STAFF COMMENT: Article 45-11 contains all new material but is not underscored so as to improve readability.

ARTICLE 45-11

LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

Chapter  
45-11-01          Advertising Rules

CHAPTER 45-11-01  
ADVERTISING RULES

Section  
45-11-01-01          Required Disclaimers

45-11-01-01. Required disclaimers.

1. General notice of policy coverage. The document, required under subsection 2 of North Dakota Century Code section 26.1-38.1-16 to be delivered to policyholders of policies or contracts described in subsection 2 of North Dakota Century Code section 26.1-38.1-01, related to the description of the general purposes and current limitations of the North Dakota life and health insurance guaranty association, must be in the same form and contain the language printed in the Notice Concerning Coverage Limitations and Exclusions Under the North

Dakota Life and Health Insurance Guaranty Association Act shown in exhibit A.

2. **Notice of noncoverage.** Each notice which is delivered to a policyholder by an insurer or agent pursuant to and required to be delivered by subsection 4 of North Dakota Century Code section 26.1-38.1-16 must be in the same form and contain the language printed in the Notice Concerning Coverage Limitations and Exclusions Under the North Dakota Life and Health Insurance Guaranty Association Act shown in exhibit A.

History: Effective September 1, 1990.

General Authority: NDCC 26.1-38.1-16

Law Implemented: NDCC 26.1-38.1-16

**NOTICE CONCERNING COVERAGE  
LIMITATIONS AND EXCLUSIONS UNDER THE NORTH  
DAKOTA LIFE AND HEALTH INSURANCE GUARANTY  
ASSOCIATION ACT**

Residents of North Dakota who purchase life insurance, annuities or health insurance should know that the insurance companies licensed in this state to write these types of insurance are members of the North Dakota Life and Health Insurance Guaranty Association. The purpose of this association is to assure that policy-holders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the guaranty association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the guaranty association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

**The North Dakota Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in North Dakota. You should not rely on coverage by the North Dakota Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy.**

**Coverage is *NOT* provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk, such as a variable contract sold by prospectus.**

**Insurance companies or their agents are required by law to give or send you this notice. *However, insurance companies and their agents are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy.***

The North Dakota Life and Health Insurance Guaranty Association  
P.O. Box 8875  
Fargo, North Dakota 58109-8875

State of North Dakota Department of Insurance  
600 East Blvd. Avenue  
Bismarck, North Dakota 58505

The state law that provides for this safety-net coverage is called the North Dakota Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change anyone's rights or obligations under the act or the rights or obligations of the guaranty association.

(please turn to back of page)

## COVERAGE

Generally, individuals will be protected by the life and health insurance guaranty association if they live in North Dakota and hold a life or health insurance contract, annuity contract, or if they are insured under a group insurance contract, issued by a member insurer. The beneficiaries, payees or assignees of insured persons are protected as well, even if they live in another state.

## EXCLUSIONS FROM COVERAGE

However, persons holding such policies are not protected by this association if:

- they are eligible for protection under the laws of another state (this may occur when the insolvent insurer was incorporated in another state whose guaranty association protects insureds who live outside that state);
- the insurer was not authorized to do business in this state;
- the policy is issued by an organization which is not a member of the North Dakota Life and Health Insurance Guaranty Association.

The association also does not provide coverage for:

- any policy or portion of a policy which is not guaranteed by the insurer or for which the individual has assumed the risk, such as a variable contract sold by prospectus;
- any policy of reinsurance (unless an assumption certificate was issued);
- interest rate yields that exceed an average rate;
- dividends;
- credits given in connection with the administration of a policy by a group contractholder;
- employers' plans to the extent they are self-funded (that is, not insured by an insurance company, even if an insurance company administers them).

## LIMITS ON AMOUNT OF COVERAGE

The act also limits the amount the association is obligated to pay out: The association cannot pay more than what the insurance company would owe under a policy or contract. Also, for any one insured life, the association will pay a maximum of \$300,000 - no matter how many policies and contracts there were with the same company, even if they provided different types of coverages. Within this overall \$300,000 limit, the association will not pay more than \$100,000 in cash surrender values, \$100,000 in health insurance benefits, \$100,000 in present value of annuities, or \$300,000 in life insurance death benefits - again, no matter how many policies and contracts there were with the same company, and no matter how many different types of coverages.

*Note to benefit plan trustees or other holders of unallocated annuities (GICs, DACs, etc.) covered by the act:* for unallocated annuities that fund governmental retirement plans under §§401(k), 403(b) or 457 of the Internal Revenue Code, the limit is \$100,000 in present value of annuity benefits including net cash surrender and net cash withdrawal per participating individual. In no event shall the association be liable to spend more than \$300,000 in the aggregate per individual; for covered unallocated annuities that fund other plans, a special limit of \$5,000,000 applies to each contractholder, regardless of the number of contracts held with the same company or number of persons covered. In all cases, of course, the contract limits also apply.

OCTOBER 1990

45-06-01-08.3. Filing requirements for advertising. Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state shall provide ~~upon request~~ a copy of any medicare supplement advertisement intended for use in this state whether through written, radio, or television medium to the commissioner of insurance of this state for review or approval by the commissioner. ~~Filing of advertisements is not required except upon specific written request of the commissioner.~~

History: Effective October 1, 1989; amended effective October 1, 1990.  
General Authority: NDCC 26.1-36-38, 28-32-02  
Law Implemented: NDCC 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36



NOVEMBER 1990

45-02-04-09. Licensee report of compliance. Reports of compliance for continuing education credit must be submitted with a fee of twenty-five dollars at the end of each ~~four-year~~ two-year period following licensure, except as provided below at the inception of the program. Persons licensed prior to January 1, 1986. All licensed agents shall submit a compliance report and fee based on the following schedule. Licensed agents with surnames beginning with:

- ~~1. A-F shall report fifteen hours or more of approved continuing education coursework within thirty days of January 1, 1987.~~
- ~~2. G-K shall report thirty hours or more of approved continuing education coursework within thirty days of January 1, 1988.~~
- ~~3. L-R shall report forty-five hours or more of approved continuing education coursework within thirty days of January 1, 1989.~~
- ~~4. S-Z shall report sixty hours or more of approved continuing education coursework within thirty days of January 1, 1990.~~
1. A-K shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.
2. L-Z shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every even-numbered year.
3. A newly licensed agent shall have the remainder of the calendar year in which initially licensed, plus the next calendar year, to comply with the first year of continuing education requirements. New agents shall report these credits, and subsequent credits for each calendar year

thereafter, in the above listed sequence as a grace period. Beginning January first of the next calendar year, newly licensed agents must comply with continuing education requirements, reporting the required continuing education credits for each calendar year according to the alphabetized schedule.

4. Agents licensed exclusively for the sale of title insurance, baggage insurance, surety bonds, or bail bonds are exempt from continuing education requirements.
5. a. Persons licensed prior to January 1, 1989, with surnames beginning with:
  - (1) L-R shall report the required hours for the year of 1989 within thirty days of January 1, 1990.
  - (2) S-Z shall report the required hours for the years of 1986, 1987, 1988, and 1989, within thirty days of January 1, 1990.
- b. Persons licensed prior to January 1, 1990, with surnames beginning with:
  - (1) A-F shall report the required hours for the years 1987, 1988, 1989, and 1990 within thirty days of January 1, 1991.
  - (2) G-K shall report the required hours for the years of 1988, 1989, and 1990 within thirty days of January 1, 1991.

The table at appendix I to this chapter represents an example of the above-reporting requirements.

History: Effective July 1, 1986; amended effective November 1, 1990.

General Authority: NDCC 26.1-26-49

Law Implemented: NDCC 26.1-26-31.1(2), 26.1-26-31.4

STAFF COMMENT: Appendix I contains all new material but is not underscored so as to improve readability.

#### APPENDIX I

<u>If Licensed During</u>	<u>And Your Surname Begins With Letters</u>	<u>You Must Report for the Following Years</u>	<u>Continuing Education Credit Hours of at Least</u>	<u>Within 30 Days of</u>
1986	A-F	1987, 1988, 1989, 1990	60	1/1/91

1987	A-F	1988, 1989, 1990	45	1/1/91
1988	A-F	1989, 1990	30	1/1/91
1989	A-F	1990	15	1/1/91
1987	G-K	1988, 1989, 1990	45	1/1/91
1988	G-K	1989, 1990	30	1/1/91
1989	G-K	1990	15	1/1/91
1990	A-K	1991, 1992	30	1/1/93
1988	L-R	1989	15	1/1/90
1985	S-Z	1986, 1987, 1988, 1989	60	1/1/90
1986	S-Z	1987, 1988, 1989	45	1/1/90
1987	S-Z	1988, 1989	30	1/1/90
1988	S-Z	1989	15	1/1/90
1989	L-Z	1990, 1991	30	1/1/92
1990	L-Z	1991	15	1/1/92

45-06-01-05. Minimum benefit standards. No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy which does not meet the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

1. General standards. The following standards apply to medicare supplement policies and are in addition to all other requirements of this chapter.
  - a. A medicare supplement policy may not deny a claim for losses incurred more than six months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
  - b. A medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.
  - c. A medicare supplement policy shall provide that benefits designed to cover cost-sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
  - d. A medicare supplement policy may not be canceled or nonrenewed by the insurer solely on the grounds of deterioration of health.
  - e. Termination of a medicare supplement policy shall be without prejudice to any continuous loss which commenced

while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

- f. A "noncancelable", "guaranteed renewable", or "noncancelable and guaranteed renewable" medicare supplement policy may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination coverage of the insured, other than the nonpayment of premium.
- g. Except as authorized by the commissioner, an insurer shall neither cancel nor nonrenew a medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
- h. If a group medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in subdivision j of this subsection, the insurer shall offer certificate holders an individual medicare supplement policy. The insurer shall offer the certificate holder at least the following choices:
  - (1) An individual medicare supplement policy which provides for continuation of the benefits contained in the group policy; and
  - (2) An individual medicare supplement policy which provides only such benefits as are required to meet the minimum standards.
- i. If membership in a group is terminated, the insurer shall:
  - (1) Offer the certificate holder such conversion opportunities as are described in subdivision h of this subsection; or
  - (2) At the option of the group policyholder, offer the certificate holder continuation of coverage under the group policy.
- j. If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy must not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

2. Minimum benefit standards.

- a. Coverage for either all or none of the medicare Part A inpatient hospital deductible amount.
- b. Coverage for the daily copayment amount of medicare Part A eligible expenses for the first eight days per calendar year incurred for skilled nursing facility care.
- c. Coverage for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) under medicare Part A unless replaced in accordance with federal regulations.
- d. Coverage as follows:
  - (1) Until January 1, 1990, coverage for twenty percent of the amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of two hundred dollars of such expenses and to a maximum benefit of at least five thousand dollars per calendar year.
  - (2) Effective January 1, 1990, coverage for the copayment amount (twenty percent) of medicare eligible expenses excluding outpatient prescription drugs under medicare Part B regardless of hospital confinement up to the maximum out-of-pocket amount for medicare Part B after the medicare deductible amount.
- e. Effective January 1, 1990, coverage under medicare Part B for the medicare reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations.
- f. Effective January 1, 1990, coverage for the copayment amount (twenty percent) of medicare eligible expenses for covered home intravenous (IV) therapy drugs (as determined by the secretary of health and human services) subject to the medicare outpatient prescription drug deductible amount, if applicable.
- g. Effective January 1, 1990, coverage for the copayment amount (\_\_\_\_\_ percent) of medicare eligible expenses for outpatient drugs used in immunosuppressive therapy, subject to the medicare outpatient prescription drug deductible, if applicable.
- a. Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from

the sixty-first day through the ninetieth day in any medicare benefit period.

- b. Coverage for either all or none of the medicare Part A inpatient hospital deductible amount.
  - c. Coverage of Part A medicare eligible expenses incurred as daily hospital charges during use of medicare's lifetime hospital inpatient reserve days.
  - d. Upon exhaustion of all medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent of all medicare Part A eligible expenses for hospitalization not covered by medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five days.
  - e. Coverage under medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B.
  - f. Coverage for the coinsurance amount of medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the medicare Part B deductible (seventy-five dollars);
  - g. Effective January 1, 1990, coverage under medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the medicare deductible amount.
3. Medicare eligible expenses. Medicare eligible expenses mean health care expenses of the kinds covered by medicare, to the extent recognized as reasonable by medicare. Payment of benefits by insurers for medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity as are applicable to medicare claims.
4. Federal standards. Every entity providing medicare supplement policies or contracts shall comply with all provisions of Section 4081 of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203]. Compliance with the requirements set forth in Public Law 100-203 must be certified on the medicare supplement insurance experience reporting form.
5. Intermediate care standards. Pursuant to subdivision 1 of subsection 9 of North Dakota Century Code section 26.1-04-03,

every medicare supplement insurer offering convalescent nursing home, extended care facility, or skilled nursing facility coverage in excess of the one hundred fifty-day medicare benefit, must also cover intermediate care from the ninth day through extended care maximum period. This provision is not intended to duplicate medicare benefits.

6. Preexisting conditions standards. The policy or certificate of insurance providing medicare supplement benefits which is sold to a consumer in addition to another medicare supplement policy or which is sold to a consumer to replace such a policy may not contain a provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

History: Effective January 1, 1982; amended effective October 1, 1989; November 1, 1990.

General Authority: NDCC 26.1-36-33

Law Implemented: NDCC 26.1-36-33

45-06-01-06. Loss ratio standards. Medicare supplement policies shall return to policyholders under the policy, for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices:

1. At least seventy-five percent of the aggregate amount of premiums collected in the case of group policies; and
2. At least ~~sixty~~ sixty-five percent of the aggregate amount of premiums collected in the case of individual policies.

For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

3. All filings of rates and rating schedules must demonstrate that actual and expected losses in relation to premiums comply with the requirements of this section.
4. Every entity providing medicare supplement policies in this state shall file annually its rates, rating schedule, and supporting documentation, including ratios of incurred losses to earned premiums by number of years of policy duration

demonstrating that it is in compliance with the foregoing applicable loss ratio standards that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

For the purposes of this section, policy forms must be deemed to comply with the loss ratio standards if: (a) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and (b) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section. An expected third-year loss ratio which is greater than or equal to the applicable percentage must be demonstrated for policies or certificates in force less than three years.

5. As soon as practicable, but ~~no later than sixty days~~ prior to the effective date of medicare benefit changes ~~required by the Medicare Catastrophic Coverage Act of 1988~~, every insurer, health care service plan, or other entity providing medicare supplement insurance or contracts in this state, ~~except employers subject to the requirements of section 421 of the Medicare Catastrophic Coverage Act of 1988~~, shall file with the commissioner, in accordance with the applicable filing procedures of this state:
  - a. (1) Appropriate premium adjustments necessary to produce loss ratios as originally anticipated for the applicable policies or contracts. Such supporting documents as necessary to justify the adjustment must accompany the filing-; and
  - (2) Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits to a resident of this state shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or contract as will conform with minimum loss ratio standards for medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the insurer, health care service plan, or other entity for such medicare supplement insurance policies or contracts. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date. ~~Premium adjustments must be in the form of refunds or premium credits and must be made no later than upon renewal~~

~~if a credit is given, or within sixty days of the renewal date or anniversary date if a refund is provided to the premium payer. Premium adjustments must be calculated for the period commencing with medicare benefit changes.~~

- b. Any appropriate riders, endorsements, or policy forms needed to accomplish the medicare supplement insurance modifications necessary to eliminate benefit duplications with medicare. Any such riders, endorsements, or policy forms must provide a clear description of the medicare supplement benefits provided by the policy or contract.

History: Effective January 1, 1982; amended effective October 1, 1989; November 1, 1990.

General Authority: NDCC 26.1-36-34

Law Implemented: NDCC 26.1-36-34

#### 45-06-01-07. Required disclosure provisions.

##### 1. General rules.

- a. Medicare supplement policies shall include a renewal, or continuation, ~~or nonrenewal~~ provision. The language or specifications of the provision must be consistent with the type of contract ~~to be~~ issued. The provision shall be appropriately captioned, and shall appear on the first page of the policy, ~~and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.~~
- b. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement policy or is required to reduce or eliminate benefits to avoid duplication of medicare benefits, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must, unless the benefits are required by the minimum standards for medicare supplement insurance policies, be agreed to in writing signed by the insured, except if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

- c. A medicare supplement policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- d. If a medicare supplement policy contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- e. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for medicare shall have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificate holder shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.
- f. Insurers issuing accident and sickness policies, certificates, or subscriber contracts which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person eligible for medicare shall provide to all applicants a medicare supplement "buyer's guide". Delivery of the buyer's guide shall be made whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this chapter. Except in the case of direct response insurers, delivery of the buyer's guide shall be made to the applicant at the time of application and acknowledgment of receipt of the buyer's guide shall be obtained by the insurer. Direct response insurers shall deliver the buyer's guide to the applicant upon request but not later than at the time the policy is delivered.
- g. Except as otherwise provided in section 45-06-01-07, the terms "medicare supplement", "medigap", and words of similar import shall not be used unless the policy is issued in compliance with section 45-06-01-05.

2. Notice requirements.

- a. As soon as practicable, but no later than thirty days prior to the annual effective date of any medicare benefit changes, every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders, contractholders, and certificate holders of modifications it has made to medicare supplement insurance policies or contracts in a format acceptable to the commissioner. ~~For the years 1989 and 1990 and if prescription drugs are covered in 1991, such notice must be in a format prescribed by the commissioner or in the format prescribed in appendixes appendix A, B, and C if no other format is prescribed by the commissioner. In addition, such Such notice must:~~
- (1) Include a description of revisions to the medicare program and a description of each modification made to the coverage provided under the medicare supplement insurance policy or contract; and
  - (2) Inform each covered person as to when any premium adjustment is to be made due to changes in medicare.
- b. The notice of benefit modifications and any premium adjustments must be in outline form and in clear and simple terms so as to facilitate comprehension.
- c. Such notices may not contain or be accompanied by any solicitation.

3. Outline of coverage requirements for medicare supplement policies.

- a. Insurers issuing medicare supplement policies for delivery in this state shall provide an outline of coverage to all applicants at the time application is made and, except for direct response policies, shall obtain an acknowledgment of receipt of such outline from the applicant.
- b. If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline of coverage delivered at the time of application, a substitute outline of coverage properly describing the policy or certificate actually issued must accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon

application and the coverage originally applied for has not been issued."

- c. The outline of coverage provided to applicants pursuant to ~~this subsection~~ subdivisions a and b shall be in the form prescribed below:

(COMPANY NAME)  
OUTLINE OF MEDICARE  
SUPPLEMENT COVERAGE  
AND PREMIUM INFORMATION

Use this outline to compare benefits and premiums among policies.

- (1) Read your Policy Carefully -- This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
- (2) Medicare Supplement Coverage -- Policies of this category are designed to supplement medicare by covering some hospital, medical, and surgical services which are partially covered by medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).
- (3) (a) (for agents):  

Neither (insert company's name) nor its agents are connected with medicare.
- (b) (for direct responses):  

(insert company's name) is not connected with medicare.
- (4) (A brief summary of the major benefit gaps in medicare Parts A and B with a parallel description of supplemental benefits, including dollar amounts (and indexed copayments or deductibles, as appropriate), provided by the medicare supplement coverage in the following order):

CHART I

THIS POLICY  
PAYS\*\*

YOU PAY

DESCRIPTION

I. Minimum Standards

SERVICE

PART A

INPATIENT HOSPITAL SERVICES.

Semi-Private Room & Board

Miscellaneous Hospital Services

& Supplies, such as Drugs.

X-Rays, Lab Tests & Operating Room

BLOOD

PART B

MEDICAL EXPENSE.

Services of a Physician

Outpatient Services

Medical Supplies other than

Prescribed Drugs

BLOOD

MISCELLANEOUS

Immunosuppressive Drugs

II. Additional Benefits

PART A

Part A Deductible

Private Rooms

In-Hospital Private Nurses

Skilled Nursing Facility Care

PARTS A & B

Home Health Services

PART B

Part B Deductible

Medical Charges in Excess of

Medicare Allowable Expenses

(Percentage Paid)

OUT-OF-POCKET MAXIMUM

PRESCRIPTION DRUGS

MISCELLANEOUS

Respite Care Services

Expenses incurred in

Foreign Country

Other

TOTAL PREMIUM

\$ \_\_\_\_\_

IN ADDITION TO THIS OUTLINE OF COVERAGE, INSURANCE COMPANY NAME<sup>1</sup> WILL SEND AN ANNUAL NOTICE TO YOU 30 DAYS PRIOR TO THE EFFECTIVE DATE OF MEDICARE CHANGES WHICH WILL DESCRIBE THESE CHANGES AND THE CHANGES IN YOUR MEDICARE SUPPLEMENT COVERAGE.

\*\* THIS POLICY DOES NOT PROVIDE COVERAGE FOR SERVICES LISTED ABOVE, UNLESS THEY ARE COVERED BY MEDICARE. OTHERWISE, THERE IS NO COVERAGE. DENIAL OF BENEFIT IS THE RESULT.

(5) The following charts shall accompany the outline of coverage:

[COMPANY NAME]  
NOTICE OF CHANGES IN MEDICARE AND YOUR MEDICARE SUPPLEMENT COVERAGE - 1990

THE FOLLOWING CHART BRIEFLY DESCRIBES THE MODIFICATIONS IN MEDICARE AND IN YOUR MEDICARE SUPPLEMENT COVERAGE. PLEASE READ THIS CAREFULLY.

[A BRIEF DESCRIPTION OF THE REVISIONS TO MEDICARE PARTS A & B WITH A PARALLEL DESCRIPTION OF SUPPLEMENTAL BENEFITS WITH SUBSEQUENT CHANGES, INCLUDING DOLLAR AMOUNTS, PROVIDED BY THE MEDICARE SUPPLEMENT COVERAGE IN SUBSTANTIALLY THE FOLLOWING FORMAT.]

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990, Medicare will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990 Your Coverage will Pay
<b>MEDICARE PART A SERVICES AND SUPPLIES</b>				
Inpatient Hospital Services	Unlimited number of hospital days after \$50 deductible	All but \$52 for first 60 days/ benefit period		
Semi-Private Room & Board		All but \$143 a day for 61st-90th days/ benefit period		
Misc. Hospital Services & Supplies, such as Drugs, X-Rays, Lab Tests & Operating Room		All but \$205 a day for 91st-150th days (if individual chooses to use 60 nonconsecutive lifetime reserve days)		
<b>BLOOD</b>	Pays all costs except payment of deductible (equal to cost for first 3 pints each calendar year. Part A blood deductible reduced to the extent paid under Part B)	Pays all costs except non-deductible fees (blood deductible) for first 3 pints in each calendar year		

SERVICES	MEDICARE BENEFITS		YOUR MEDICARE SUPPLEMENT COVERAGE	
	In 1989 Medicare Pays Per Calendar Year	Effective January 1, 1990 Medicare Will Pay	In 1989 Your Coverage Pays	Effective January 1, 1990 Your Coverage Will Pay
SKILLED NURSING FACILITY CARE	There is no prior confinement requirement for this benefit	100% of costs for first 20 days (after a 3 day prior hospital confinement/benefit period)		
	First 8 days - All but \$25.50 a day	All but \$74.00 a day for 21st-100th days/benefit period		
	9th through 150th day - 100% of costs	Beyond 100 days - Nothing/benefit period		
	Beyond 150 days - Nothing			
MEDICARE PART B SERVICES AND SUPPLIES	80% of allowable charges (after \$75 deductible)	80% of allowable charges (after \$75 deductible/ calendar year)		
PRESCRIPTION DRUGS	Inpatient prescription drugs, 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/ calendar year)	Inpatient prescription drugs, 80% of allowable charges for immunosuppressive drugs during the first year following a covered transplant (after \$75 deductible/ calendar year)		
BLOOD	80% of all costs except nonreplacement fees (blood deductible) for first 3 pints in each benefit period (after \$75 deductible/ calendar year)	80% of costs except nonreplacement fees (blood deductible) for first 3 pints (after \$75 deductible/ calendar year)		

(Any other policy benefits not mentioned in this chart should be added to the chart in the order prescribed by the outline of coverage, if there are corresponding Medicare benefits, they should be shown.)

(Describe any coverage provisions changing due to Medicare modifications.)

(Include information about when premium adjustments that may be necessary due to changes in Medicare benefits will be effective.)

THIS CHART SUMMARIZING THE CHANGES IN YOUR MEDICARE BENEFITS AND IN YOUR MEDICARE SUPPLEMENT PROVIDED BY (COMPANY) ONLY BRIEFLY DESCRIBES SUCH BENEFITS. FOR INFORMATION ON YOUR MEDICARE BENEFITS CONTACT YOUR SOCIAL SECURITY OFFICE OR THE HEALTH CARE FINANCING ADMINISTRATION. FOR INFORMATION ON YOUR MEDICARE SUPPLEMENT (Policy) CONTACT:

(COMPANY OR FOR AN INDIVIDUAL POLICY - NAME OF AGENT) (ADDRESS/PHONE NUMBER)

- (6) Statement that the policy does or does not cover the following:
- (a) Private duty nursing;
  - (b) Skilled nursing home care costs (beyond what is covered by medicare);
  - (c) Custodial nursing home care costs;
  - (d) Intermediate nursing home care costs;
  - (e) Home health care above number of visits covered by medicare;
  - (f) Physician charges (above medicare's reasonable charges);
  - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay);
  - (h) Care received outside the United States of America;
  - (i) Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (7) (A description of any policy provision which excludes, eliminates, resists, reduces, limits, delays, or in any other manner operates to qualify payments of the benefits described in paragraph 4, including conspicuous statements:)
- (a) (That the chart summarizing medicare benefits only briefly describes such benefits.)
  - (b) (That the health care financing administration or its medicare publications should be consulted for further details and limitations.)
- (8) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation or rights to change premium.)
- (9) The amount of premium for this policy.
- (\*Substitute ~~"Certification"~~ "Certificate" for "policy" where appropriate.)

4. Notice regarding policies or subscriber contracts which are not medicare supplement policies.

Any accident and sickness insurance policy, other than a medicare supplement policy; or a policy issued pursuant to a contract under section 1876 of the Federal Social Security Act [42 U.S.C. 1395 et seq.]; disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy; or other policy defined in subsection 2 of section 45-06-01-01, issued for delivery in this state to persons eligible for medicare by reason of age shall notify insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. Such notice shall be in no less than twelve point type and shall contain the following language:

THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for medicare, review the medicare supplement buyer's guide available from the company.

History: Effective January 1, 1982; amended effective November 1, 1987; October 1, 1989; November 1, 1990.

General Authority: NDCC 26.1-36-35

Law Implemented: NDCC 26.1-36-35

45-06-01-08. Requirements for application forms and replacement coverage.

1. Application forms ~~shall~~ must include ~~a question~~ the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another medicare supplement insurance policy or certificate in force or whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing such a question questions may be used.

a. Do you have another medicare supplement insurance policy or certificate in force (including health care service contract, health maintenance organization contract)?

b. Did you have another medicare supplement policy or certificate in force during the last twelve months?

(1) If so, with which company?

(2) If that policy lapsed, when did it lapse?

c. Are you covered by medicaid?

d. Do you intend to replace any of your medical or health insurance coverage with this policy (certificate)?

2. Agents shall list any other health insurance policies they have sold to the applicant.

a. List policies sold which are still in force.

b. List policies sold in the past five years which are no longer in force.

~~2-~~ 3. Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the medicare supplement policy or certificate, a notice regarding replacement of accident and sickness coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy signed by the applicant shall be retained by the insurer. A direct response insurer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such a notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.

~~3-~~ 4. The notice required by subsection ~~2~~ 3 for an insurer, other than a direct response insurer, shall be provided in substantially the following form:

NOTICE ~~OF~~ TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing ~~accident and sickness medicare supplement~~ insurance and replace it with a policy to be issued by (Company name) Insurance Company. Your new policy provides ~~ten~~ thirty days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision.

STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]: (Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

\*This subsection may be modified if preexisting conditions are covered under the new policy.

b. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

~~b.~~ c. You If you are replacing existing medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.

~~c.~~ d. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

Signature of Agent, Broker, or Other Representative

---

(Typed Name and Address of Agent or Broker)

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's signature)

- ← 5. The notice required by subsection ~~2~~ 3 for a direct response insurer shall be as follows:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ~~ACCIDENT AND SICKNESS~~ MEDICARE SUPPLEMENT INSURANCE

(Insurance company's name and address)

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing ~~accident and sickness medicare supplement~~ insurance and replace it with the policy delivered herewith issued by (Company name) Insurance Company. Your new policy provides thirty days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision.

- a. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- b. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods, or probationary periods. Your insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

- c. ~~You~~ If you are replacing existing medicare supplement insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
- d. (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company name and address) within ~~ten~~ thirty days if any information is not correct and complete, or if any past medical history has been left out of the application.

\_\_\_\_\_  
(Company name)

History: Effective January 1, 1982; amended effective November 1, 1990.  
General Authority: NDCC 26.1-36-35  
Law Implemented: NDCC 26.1-36-35

45-06-01-08.4. Standards for marketing.

1. Every insurer, health care service plan, or other entity marketing medicare supplement insurance coverage in this state, directly or through its producers, shall:
  - a. Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
  - b. Establish marketing procedures to assure excessive insurance is not sold or issued.
  - c. Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first-year commissions as authorized in section 45-06-01-08.2.
  - d. Display prominently by type, stamp, or other appropriate means, on the first page of the outline of coverage and policy the following:

Notice to buyer: This policy may not cover all of the costs associated with medical care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations.

- e. Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.
  - f. Every insurer or entity marketing medicare supplement insurance shall establish auditable procedures for verifying compliance with this subsection.
2. Consistent with the provisions of North Dakota Century Code section 26.1-04-03, the following acts and practices are prohibited:
- a. Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.
  - b. High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.
  - c. Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

History: Effective November 1, 1990.

General Authority: NDCC 26.1-26-49, 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-04-03, 26.1-26-42, 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36

45-06-01-08.5. Appropriateness of recommended purchase and excessive insurance.

- 1. In recommending the purchase or replacement of any medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

2. Any sale of medicare supplement coverage which will provide an individual more than one medicare supplement policy or certificate is prohibited.

History: Effective November 1, 1990.

General Authority: NDCC 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36

45-06-01-08.6. Reporting of multiple policies.

1. On or before March first, every insurer or other entity providing medicare supplement insurance coverage in this state shall report the following information for every individual resident of this state for which the insurer or entity has in force more than one medicare supplement insurance policy or certificate:
  - a. Policy and certificate number; and
  - b. Date of issuance.
2. The items set forth in subsection 1 must be grouped by individual policyholder.

History: Effective November 1, 1990.

General Authority: NDCC 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36

45-06-01-08.7. Prohibition against preexisting conditions, waiting periods, elimination periods, and probationary periods in replacement policies or certificates. If a medicare supplement policy or certificate replaces another medicare supplement policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods in the new medicare supplement policy for similar benefits to the extent such time was spent under the original policy.

History: Effective November 1, 1990.

General Authority: NDCC 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-36-31, 26.1-36-32, 26.1-36-33, 26.1-36-34, 26.1-36-35, 26.1-36-36

STAFF COMMENT: Appendix A, Notice of Changes in Medicare and Your Medicare Supplement Insurance-1989; Appendix B, Notice of Changes in Medicare and Your Medicare Supplement Coverage-1990; Appendix C, Notice of Changes in Medicare and Your Medicare Supplement Coverage-1991, are deleted.

45-06-05-05.1. Prohibition against post-claims underwriting.

1. All applications for long-term care insurance policies or certificates, except those which are guaranteed issue, must contain clear and unambiguous questions designed to ascertain the health condition of the applicant.
2. a. If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.  
b. If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.
3. Except for policies or certificates which are guaranteed issue:
  - a. The following language must be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.

- b. The following language, or language substantially similar to the following, must be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

- c. Prior to issuance of a long-term care policy or certificate to an applicant age eighty or older, the insurer shall obtain one of the following:

(1) A report of a physical examination;

- (2) An assessment of functional capacity;
  - (3) An attending physician's statement; or
  - (4) Copies of medical records.
4. A copy of the completed application or enrollment form (whichever is applicable) must be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.
5. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the insurance commissioner in the format prescribed by the national association of insurance commissioners.

History: Effective November 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-45

45-06-05-05.2. Minimum standards for home health care benefits in long-term care insurance policies.

1. Definitions:

- a. "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.
  - b. "Home health care services" means medical and nonmedical services, provided to ill, disabled, or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.
2. A long-term care insurance policy or certificate may not, if it provides benefits for home health care services, limit or exclude benefits:
- a. By requiring that the insured or claimant would need skilled care in a skilled nursing facility if home health care services were not provided;
  - b. By requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services, or

- both in a home or community setting before home health care services are covered;
- c. By limiting eligible services to services provided by registered nurses or licensed practical nurses;
  - d. By requiring that a nurse or therapist provide service covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification.
  - e. By requiring that the insured or claimant have an acute condition before home health care services are covered;
  - f. By limiting benefits to services provided by medicare-certified agencies or providers.
3. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

History: Effective November 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-05.3. Requirement to offer inflation protection.

- 1. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:
  - a. Increases benefit levels annually, in a manner so that the increases are compounded annually;
  - b. Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined; or
  - c. Covers a specified percentage of actual or reasonable charges.

2. Where the policy is issued to a group, the required offer in subsection 1 must be made to the group policyholder; except, if the policy is issued to a group defined in subdivision d of subsection 3 of section 26.1-45-01 other than to a continuing care retirement community, the offering must be made to each proposed certificate holder.
3. The offer in subsection 1 is not required of:
  - a. Life insurance policies or riders containing accelerated long-term care benefits; nor
  - b. Policies which cover a specified percentage of actual or reasonable charges without application of daily benefit limitation.
4. Insurers shall include the following information in or with the outline of coverage:
  - a. A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison must show benefit levels over at least a twenty-year period.
  - b. Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages seventy-five and eighty-five for benefit increases.

An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

History: Effective November 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

#### 45-06-05-06. Requirements for replacement.

1. Question concerning replacement. Individual and direct response solicited long-term care insurance application forms must include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness or long-term care insurance policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.

2. Solicitations other than direct response. Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agents, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice must be retained by the applicant and an additional copy signed by the applicant must be retained by the insurer. The required notice must be provided in the following manner:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL  
ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (Company name) Insurance Company. Your new policy provides ~~ten (10)~~ thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force.

After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)"

3. Direct response solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice must be provided in the following manner:

"NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (Company name) Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware and seriously consider the factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your

present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company name and address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)"

History: Effective July 1, 1988; amended effective November 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-10. Standard format outline of coverage. This section implements, interprets, and makes specific the provisions of subsection 2 of North Dakota Century Code section 26.1-45-09 in prescribing a standard format and the content of an outline of coverage.

1. The outline of coverage must be a freestanding document, using no smaller than ten point type.
2. The outline of coverage must contain no material of an advertising nature.
3. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.
4. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
5. Format for outline of coverage:

[COMPANY NAME]  
[ADDRESS - CITY AND STATE]  
[TELEPHONE NUMBER]  
LONG-TERM CARE INSURANCE  
OUTLINE OF COVERAGE

[Policy number or group master policy and certificate number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
  - a. [Provide a brief description of the right to return - "free look" provision of the policy.]
  - b. [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]
4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for medicare, review the Medicare Supplement Buyer's Guide from the insurance company.
  - a. [For agents] Neither [insert company name] nor its agents represent medicare, the federal government or any state government.
  - b. [For direct response] [insert company name] is not representing medicare, the federal government, or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

- a. [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]
- b. [Institutional benefits, by skill level.]
- c. [Noninstitutional benefits, by skill level.]

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

- a. Preexisting conditions.
- b. Noneligible facilities and provider.
- c. Noneligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.).
- d. Exclusions and exceptions.
- e. Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict,

reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- a. That the benefit level will not increase over time.
- b. Any automatic benefit adjustment provisions.
- c. Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.
- d. If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.
- e. And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

- [a. Describe the policy renewability provisions;
- b. For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.
- c. Describe waiver of premium provisions or state that there are not such provisions.
- d. State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses.]

Specifically, describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

11. PREMIUM.

- a. [State the total annual premium for the policy.
- b. If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

- a. [Indicate if medical underwriting is used;
- b. Describe other important features.]

History: Effective October 1, 1989; amended effective November 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 26.1-45

TITLE 54  
Nursing, Board of



NOVEMBER 1990

54-02-05-01. Residency or employment requirement. Any applicant for renewal of license must be a North Dakota resident or ~~employed~~ practicing nursing in North Dakota or ~~by~~ with the federal government.

History: Amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-13

54-02-05-02. Renewal dates. Nursing licenses will be valid for ~~one~~ two calendar ~~year~~ years and will be subject to renewal before December thirty-first of the second year. Applicants for initial licensure by endorsement or examination shall receive a license expiring on December thirty-first of the initial licensure year as a part of the application fee.

History: Amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(12)

54-02-05-03. Renewal fees. The ~~annual~~ renewal fee for the registered nurse license will be ~~twenty five~~ sixty dollars. The ~~annual~~ renewal fee for the practical nurse license will be ~~twenty~~ fifty dollars.

History: Amended effective November 1, 1979; July 1, 1987; November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(3)

54-02-05-04. Increased renewal fee. The relicensure fee for any practicing nurse will be doubled for any renewal application received in

the board office postmarked after ~~December thirty first~~ the expiration date. The registered nurse shall pay fifty one hundred twenty dollars and the licensed practical nurse shall pay forty one hundred dollars.

History: Amended effective November 1, 1979; June 1, 1982; July 1, 1987; November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(3)

54-02-05-05.1. Practice requirements for license renewal. Nursing practice for purposes of relicensure must meet or exceed eighty hours per year or five hundred hours within the preceding five years. If an application for renewal and the applicant's records on file with the board show less than four hundred hours of nursing practice by the applicant within the preceding four calendar years, then a license will be issued, at a prorated fee, for only one calendar year.

History: Effective July 1, 1987; amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(13)

#### 54-02-08-03. Renewal.

1. A temporary practical nurse license may be renewed for two consecutive calendar years if the licensee meets the following requirements:
  - a. ~~Complete the relicensure~~ Submit a completed renewal application.
  - b. Pay the ~~current~~ calendar year renewal fee of twenty-five dollars.
  - c. Provide the board with proof of enrollment and coursework in a board-approved nursing education program.
2. A temporary registered nurse license may be renewed for four consecutive calendar years if the licensee meets the following requirements:
  - a. ~~Complete the relicensure~~ Submit a completed renewal application.
  - b. Pay the ~~current~~ calendar year renewal fee of thirty dollars.
  - c. Provide the board with proof of enrollment and coursework in a board-approved nursing education program.
3. Nonrenewal of a temporary license because of failure to complete the educational requirements in the allotted time or

failure of the applicant to apply for renewal shall be communicated to all health care agencies in North Dakota.

History: Effective October 1, 1989; amended effective November 1, 1990.  
General Authority: NDCC 43-12.1-08(18)  
Law Implemented: NDCC 43-12.1-08(19)

54-04.1-01-01. Nursing scholarship or loan program. The board of nursing shall create a nursing scholarship or loan program. The program must be funded by:

1. ~~Four~~ Eight dollars of each registered nurse and licensed practical nurse renewal fee.
2. Principle and interest payments from scholarship or loan recipients.
3. Donations and bequests from individuals wishing to further the intent of the scholarship or loan program.
4. Additional funds as may from time to time be designated by the board.

History: Effective October 1, 1987; amended effective November 1, 1990.  
General Authority: NDCC 43-12-27  
Law Implemented: NDCC 43-12-27

54-05-03-03. Nurse clinician - Requirements for license. Applicants for license as a nurse clinician shall:

1. Possess a current license to practice as a registered nurse in North Dakota.
2. Submit evidence of additional educational preparation in continuing education programs or advanced formal education in a board-approved program.
3. Submit evidence of experiential expertise gained through the clinical aspect of coursework or employment.
4. Be certified by a national nursing organization in the nurse's specific area of practice.
5. Submit a completed notarized application and pay the fee of ~~fifty~~ one hundred dollars.
6. Submit a scope of practice statement according to established guidelines for review and approval by the board of nursing.

History: Effective October 1, 1980; amended effective November 1, 1990.  
General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-04. Nurse clinician - License renewal. The license for a nurse clinician shall be valid for up to two calendar years and shall be renewed by December thirty-first of the second year. Applicants for renewal of the license shall pay the relicensure fee of ~~ten~~ forty dollars and shall submit a scope of practice statement for review and evidence of continuing certification.

History: Effective October 1, 1980; amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-06. Nurse practitioner - Requirements for license - Temporary permit. Applicants for licensure as a nurse practitioner shall:

1. Possess a current license to practice as a registered nurse in North Dakota.
2. Submit evidence of advanced formal education in a board-approved nurse practitioner program.
3. Submit evidence of passing a qualifying entry level proficiency examination acceptable to the board of nursing certification by a national nursing organization in the nurse's specific area of practice.
  - a. ~~If no qualifying examination is available, the board of nursing shall devise a method for examining the candidate's competency.~~
  - b. A temporary permit may be issued until the results of the first qualifying examination for which the candidate is eligible after completion of the program are received.
4. Submit a completed notarized application and pay the fee of fifty one hundred dollars.
5. Submit a scope of practice statement according to established guidelines for review and approval by the board of nursing with consultation from a statewide nurse practitioner group.

History: Effective October 1, 1980; amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-07. Nurse practitioner - License renewal. The license for a nurse practitioner shall be valid up to two calendar years and shall be renewed by December thirty-first of the second year.

Applicants for renewal of the nurse practitioner license shall pay the relicensure fee of ~~ten~~ forty dollars, submit evidence of current certification, and submit a scope of practice statement for review and approval by the board.

History: Effective October 1, 1980; amended effective March 1, 1986; November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-09. Clinical nurse specialist - Requirements for license - Temporary permit. Applicants for licensure as a clinical nurse specialist shall:

1. Possess a current license to practice as a registered nurse in North Dakota.
2. Submit evidence of a master's degree in nursing from a board-approved graduate program that included a core of clinical nursing.
3. Submit evidence of passing a qualifying entry-level proficiency examination acceptable to the board of nursing certification by a national nursing organization in the nurse's specific area of practice.
  - ~~a. If no qualifying examination is available, the board shall devise a method for determining the candidate's competency.~~
  - ~~b. A temporary permit may be issued until the results of the first qualifying examination for which the candidate is eligible after completion of the program are received.~~
4. Submit a completed notarized application and pay the fee of fifty one hundred dollars.
5. Submit a scope of practice statement according to established guidelines for review and approval by the board of nursing.

History: Effective October 1, 1980; amended effective November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

54-05-03-10. Clinical nurse specialist - License renewal. The license for a clinical nurse specialist shall be valid up to two calendar years and shall be renewed by December thirty-first of the second year. Applicants for renewal of the license shall pay the relicensure fee of ~~ten~~ forty dollars, submit evidence of current certification, and submit a scope of practice statement for review and approval by the board.

History: Effective October 1, 1980; amended effective March 1, 1986;  
November 1, 1990.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(18)

TITLE 60  
Pesticide Control Board



OCTOBER 1990

60-03-01-02. Definitions. As used in this chapter, the following words shall have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section shall have the meaning given to them in North Dakota Century Code chapter 4-35.

1. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4-35-02.
2. "Bulk pesticide" means any volume of pesticide greater than fifty five United States gallons [189.27 liters] which can be accurately metered and which is transported or held in an individual container which is capable of holding, in undivided quantities, one hundred ten United States gallons [416.40 liters] or greater, or two hundred pounds [90.72 kilograms] net dry weight.
3. "Certification" means certification of dealers, commercial applicators, and private applicators provided for by North Dakota Century Code section sections 4-35-09, 4-35-12, and 4-35-14.
4. "Commissioner" means the North Dakota commissioner of agriculture.
5. "Compensation" means monetary payment for a specific service.
6. "Custom applicator" means any person who uses or supervises the use of a general use pesticide for compensation upon the land of another person.
- 6- 7. "Custom mix" means any diluted mixture of pesticide prepared by a dealer when prepared to the specifications of the end-user and which is not held in inventory.

- ~~7-~~ 8. "End-use labeling" means the label application recommendations for any a pesticide.
- ~~8-~~ 9. "End-user" means the person who applies the pesticide.
- ~~9-~~ 10. "General use pesticide" means any pesticide formulation which is not classified for restricted use by the board.
- ~~10-~~ "License" means a license to use, supervise the use of, sell, or distribute any pesticide as provided for by North Dakota Century Code sections ~~4-35-09~~ and ~~4-35-12~~.
- 11. "Pesticide applicator" means any person who applies any pesticides a pesticide.
- 12. "Repackaging" means the transfer of a pesticide in bulk quantities from one container to another and in an unaltered state from a container into a designated refillable container.

History: Amended effective April 15, 1985; October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-06

60-03-01-03. Restricted use pesticides. The North Dakota restricted use pesticides shall be those pesticide uses that the United States environmental protection agency has the same as those declared to be restricted use pesticides by the United States environmental protection agency.

History: Effective August 1, 1978; amended effective February 1, 1982; October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-06

60-03-01-05. Licensing—Dealers, commercial Certification - Commercial applicators, dealers, private applicators.

1. Dealers Categories of certification.

- a. A pesticide dealer license shall be issued in accordance with North Dakota Century Code section ~~4-35-12~~ only to those persons who successfully complete the licensing examination established by the board, and who pay the license fee of ten dollars Agricultural pest control (plant and animal). This category includes commercial applicators using restricted use pesticides in production of agricultural crops including cereal grain, feed grains, soybeans, forages, large and small seeded legumes, small fruits, tree fruits, nuts, and vegetables, as well as application to grasslands and noncrop lands. This also includes the use of restricted use pesticides on animals,

beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and other livestock, and also to places on or in which animals are confined.

- b. The board shall establish a licensing examination which shall be administered by the appropriate county extension agent in accordance with North Dakota Century Code section ~~4-35-12~~. The examination shall be given by the agent only to those persons who meet all of the following:

~~(1) Are eighteen years of age or older.~~

~~(2) Complete a license application in such form as the board shall require.~~

~~(3) Pay an examination fee of five dollars.~~

Any person who fails an examination may retake such examination no sooner than three days later. Each examination requires payment of the examination fee. Seed treatment. This category includes commercial applicators using restricted use pesticides on agricultural crop seeds, other seeds, and vegetative seed stocks.

- c. Dealer's licenses shall expire on December thirty-first of each year and may be renewed upon payment of the annual fee, and in accordance with North Dakota Century Code section ~~4-35-10~~. Every pesticide dealer shall be recertified by an approved seminar or an examination at least every third year. Fumigation. This category includes applicators using restricted use fumigants for controlling pests in stored and transported agricultural crops, grain milling equipment, and storage facilities. (Effective April 1, 1991, private applicators.)

- d. Ornamental and turf pest control. This category includes commercial applicators using restricted use pesticides to control pests in the production and maintenance of ornamental trees, shrubs, flowers, and turf.

- e. Greenhouse. This category includes commercial applicators using restricted use pesticides to control pests in a greenhouse.

- f. Right of way. This category includes commercial applicators using restricted use pesticides to control pests in the maintenance of public roads, electric powerlines, pipelines, railways, right of ways, parking lots, or other similar areas.

- g. Public health pest control. This category includes state, federal, or other government employees, or applicators working under government contract, using restricted use

pesticides in public health programs for the management and control of pests having medical and public health impacts.

- h. Research and demonstration pest control. This category is for those individuals who demonstrate or apply restricted use pesticides for education and research or education or research. These would include county agents, extension specialists, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.
- i. Home, industrial, and institutional pest control. This category includes commercial applicators using restricted use pesticides in, on, or around food handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures or adjacent area, for the control of pests.
- j. Wood preservatives. This category includes commercial applicators who apply and treat with restricted use wood preservatives to preserve and protect wood, posts, and various lumber products from pests.
- k. Vertebrate. This category includes commercial applicators who use restricted use pesticides for the control of certain pest vertebrate, such as rodents, certain predators, and bats.
- l. Other. This is reserved for any future categories that may be required by the United States environmental protection agency or become necessary by order of the pesticide control board.

2. Commercial applicators and dealers.

- a. A commercial applicator ~~license~~ or dealer, or commercial applicator and dealer certificate shall be issued in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12 respectively, only to those persons who successfully complete the ~~licensing~~ certification examination established by the board, and who pay the ~~license~~ certification fee of twenty dollars.
- b. The board shall establish a ~~licensing~~ certification examination which shall be administered by any ~~county extension agent~~ North Dakota state university extension designate in accordance with North Dakota Century Code section 4-35-09 or 4-35-12 or sections 4-35-09 and 4-35-12. The examination shall be given by the ~~agent~~ North Dakota state university extension designate only to those persons who ~~meet all of the following:~~

- (1) Are eighteen years of age or older; and
- (2) Complete a license certificate application in such form as the board shall require.

~~(3) Pay an examination fee of five dollars.~~

~~Any person who fails an examination may retake such examination no sooner than three days later. Each examination requires payment of the examination fee.~~

- c. Commercial applicator's licenses or dealer or commercial applicator and dealer certificates shall expire on December thirty first of each year and may be renewed upon payment of the license fee, and in accordance with North Dakota Century Code section 4-35-10 April first following the third anniversary of the year of certification or recertification. Every commercial applicator commercially certified person shall be recertified by an approved seminar or an examination at least every third year.
- d. Any person who fails an examination may retake such examination after three or more days.
- e. All commercial applicators must be certified in the proper category of application.
- f. All dealers must be certified in the category of the labels' intended target site.
- g. Situations where the pesticide is labeled for more than one of the certification target sites, the dealer only needs to be certified in one of the categories.

### 3. Private applicators.

- a. A private applicator certification shall be issued in accordance with North Dakota Century Code section 4-35-14 only to those persons who **meet all of the following**:
  - (1) Are eighteen years of age or older; and
  - (2) Demonstrate competence in the application of pesticides as provided in subdivisions b, c, d, and e.
- b. Persons purchasing, storing, or applying grain fumigants must be commercially certified in the fumigation category. (Effective April 1, 1991.)
- c. Competence to apply restricted use pesticides shall be demonstrated by a showing of any one of the following to the county North Dakota state university extension agent

of the county designate in which the applicant resides applicant's area:

- (1) Attendance at an approved educational seminar, signing of a certificate of attendance, and completion of a procedure to determine teaching-learning effectiveness passing an examination.
- (2) Completion of a course of self-instruction and completion of a procedure to determine teaching-learning effectiveness passing an examination at the appropriate county agent's North Dakota state university extension designate's office in the applicant's area.
- (3) Completion of a take-home self-study program and completion of a procedure to determine teaching-learning effectiveness passing an examination.
- (4) Passing of the dealer licensing or commercial applicator certification examination or commercial applicator licensing examination and the submitting of the passing grade to the appropriate county agent's office North Dakota state university extension designate.

~~c.~~ d. Every private applicator shall be recertified upon at least every fifth anniversary of the issuance of the permit by one of the methods specified in subdivision b once every five years.

~~d.~~ e. Competence to apply a single restricted use pesticide by a person who cannot read shall be demonstrated by completion of a course of oral instruction and completion of a procedure to determine teaching-learning effectiveness to the county extension agent of the county North Dakota state university extension designate in which the applicant resides applicant's area. Such private applicator certification for a single restricted use pesticide shall be for no more than ~~two years~~ one year and the notation, "Restricted to" followed by the common name of the restricted use pesticide in bold lettering shall appear on the private applicator certificate.

~~e.~~ f. In an emergency situation, competence to apply a single restricted use pesticide by a person shall be demonstrated by completion of a course of oral instruction and completion of a procedure to determine teaching-learning effectiveness to the county extension agents of the county North Dakota state university extension designate in which the applicant resides applicant's area. Such private applicator certification for a single restricted use pesticide shall expire sixty days from issuance and shall

be issued to a person only once. The notation, "Restricted to" followed by the common name of the restricted use pesticide shall appear on the private applicator certificate in bold lettering.

History: Amended effective February 1, 1982; October 1, 1990.

General Authority: NDCC 4-35-06, 4-35-12, ~~28-32-02~~

Law Implemented: NDCC 4-35-08, 4-35-09, 4-35-12, 4-35-14

60-03-01-06. Application, storage, transportation, and disposal of pesticides.

1. Application.

- a. All pesticides shall be ~~applied~~ used in accordance with the label.
- b. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the container label.
- c. All equipment used in pesticide application must be operationally sound and properly calibrated ~~so as~~ to prevent unreasonable adverse effects on the environment.
- d. All pesticides that require posting on the label or with a forty-eight-hour-reentry period or greater must be posted by the applicator or the applicator's designate under contract. The signs must be a minimum of eight inches by eleven inches [20.32 centimeters by 27.94 centimeters] with one-half-inch [1.270-centimeter] lettering and be easily readable. The signs must be posted at all normal entrances to the field and on all corners which are along normally traveled roads. These signs can be a maximum of one-half mile [.80 kilometers] apart. The signs must contain the following information: Danger field sprayed with (pesticide name). The field is safe for reentry on (date).

2. Storage.

- a. All pesticides, except bulk pesticides, shall be stored in their original container and in accordance with label recommendations. All labels of stored pesticides shall be plainly visible. All pesticide containers must have a proper label affixed to them.
- b. All pesticides shall be stored in dry, well-ventilated spaces, and in a manner which will not endanger humans, animals, or the environment, nor contaminate food or feed.

c. If a storage area contains a floor drain, it must be sealed or self-contained.

3. Transportation.

a. All pesticides, except bulk pesticides, shall be transported in their original containers and. All pesticides must be transported in such a secure manner as to avoid breakage of containers, spills, or any other manner of contamination.

b. Pesticides shall not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.

c. Equipment contaminated in the transportation of pesticides shall be cleaned and decontaminated prior to any other use.

4. Disposal.

a. Empty pesticide containers shall be stored in accordance with label recommendations and in a manner which will not endanger humans, animals, or the environment.

b. ~~Nonreturnable empty~~ Empty nonreturnable pesticide containers shall be ~~rinsed and secondary~~ triple-rinsed or equivalent. Secondary use of such containers that which would endanger humans, animals, or the environment is prohibited.

c. Pesticide containers shall be disposed of in accordance ~~or consistent~~ with its labeling label directions and in a manner which will not endanger humans, animals, or the environment.

History: Amended effective April 15, 1985; October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-06, ~~4-35-15~~, 4-35-20

60-03-01-07. Recordkeeping - Dealers and commercial and custom applicators.

1. Dealers. Every pesticide dealer shall keep ~~an~~ separate, accurate, and complete record of all purchases and sales of section 18 pesticides and restricted use pesticides, which. The record shall include the following for each pesticide so purchased or sold:

a. Purchases.

(1) Dealer's name and address.

- (2) Pesticide name.
- (3) Volume of pesticide.
- (4) Date pesticide was shipped or received.
- (5) Distributor's name (person from whom the pesticide was received).

b. Sales.

- (1) Dealer's name and address and identification of person making the sale.
- (2) Name, address, license number, and signature of private or commercial applicator.
- (3) Date of sale.
- (4) Trade name or common name and quantity of pesticide sold.
- (5) ~~Intended use by purchaser~~ Running inventory by product.
- (6) Intended application site of purchaser for all section 18 pesticides.

2. Commercial and custom applicators. Commercial and custom applicators shall keep a record of all pesticide applications of any pesticide, which. The record shall include for each application:

- a. Name and address of the person for whom the pesticide was applied.
- b. ~~Location~~ Legal description of the land grain bin identification, railcar number, or other description of where the pesticide was applied.
- c. Pest or pests controlled.
- d. Time the pesticide was applied (month, day, year, hour of the day).
- e. ~~The person~~ Person who supplied the pesticide which was applied.
- f. ~~The trade~~ Trade name or common name of the pesticide applied.
- g. ~~The direction~~ Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the

time the pesticide was applied. This requirement shall not apply if a bait is used to attract the pest or pests or if the application is made indoors.

- h. ~~The amount~~ Amount of ~~pesticides~~ pesticide used, including:
- (1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare].
  - (2) Percentage or pounds [kilograms] of active ingredient.
  - (3) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].
- i. Specific crops, commodities, and total acreage [hectare] to which the pesticide was applied.
- j. Description of equipment used in application.
- k. ~~License~~ Certification number of applicator, if any, and signature.

Records made pursuant to this section shall be completed and made available for inspection on the day the pesticide is applied.

History: Amended effective October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-06, ~~4-35-15~~, 4-35-16, ~~4-35-24~~

60-03-01-08. Unlawful acts. The commissioner may, after opportunity for a hearing, take any appropriate administrative or judicial enforcement action against any person if the commissioner finds that such person has committed any of the following acts, each of which is declared to be a violation of this chapter:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by the person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.

6. Neglected or, after notice, refused to comply with the provisions of North Dakota Century Code chapter 4-35 and this chapter, or of any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Aided or abetted a ~~licensed or an unlicensed~~ certified or an uncertified person to evade the provisions of North Dakota Century Code chapter 4-35 or this chapter, or conspired with such a ~~licensed or unlicensed~~ certified or uncertified person to evade the provisions of North Dakota Century Code chapter 4-35 or this chapter.
10. Knowingly made false statements during or after an inspection ~~concerning an infestation of pests found on the land.~~
11. Impersonated any federal, state, county, or city inspector or official.
12. Distributed any restricted use pesticide to any person who is required by law or regulations promulgated under such law to be certified to use or purchase such restricted use pesticides unless such person or such person's agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
13. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of North Dakota Century Code chapter 4-35, unless otherwise exempted therefrom.

History: Amended effective October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-15, 4-35-24

60-03-01-10. Registration, packaging, repackaging, storage, and transportation of bulk pesticides.

1. Registration.

- a. Any person that repackages bulk pesticides or custom mixes any quantity of pesticide to be applied by another person must have an environmental protection agency establishment number.
- b. The environmental protection agency establishment number and end-use labeling must be attached to bulk pesticide storage tanks.

- c. The environmental protection agency establishment number and end-use labeling must accompany or be attached to the mobile bulk pesticide container.

## 2. Storage and transportation.

- a. The transportation and storage of all bulk pesticides must be in compliance with the manufacturer's label requirements.
- b. The transportation of bulk pesticides must meet all applicable standards of state and United States department of transportation rules and regulations.
- c. Bulk pesticide storage tanks must be made of materials and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide labels and labeling.
- d. Nonmobile bulk pesticide storage containers must be on a site with additional structure constructed as a means of containment. The structure must be constructed of sufficient size and material so as to contain any spilled or discharged materials and have a capacity of a minimum of one hundred ten percent of the single largest nonmobile bulk pesticide storage container.
- e. Bulk containers and permanent loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate streams and water supplies.
- f. All permanent bulk storage tanks must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked when no bulk pesticide is being transferred during nonbusiness hours.
- g. Bulk pesticide storage tanks that are going to be refilled with a different pesticide must be cleaned and rinsed according to both the repackager's and manufacturer's agreed upon written instructions and all former labeling must be removed.

## 3. Prohibitions.

- a. The transfer of bulk pesticides must be under the control of the repackager. Filling or refilling of containers which is prohibited unless they are not capable of holding, in undivided quantities, one hundred ten United States gallons [416.40 liters] or greater, or two hundred pounds [90.72 kilograms] net dry weight, with pesticides

is prohibited or the chemical manufacturer has submitted container specifications to the department and received written approval from the department.

- b. Bulk pesticide storage tanks may not be placed underground.
- c. Repackaging at any location that does not have an environmental protection agency producer establishment number is prohibited.
- d. Repackaging of pesticides without the written agreement of the manufacturing company is prohibited.
- e. Repackaging at any location other than at a loading site is prohibited.
- f. Repackaging into improperly labeled containers is prohibited.
- g. Repackaging into containers not designated as reusable by the chemical and container manufacturer is prohibited.
- h. Repackaging into containers with a capacity less than one hundred ten gallons [416.39 liters] or not approved in writing by the department is prohibited.
- i. Repackaging for resale from a nonpermanent bulk storage tank is prohibited.

History: Effective April 15, 1985; amended effective October 1, 1990.

General Authority: NDCC 4-35-06, ~~28-32-02~~

Law Implemented: NDCC 4-35-06, 4-35-15, 4-35-20



TITLE 62  
Plumbing, Board of



SEPTEMBER 1990

62-03-01-01. Definitions. For the purpose of this article, the following terms shall have the meaning indicated in this section. No attempt is made to define ordinary words which are used in accordance with their established dictionary meaning except where it is necessary to define their meaning as used in this article to avoid misunderstanding.

1. "A.B.S." means acrylonitrile-butadiene-styrene.
2. "Accessible" means having access thereto but which first may require the removal of an access panel, door, or similar obstruction. "Readily accessible" means direct access without the necessity of removing or moving any panel, door, or similar obstruction.
3. "Acid waste" means corrosive waste.
4. "Administrative authority" means the individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of the plumbing code as adopted or amended.
5. "A.G.A." means American gas association.
6. "Air break (drainage system)" means a piping arrangement in which a drain from a fixture, appliance, or device discharges indirectly into a fixture, receptacle, or interceptor at a point below the flood level rim of the receptacle so installed as to prevent backflow or siphonage.
7. "Air chamber" means a pressure surge absorbing device operating through the compressibility of air.

8. "Airgap (drainage systems)" means the unobstructed vertical distance through the free atmosphere between the outlet of waste pipe and the flood level rim of the receptacle into which it is discharging.
9. "Airgap (water distribution system)" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle.
- 9.1. "Alkali waste" means waste having a pH factor more than seven.
10. "Anchors" means supports.
11. "A.N.S.I." means the American national standards institute.
12. "Antiscald valve" - see "water temperature control valve".
13. "Approved" means accepted or acceptable under an applicable standard stated or cited in this article, or accepted as suitable for the proposed use under procedures and powers of the administrative authority.
14. "Area drain" means a receptacle designed to collect surface or storm water from an open area.
15. "A.S.M.E." means the American society of mechanical engineers.
16. "Aspirator" means a fitting or device supplied with water or other fluid under positive pressure which passes through an integral orifice or "constriction" causing a vacuum.
17. "Autopsy table" means a fixture or table used for the postmortem examination of a body.
18. "B and S" means Brown and Sharpe.
19. "Backflow" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
20. "Backflow connection" means any arrangement whereby backflow can occur.
21. "Backflow drainage" means a reversal of flow in the drainage system.
22. "Backflow preventer" means a device or means to prevent backflow.

23. "Backflow preventer, reduced pressure zone type" means an assembly of differential valves and check valves including an automatically opened spillage port to the atmosphere.
24. "Backflow, water distribution" means the flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source. Backsiphonage is one type of backflow.
25. "Back pressure backflow" means a condition, which may occur in the potable water distribution system, whereby a higher pressure than the supply pressure is created which causes a reversal of flow into the potable water piping.
26. "Backsiphonage" means the flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in the pipe.
27. "Back vent" means individual vent.
28. "Backwater valve" means a device installed in a drain or pipe to prevent backflow.
29. "Bathroom group" means, unless specifically cited in the body of the code, a water closet, a lavatory, and a bathtub or shower stall or both.
30. "Battery of fixtures" means any group of two or more similar adjacent fixtures which discharge into a common horizontal waste or soil branch.
31. "Bedpan steamer" means a fixture used for scalding bedpans or urinals by direct application of steam.
32. "Bedpan washer" means a fixture designed to wash bedpans and to flush the contents into the soil drainage system. It may also provide for steaming the utensils with steam or hot water.
33. "Bedpan washer hose" means a device supplied with hot and cold water and located adjacent to a water closet or clinic sink to be used for cleansing bedpans.
34. "Boiler blowoff" means an outlet on a boiler to permit emptying or discharge of sediment.
35. "Boiler blowoff tank" means a vessel designed to receive the discharge from a boiler blowoff outlet and to cool the discharge to a temperature which permits its safe discharge to the drainage system.

36. "Branch" means any part of the piping system other than a riser, main, or stack.
37. "Branch, fixture" means fixture branch.
38. "Branch, horizontal" means horizontal branch.
39. "Branch interval" means a distance along a soil or waste stack corresponding in general to a story height, but in no case less than eight feet [2.44 meters], within which the horizontal branches from one floor or story of a building are connected to the stack.
40. "Branch vent" means a vent connecting one or more individual vents with a vent stack or stack vent.
41. "Building" means a structure having walls and a roof designed and used for the housing, shelter, enclosure, or support of persons, animals, or property.
42. "Building classification" means the arrangement adopted by the administrative authority for the designation of buildings in classes according to occupancy.
43. "Building drain" means that part of the lowest piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer beginning three feet [91.44 centimeters] outside the building wall.
44. "Building drain - combined" means a building drain which conveys both sewage and storm water or other drainage.
45. "Building drain - sanitary" means a building drain which conveys sewage only.
46. "Building drain - storm" means a building drain which conveys storm water or other drainage but no sewage.
47. "Building sewer" means that part of the drainage system which extends from the end of the building drain and conveys its discharge to a public sewer, private sewer, individual sewage-disposal system, or other point of disposal.
48. "Building sewer - combined" means a building sewer which conveys both sewage and storm water or other drainage.
49. "Building sewer - sanitary" means a building sewer which conveys sewage only.
50. "Building sewer - storm" means a building sewer which conveys storm water or other drainage but no sewage.

51. "Building subdrain" means that portion of a drainage system which does not drain by gravity into the building sewer.
52. "Building trap" means a device, fitting, or assembly of fittings installed in the building drain to prevent circulation of air between the drainage system of the building and the building sewer.
53. "Cesspool" means a lined and covered excavation in the ground which receives the discharge of domestic sewage or other organic waste from a drainage system, so designed as to retain the organic matter and solids, but permitting the liquids to seep through the bottom and sides.
54. "Chemical waste" means special wastes such as, but not limited to, corrosive wastes or industrial wastes containing chemicals.
55. "Circuit vent" means a branch vent that serves two or more traps and extends from the downstream side of the highest fixture connection of a horizontal branch to the vent stack.
56. "Clear water waste" means cooling water and condensate drainage from refrigeration, and air-conditioning equipment; cooled condensate from steam heating systems; cooled boiler blowdown water; wastewater drainage from equipment rooms and other areas where water is used without an appreciable addition of oil, gasoline, solvent, acid, etc., and treated effluent in which impurities have been reduced below a minimum concentration considered harmful.
57. "Clinic sink (bedpan hopper)" means a sink designed primarily to receive wastes from bedpans provided with a flush rim, integral trap with a visible trap seal, having the same flushing and cleansing characteristics as a water closet.
58. "Code" means this article, subsequent amendments thereto, or any emergency rule or regulation which the administrative authority having jurisdiction may lawfully adopt.
59. "Combination fixture" means a fixture combining one sink and laundry tray or a two- or three-compartment sink or laundry tray in one unit.
60. "Combination waste and vent system" means a specially designed system of waste piping embodying the horizontal wet venting of one or more sinks or floor drains by means of a common waste and vent pipe adequately sized to provide free movement of air above the flow line of the drain.
61. "Combined building drain" means building drain - combined.
62. "Combined building sewer" means building sewer - combined.

63. "Commercial" means public or public use.
64. "Common vent" means a vent connected at a common connection of two fixture drains and serving as a vent for both fixtures.
65. "Conductor" means the water conductor from the roof to the building storm drain, combined building sewer, or other means of disposal and located inside of the building.
66. "Continuous vent" means a vertical vent that is a continuation of the drain to which it connects.
67. "Continuous waste" means a drain from two or more fixtures connected to a single trap.
68. "Corrosive waste" means waste derived from laboratories or classrooms used for laboratory or demonstration purposes, or from industrial or commercial processes, or from any sink or fixture made to receive discarded chemicals, whereby acid or other harmful chemicals are disposed of, which may destroy or cause damage to the materials and equipment of a plumbing installation, if such materials and equipment are not of a type selected, manufactured, or installed for such special use.
69. "Critical level" on a backflow prevention device or vacuum breaker means a point established by the manufacturer and usually stamped on the device by the manufacturer which determines the minimum elevation above the flood level rim of the fixture or receptacle served at which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or the bottom of any approved device shall constitute the critical level.
70. "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. (See backflow and backsiphonage.)
71. "Dead end" means a branch leading from a soil, waste, or vent pipe, building drain, or building sewer, and terminating at a developed length of two feet [60.96 centimeters] or more by means of a plug, cap, or other closed fitting.
72. "Department having jurisdiction" means administrative authority.
73. "Developed length" means the length of a pipeline measured along the centerline of the pipe and fittings.

74. "Diameter" means the nominal diameter as designated commercially.
75. "Double check valve assembly" means a backflow prevention device consisting of two independently acting check valves, internally force loaded to a normally closed position between two tightly closing shutoff valves, and with means of testing for tightness.
76. "Double offset" means two changes of direction installed in succession or series in a continuous pipe.
77. "Downspout" means the rainleader from the roof to the building storm drain, combined building sewer, or other means of disposal and located outside of the building.
78. "Domestic sewage" means the water-borne wastes derived from ordinary living processes.
79. "Drain" means any pipe which carries wastewater or water-borne wastes in a building drainage system.
80. "Drainage pipe" means drainage system.
81. "Drainage system" means all the piping, within public or private premises, which conveys sewage, rainwater, or other liquid wastes to a point of disposal. It does not include the mains of a public sewer system or private or public sewage-treatment or disposal plant.
82. "Drainage system, building gravity" means a drainage system which drains by gravity into the building sewer.
83. "Drainage system, sub-building" means building subdrain.
84. "Dry well" means leaching well.
85. "Dual vent" means common vent.
86. "Durham system" means a soil, waste, or vent pipe system where all piping is of threaded pipe using recessed drainage fittings.
87. "Dwelling unit - multiple" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and eating; and whose sewer connections and water supply within its own premise are shared with one or more other dwelling units.
88. "Dwelling unit - single" means a room or group of rooms forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking, and

- eating; and whose sewer connections and water supply are within its own premise separate from and completely independent of any other dwelling.
89. "D.W.V." means drainage, waste, and venting.
  90. "Effective opening" means the minimum cross-sectional area at the point of water supply discharge, measured or expressed in terms of (a) diameter of a circle, or (b) if the opening is not circular, the diameter of a circle of equivalent cross-sectional area.
  91. "Existing work" means a plumbing system or any part thereof installed prior to the effective date of this article.
  92. "Family" means one or more individuals living together and sharing the same facilities.
  93. "Fixture" means plumbing fixture.
  94. "Fixture branch" means a water supply pipe between the fixture supply and water distributing pipe.
  95. "Fixture branch - drainage" means a drain serving one or more fixtures which discharges into another drain.
  96. "Fixture drain" means the drain from the trap of a fixture to the junction of that drain with any other drainpipe.
  97. "Fixture supply" means the water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.
  98. "Fixture unit (drainage - d.f.u.)" means a measure of the probable discharge into the drainage system by various types of plumbing fixtures. The drainage fixture-unit value for a particular fixture depends on its volume rate of drainage discharge, on the time duration of a single drainage operation, and on the average time between successive operations.
  99. "Fixture unit (supply - s.f.u.)" means a measure of the probable hydraulic demand on the water supply by various types of plumbing fixtures. The supply fixture-unit value for a particular fixture depends on its volume rate of supply, on the time duration of a single supply operation, and on the average time between successive operations.
  100. "Flood level" means flood level rim.
  101. "Flood level rim" means the edge of the receptacle from which water overflows.

102. "Flooded" means the condition which results when the liquid in a container or receptacle rises to the flood-level rim.
103. "Flow pressure" means the pressure in the water supply pipe near the faucet or water outlet while the faucet or water outlet is wide-open and flowing.
104. "Flushing type floor drain" means a floor drain which is equipped with an integral water supply, enabling flushing of the drain receptor and trap.
105. "Flush valve" means a device located at the bottom of a tank for flushing water closets and similar fixtures.
- 105.1. "Flushometer tank" means a device integrated within an air accumulator vessel which is designed to discharge a predetermined quantity of water to fixtures for flushing purposes.
106. "Flushometer valve" means a device which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.
107. "Frostproof closet" means a hopper with no water in the bowl and with the trap and water supply control valve located below frostline.
108. "F.U." means fixture units.
109. "Funnel drain" means a funnel-shaped receptor for receiving the discharge of an indirect waste pipe.
110. "G.P.M." means gallons per minute.
111. "Grade" means the fall (slope) of a line of pipe in reference to a horizontal plane. In drainage it is usually expressed as the fall in a fraction of an inch per foot length of pipe.
112. "Grease interceptor" means interceptor.
113. "Grease trap" means interceptor.
114. "Ground water" means subsurface water occupying the zone of saturation.
- a. "Confined ground water" is a body of ground water overlain by material sufficiently impervious to sever free hydraulic connection with overlying ground water.
- b. "Free ground water" is ground water in the zone of saturation extending down to the first impervious barrier.
115. "Hangers" means supports.

116. "Health authority" means the state department of health or a county, city, or multi or combined county or city health unit.
117. "Horizontal branch drain" means a drain branch pipe extending laterally from a soil or waste stack or building drain, with or without vertical sections or branches, which receives the discharge from one or more fixture drains and conducts it to the soil or waste stack or to the building drain.
118. "Horizontal pipe" means any pipe or fitting which makes an angle of less than forty-five degrees with the horizontal.
119. "Hot water" means water supplied to plumbing fixtures at a temperature of not less than one hundred ten degrees Fahrenheit [-12.22 degrees Celsius], and not more than one hundred forty degrees Fahrenheit [60 degrees Celsius], except that commercial dishwashing machines and similar equipment shall be provided with water one hundred eighty degrees Fahrenheit [82.22 degrees Celsius] for sterilization purposes.
120. "House drain" means building drain.
121. "House sewer" means building sewer.
122. "House trap" means building trap.
123. "Individual sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank, cesspool, or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.
124. "Indirect waste pipe" means a waste pipe which does not connect directly with the drainage system, but which discharges into the drainage system through an air break or airgap into a trap, fixture, receptor, or interceptor.
125. "Individual vent" means a pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.
126. "Individual water supply" means a supply other than an approved public water supply which serves one or more families.
127. "Industrial wastes" means liquid or liquid-borne wastes resulting from the processes employed in industrial and commercial establishments.
128. "Insanitary" means contrary to sanitary principles - injurious to health.
129. "Interceptor" means a device designed and installed so as to separate and retain deleterious, hazardous, or undesirable

matter from normal wastes while permitting normal sewage or liquid wastes to discharge into the drainage system by gravity.

130. "Installed" means altered, changed, or a new installation.
131. "Interval" means branch interval.
132. "Invert" means the lowest portion of the inside of a horizontal pipe.
133. "Leaching well or pit" means a pit or receptacle having porous walls which permit the contents to seep into the ground.
134. "Leader" means an exterior vertical drainage pipe for conveying storm water from roof or gutter drains.
135. "Liquid waste" means the discharge from any fixture, appliance, area, or appurtenance, which does not contain human or animal waste matter.
136. "Load factor" means the percentage of the total connected fixture until flow which is likely to occur at any point in the drainage system.
137. "Local ventilating pipe" means a pipe on the fixture side of the trap through which vapor or foul air is removed from a room or a fixture.
138. "Loop vent" means a circuit vent which loops back to connect with a stack vent instead of a vent stack.
139. "Main" means the principal pipe artery to which branches may be connected.
140. "Main sewer" means public sewer.
141. "Main vent" means the principal artery of the venting system to which vent branches may be connected.
142. "May" is permissive.
143. "Multiple dwelling" means a building containing two or more dwelling units.
144. "Nonpotable water" means water not safe for drinking or for personal or culinary use.
145. "Nuisance" means public nuisance at common law or in equity jurisprudence; whatever is dangerous to human life or detrimental to health; whatever building, structure, or premise is not sufficiently ventilated, sewered, drained, cleaned, or lighted, in reference to its intended or actual

- use; and whatever renders the air or human food or drink or water supply unwholesome.
146. "Offset" means a combination of elbows or bends which brings one section of the pipe out of line but into a line parallel with the other section.
147. "Oil interceptor" means interceptor.
148. "P.E." means polyethylene.
149. "Person" means a natural person, the natural person's heirs, executors, administrators or assigns, and includes a firm, partnership, or corporation, its or their successors or assigns. Singular includes plural and male includes female.
150. "Pitch" means grade.
151. "Plumbing" means the installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other appurtenances in connection with bringing water into, and using the water in, buildings, and for removing liquids and water-carried wastes therefrom. Maintenance does not include making repairs to faucets, valves, appliances, and fixtures, or removal of stoppages in waste or drainage pipes.
152. "Plumbing appliance" means any one of a special class of plumbing fixture which is intended to perform a special plumbing function. Its operation or control may be dependent upon one or more energized components, such as motors, controls, heating elements, or pressure or temperature-sensing elements. Such fixtures may operate automatically through one or more of the following actions: a time cycle, a temperature range, a pressure range, a measured volume or weight; or the fixture may be manually adjusted or controlled by the user or operator.
153. "Plumbing appurtenance" means a manufactured device, or a prefabricated assembly, or an on-the-job assembly of component parts, and which is an adjunct to the basic piping system and plumbing fixtures. An appurtenance demands no additional water supply, nor does it add any discharge load to a fixture or the drainage system. It is presumed that it performs some useful function in the operation, maintenance, servicing, economy, or safety of the plumbing system.
154. "Plumbing fixture" means a receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom, or it discharges used water, liquid-borne waste materials, or sewage either directly or indirectly to the drainage system of the premises, or which requires both a

water supply connection and a discharge to the drainage system of the premises. Plumbing appliances as a special class of fixture are further defined.

155. "Plumbing fixture" - private or private use" means in the classification of plumbing fixtures, fixtures in residences, apartments, or condominiums, or single fixtures for the intended use of a family or individual.
156. "Plumbing fixture - public or public use" means in the classification of plumbing fixtures, every fixture not defined under private use and includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
157. "Plumbing inspector" means administrative authority.
158. "Plumbing system" includes the water supply and distribution pipes, plumbing fixture, and traps; soil, waste, and vent pipes; sanitary and storm drains and building sewers, including their respective connections, devices, and appurtenances to an approved point of disposal.
159. "Pollution" means the addition of sewage, industrial wastes, or other harmful or objectionable material to water. Sources of sewage pollution may be privies, septic tanks, subsurface irrigation fields, seepage pits, sink drains, barnyard wastes, etc.
160. "Pool" means swimming pool.
161. "Potable water" means water free from impurities present in amounts sufficient to cause disease or harmful physiological effects and conforming in its bacteriological and chemical quality to the requirements of the public health service drinking water standards or the regulations of the public health authority having jurisdiction.
- 161.1. "Pressure gradient monitor" means a device used to protect the quality of potable water, fail-safe by design, protecting the water system by isolating the heat exchangers when the positive pressure differential is less than the set point.
162. "Private or private use" means in the classification of plumbing fixtures, fixtures in residences and apartments and similar installations.
163. "Private sewage disposal system" means a system for disposal of domestic sewage by means of a septic tank or mechanical treatment, designed for use apart from a public sewer to serve a single establishment or building.

164. "Private sewer" means a sewer not directly controlled by public authority.
165. "P.S.I." means pounds per square inch.
166. "Public or public use" means, in the classification of plumbing fixtures, every fixture not defined under private use, and public includes all installations where a number of fixtures are installed and their use may be restricted or unrestricted.
167. "Public sewer" means a common sewer directly controlled by public authority.
168. "Public toilet room" means an unrestricted toilet facility that serves the public.
169. "Public water main" means a water supply pipe for public use controlled by public authority.
- 169.1. "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 an average of at least twenty-five individuals daily at least sixty days out of the year.
170. "P.V.C." means polyvinyl chloride.
171. "Receptor" means a fixture or device which receives the discharge from indirect waste pipes.
172. "Relief vent" means an auxiliary vent which permits additional circulation of air in or between drainage and vent systems.
173. "Return offset" means a double offset installed so as to return the pipe to its original alignment.
174. "Revent pipe" means individual vent.
175. "Rim" means an unobstructed open edge of a fixture.
176. "Riser" means a water supply pipe which extends vertically one full story or more to convey water to branches or to a group of fixtures.
177. "Roof drain" means a drain installed to receive water collecting on the surface of a roof and to discharge it into a leader or a conductor.
178. "Roughing-in" means the installation of all parts of the plumbing system which can be completed prior to the installation of fixtures. This includes drainage, water

supply, and vent piping, and the necessary fixture supports, or any fixtures that are built into the structure.

179. "Safe waste" means indirect waste.
180. "Sand filter" means a treatment device or structure, constructed above or below the surface of the ground, for removing solid or colloidal material of a type that cannot be removed by sedimentation, from septic tank effluent.
181. "Sand interceptor" means interceptor.
182. "Sand trap" means interceptor.
183. "Sanitary sewer" means a sewer which carries sewage and excludes storm, surface and ground water.
184. "Scavenger" means any person engaged in the business of cleaning and emptying septic tanks, seepage pits, privies, or any other sewage disposal facility.
185. "Seepage well or pit" means leaching well.
186. "Separator" means interceptor.
187. "Septic tank" means a watertight receptacle which receives the discharge of a building sanitary drainage system or part thereof, and is designed and constructed so as to separate solids from the liquid, digest organic matter through a period of detention, and allow the liquids to discharge into the soil outside of the tank through a system of open joint or perforated piping, or a seepage pit.
188. "Sewage" means any liquid waste containing animal or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution.
189. "Sewage ejectors" means a device for lifting sewage by entraining it in a high velocity jet of steam, air, or water.
190. "Sewage pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
191. "Shall" is mandatory.
192. "Shock arrestor (mechanical device)" means a device used to absorb the pressure surge (water hammer) that occurs when water flow is suddenly stopped.
193. "Side vent" means a vent connecting to the drainpipe through a fitting at an angle not greater than forty-five degrees to the vertical.

194. "Siphon" means an arrangement of plumbing piping, fittings, or device that will allow liquid to flow from a higher level to a lower level over an intervening level at a velocity sufficient to break the water seal of a trap.
195. "Size of pipe and tubing" means diameter.
196. "Slope" means grade.
197. "Soil pipe" means a pipe which conveys sewage containing human or animal waste to the building drain or building sewer.
198. "Soil vent" means stack vent.
199. "Special waste pipe" means a pipe which conveys special wastes.
200. "Special wastes" means wastes which require special treatment before entry into the normal plumbing system.
201. "S.P.S." means standard pipe size.
202. "Stack" means any vertical line of soil, waste, vent, or inside conductor piping extending through one or more stories.
203. "Stack group" means a group of fixtures located adjacent to the stack so that by means of proper fittings, vents may be reduced to a minimum.
204. "Stack vent" means the extension of a soil or waste stack above the highest horizontal drain connected to the stack.
205. "Stack venting" means a method of venting a fixture or fixtures through the soil or waste stack.
206. "Static line pressure" means the pressure existence without any flow.
207. "Sterilizer, boiling type" means a fixture (nonpressure type) used for boiling instruments, utensils, or other equipment (used for disinfection) and may be portable or connected to the plumbing system.
208. "Sterilizer instrument" means a sterilizer, boiling type.
209. "Sterilizer, pressure, instrument washer" means a fixture (pressure vessel) designed to both wash and sterilize instruments during the operating cycle of the fixture.
210. "Sterilizer, pressure (autoclave)" means a fixture (pressure vessel) designed to use steam under pressure for sterilizing. See Sterilizer, boiling type.

211. "Sterilizer vent" means a separate pipe or stack, indirectly connected to the building drainage system at the lower terminal, which receives the vapors from nonpressure sterilizers, or the exhaust vapors from pressure sterilizers, and conducts the vapors directly to the outer air. Sometimes called a vapor, steam, atmosphere, or exhaust vent.
212. "Sterilizer, water" means a device for sterilizing water and storing sterile water.
213. "Still" means a device used in distilling liquids.
214. "Storm drain" means building storm drain.
215. "Storm sewer" means a sewer used for conveying rainwater, surface water, condensate, cooling water, or similar liquid wastes.
216. "Subsoil drain" means a drain which collects subsurface or seepage water and conveys it to a place of disposal.
217. "Sump" means a tank or pit, which receives sewage or liquid waste, located below the normal grade of the gravity system and which must be emptied by mechanical means.
218. "Sump drainage" means a liquid and airtight tank that receives sewage or liquid waste, or both, located below the elevation of the gravity system, and is emptied by pumping.
219. "Sump pump" means a permanently installed mechanical device other than an ejector for removing sewage or liquid waste from a sump.
220. "Supports" means devices for supporting and securing pipe, fixtures, and equipment.
221. "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, wading, or recreational bathing.
222. "Tailpiece" means a connection used from outlet of fixture strainer to trap connection.
223. "Tempered water" means water at a temperature of not less than ninety degrees Fahrenheit [32.22 degrees Celsius] and not more than one hundred five degrees Fahrenheit [40.56 degrees Celsius].
224. "Trap" means a fitting or device which provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or wastewater through it.

225. "Trap arm" means that portion of a fixture drain between a trap and its vent.
226. "Trap primer" means a device or system of piping to maintain a water seal in a trap.
227. "Trap seal" means the vertical distance between the crown weir and the top of the dip of the trap.
228. "Vacuum" means any pressure less than that exerted by the atmosphere.
229. "Vacuum breaker" means backflow preventer.
230. "Vacuum breaker, nonpressure type (atmospheric)" means a vacuum breaker which is not designed to be subject to static line pressure.
231. "Vacuum breaker, pressure type" means a vacuum breaker designed to operate under conditions of static line pressure.
232. "Vacuum relief valve" means a device to prevent excessive vacuum in a pressure vessel.
233. "Vent pipe" means part of the vent system.
234. "Vent stack" means a vertical vent pipe installed to provide circulation of air to and from the drainage system and which extends through one or more stories.
235. "Vent system" means a pipe or pipes installed to provide a flow of air to or from a drainage system or to provide a circulation of air within such system to protect trap seals from siphonage and back pressure.
236. "Vertical pipe" means any pipe or fitting which makes an angle of forty-five degrees or less with the vertical.
237. "Wall hung water closet" means a water closet installed in such a way that no part of the water closet touches the floor.
238. "Waste" means liquid waste and industrial waste.
239. "Waste pipe" means a pipe which conveys only waste.
240. "Water distributing pipe" means a pipe within the building or on the premises which conveys water from the water-service pipe to the point of usage.
241. "Water lifts" means sewage ejector.
242. "Water main" means a water supply pipe for public use.

243. "Water outlet" means a discharge opening through which water is supplied to a fixture, into the atmosphere (except into an open tank which is part of the water supply system), to a boiler or heating system, to any devices or equipment requiring water to operate but which are not part of the plumbing system.
244. "Water riser pipe" means riser.
245. "Water service pipe" means the pipe from the water main or other source of potable water supply to the water distributing system of the building served.
246. "Water supply system" means the water service pipe, the water-distributing pipes, and the necessary connecting pipes, fittings, control valves, and all appurtenances in or adjacent to the building or premises.
- 246.1. "Water temperature control valve" means a valve of the pressure balancing, thermostatic mixing, or combination pressure balance thermostatic mixing type, which is designed to control water temperature to reduce the risk of scalding.
247. "Wet vent" means a vent which receives the discharge of wastes other than from water closets and kitchen sinks.
- 247.1. "Whirlpool bathtub" means a bathtub fixture which is equipped and fitted with a circulation piping system, pump, and other appurtenances and is so designed to accept, circulate, and discharge bathtub water upon each use.
248. "Yoke vent" means a pipe connecting upward from a soil or waste stack to a vent stack for the purpose of preventing pressure changes in the stack.

History: Amended effective July 1, 1985; October 1, 1989; September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-01. General provisions.

1. All sewage disposal systems shall be constructed, added to, or altered in accordance with this chapter. ~~Where~~ When a public sewerage system is ~~legally and economically deemed~~ deemed available to ~~the building to be served~~ a premise used for human occupancy if such premise is within two hundred feet [60.96 meters], the approving authority ~~may~~ shall require that sewage be discharged into that system.
2. Where sewage disposal systems are not available and construction is contemplated for a building of human occupancy

or use or addition to, or alteration of any existing sewage disposal system, the master plumber or sewer and water contractor previous to beginning any construction may be required to make application to the local or district health units for a written permit to make the desired installation.

3. "Sewage disposal" under this section means all private methods of collecting and disposing of domestic sewage including septic tanks, privies, chemical toilets, and any others.
- ~~3-~~ 4. All domestic sewage shall be disposed of by an approved method of collection, treatment, and effluent discharge. Domestic sewage or sewage effluent shall not be disposed of in any manner that will cause pollution of the ground surface, ground water, bathing area, lake, pond, watercourse, or create a nuisance. It shall not be discharged into any abandoned or unused well, or into any crevice, sink hole, or other opening either natural or artificial in a rock formation.
- ~~4-~~ 5. Where water under pressure is not available, all human body wastes shall be disposed of by depositing them in approved privies, chemical toilets, or such other installations acceptable to the administrative authority.
- ~~5-~~ 6. Water-carried sewage from bathrooms, kitchens, laundry fixtures, and other household plumbing shall pass through a septic or other approved sedimentation tank prior to its discharge into the soil or into ~~a sand filter~~ an alternative system. Where underground disposal or sand filtration is not feasible, consideration will be given to special methods of collection and disposal.
- ~~6-~~ 7. The building contractor, owner, plumbing contractor, or disposal system installer are jointly responsible for compliance with this chapter.
- ~~7-~~ 8. Abandoned disposal systems, septic tanks, and seepage beds shall be disconnected from the buildings, pumped out, and filled with earth.
- ~~8-~~ 9. No property shall be improved in excess of its capacity to properly absorb sewage effluent in the quantities and by the means provided in this code.
- ~~9-~~ 10. When there is insufficient lot area or improper soil conditions for adequate sewage disposal for the building or land use proposed, and the administrative authority so finds, no building permit shall be issued and no private sewage disposal shall be permitted. Where space or soil conditions are critical, no building permit shall be issued until engineering data and test reports satisfactory to the administrative authority have been submitted and approved or a

private sewage disposal system complying with the provisions of this article has first been installed.

- ~~10.~~ 11. Nothing contained in this chapter shall be construed to prevent the administrative authority from requiring compliance with higher requirements than those contained herein where such higher requirements are essential to maintain a safe and sanitary condition.

History: Amended effective October 1, 1989; September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-02. Permits required.

- ~~1.~~ Where sewage disposal systems are not available and construction is contemplated for a building of human occupancy or use or addition to or alteration of any existing sewage disposal system, the master plumber or sewer and water contractor shall, previous to beginning any construction, make application to the administrative authority for a written permit to make the desired installation.

Applications for such a permit shall be in a form required by the administrative authority and shall include complete plans and specifications for the desired installation. The administrative authority shall require percolation tests and other pertinent tests to be conducted under its supervision; such information to be made a part of the application.

- ~~2.~~ When, upon review of the application, the administrative authority is satisfied that the proposed design is adequate, a written permit to proceed with construction shall be issued.
- ~~3.~~ When, upon review of the application, the administrative authority is convinced that the proposed design is inadequate, or soil and geological conditions are such as to preclude safe and proper operation of the desired installation, a permit to proceed with construction shall be denied.
- ~~4.~~ No installation shall be made without a written permit from the administrative authority.
- ~~5.~~ The administrative authority may make inspections during construction to determine compliance with this chapter. No part of any installation shall be covered until inspected and given final written approval by the administrative authority. Any part of an installation which has been covered prior to final approval shall be uncovered upon order of the administrative authority. Final written approval shall not be given until all pertinent data required has been submitted.
- Repealed effective September 1, 1990.

History: Amended effective October 1, 1989.  
 General Authority: NDEC 43-18-09  
 Law Implemented: NDEC 43-18-09

62-03-16-03. Design of individual sewage system.

1. Design. The design of the individual sewage disposal system must take into consideration location with respect to wells or other sources of water supply, topography, water table, soil characteristics, area available, and maximum occupancy of the building.
2. Type of system. The type of system to be installed shall be determined on the basis of location, soil permeability, and ground water elevation.
3. Sanitary sewage. The system shall be designed to receive all sanitary sewage, including laundry waste, from the building. Drainage from footings or roofs shall not enter the system.
4. Discharge. The system shall consist of a septic tank discharging into either a subsurface disposal field or one or more seepage ~~pits~~ beds or into a combination of both, if found adequate as such and approved by the administrative authority.
5. Ground water. No plumbing fixture may be connected to any individual sewage disposal system where ground water may collect above the sewage disposal system causing a flooded condition, unless the elevation of the fixture trap is a sufficient height above the elevation of the finished grade of the ground in which the seepage pit or disposal field are installed to prevent backup.
6. Alternate design. Where soil conditions are such that neither of the systems mentioned in subsection 4 can be expected to operate satisfactorily, approval of an alternate design shall be secured from the administrative authority.
7. Sewage flow. Design criteria for sewage flow according to the type of establishment is indicated in the following table.

SEWAGE FLOWS ACCORDING TO TYPE OF ESTABLISHMENT

Type of Establishment	Gallons Per Person Per Day (Unless Otherwise Noted)
Airports (per passenger) .....	5
Apartments-multiple family (per resident) .....	60
Assembly halls (per seat) .....	2
Bars (per customer) .....	<del>2</del> <u>5</u>

Bathhouses and swimming pools .....	10
Bowling alleys (per lane) .....	75
Camps:	
Campground with central comfort stations .....	35
With flush toilets, no showers .....	25
Construction camps (semipermanent) .....	50
Day camps (no meals served) .....	15
Resort camps (night and day) with limited plumbing .....	50
Luxury camps .....	100
Churches (per sanctuary seat) .....	3-5
Churches with kitchens (per sanctuary seat) .....	5-7
Cottages and small dwellings with seasonal occupancy .....	50
Country clubs (per member present) .....	25
Dwellings:	
Boardinghouses .....	50
additional for nonresident boarders .....	10
Luxury residences and estates .....	150
Multiple family dwellings (apartments) .....	60
Roominghouses .....	40
Single family dwellings .....	75
Factories (gallons per person, per shift, exclusive of industrial wastes) .....	35
Hospitals (per bed space) .....	250
Hotels (per guest) .....	50
Institutions other than hospitals (per bed space) ...	100
Laundries, self-service (gallons per machine) .....	500
Mobile home parks (per space) .....	250
Motels (per bed space) .....	50
Picnic parks (sanitary waste only) .....	5
Picnic parks with bathhouses, showers, and flush toilets .....	10
Restaurants (toilet and kitchen wastes per patron) ..	10
Restaurants (kitchen wastes per meal served) .....	3
Restaurants additional for bars and cocktail lounges .....	2
Schools:	
Boarding .....	75
Day, without gyms, cafeterias, or showers .....	15
Day, with gyms, cafeteria, and showers .....	25
Day, with cafeteria, but without gyms, or showers .....	20
Service stations (per vehicle served) .....	10
Theaters:	
Movie (per auditorium seat) .....	5
Drive-in (per car space) .....	5
Travel trailer parks without individual water and sewer hookups (per space) .....	50
Travel trailer parks with individual water and sewer hookups (per space) .....	100
Workers:	
Construction (at semipermanent camps) .....	50

Day, at school and offices (per shift) ..... 15

History: Amended effective October 1, 1989; September 1, 1990.  
 General Authority: NDCC 43-18-09  
 Law Implemented: NDCC 43-18-09

62-03-16-04. Location of individual sewage system.

1. The minimum lot size in which a private disposal system may be installed is ~~twenty~~ forty thousand square feet [~~1850.06~~ 3716.00 square meters]. Smaller lot sizes may be approved by the administrative authority if a centralized water supply or sewage disposal is provided.
2. Required lot size with private water system in which a private disposal system may be installed is twenty thousand square feet [~~1850.06 square meters~~].
3. The following table provides for the minimum distances that shall be observed in locating the various components of the disposal system.

	Shallow -Well	Deep- Well	Septic Tank	Distri- bution Box	Dis- posal Field	Seep- age Pit Bed	Prop- erty Dry Well	Build- ing Line
Bldg Sewer	<del>(50)</del>	(50)	-	-	-	-	-	-
Septic Tank Distribution Box	<del>(100)</del>	(50)	-	5	10	10	<del>10</del>	(10) <sup>1</sup> (10)
Disposal Field	<del>(100)</del>	(50)	5	-	5	5	<del>5</del>	(10) (20)
Seepage Pit Bed	<del>(100)</del>	(50)	10	5	-	-	<del>---</del>	(10) (20)
Dry-Well	<del>(100)</del>	<del>(50)</del>	<del>10</del>	<del>5</del>	<del>---</del>	<del>---</del>	<del>---</del>	<del>(10)</del> <del>(20)</del>
Shallow- Well	<del>---</del>	<del>---</del>	<del>(100)</del>	<del>(100)</del>	<del>(100)</del>	<del>(100)</del>	<del>(100)</del>	<del>(100)</del>
Deep- Well	<del>---</del>	-	(50)	(50)	(50)	(50)	<del>(50)</del>	<del>---</del>
Suction Line	<del>---</del>	-	(50)	(50)	(50)	(50)	<del>(50)</del>	<del>---</del>

<sup>1</sup> May be closer to building when permission is given by the administrative authority.

4. 3. All sewage disposal systems shall conform with the following general principles regarding site:

Sewage disposal system shall be located at the lowest point on the premises consistent with the general layout

topography and surroundings, including abutting lots. Locations at a higher elevation through employment of a forced system may be used with the specific permission of the administrative authority.

All proposed sites for individual sewage treatment systems must be evaluated as to:

- a. Depth to the highest known or calculated ground water table or bedrock;
- b. Soil conditions, properties, and permeability;
- c. Slope;
- d. The existence of lowlands, local surface depressions, and rock outcrops;
- e. All legal setback requirements from existing and proposed buildings, property lines, sewage tanks, soil treatment systems, water supply wells, buried water pipes and utility lines, the ordinary high water mark of lakes, rivers, streams, flowages, and the location of all soil treatment systems and water supply wells on adjoining lots to the proposed soil treatment system, sewage tank, and water supply well; and
- f. Surface water flooding probability.

- 5- 4. No sewage disposal facilities shall be located on any watersheds of the public water supply system. Privies, septic tanks, and underground disposal means shall not be within two hundred feet [60.96 meters] measured horizontally from the high water level in the reservoir or the banks of tributary streams when situated less than three thousand feet [914.4 meters] upstream from potable water intake structures. Sewage disposal facilities situated beyond three thousand feet [914.4 meters] upstream from intake structures shall be located no less than one hundred feet [30.48 meters] measured horizontally from the high water level in the reservoir or the banks of the tributary streams. Prior to approval, the soil must prove satisfactory by the standard percolation test when underground disposal is used.

History: Amended effective August 1, 1981; October 1, 1989; September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-05. Percolation test tests. The percolation test to determine the absorption capacity of soil for septic tank effluent shall be conducted in the following manner:

A percolation test must be taken to determine the rate at which the soil will absorb water. The rate of absorption and the number of bedrooms using the system determines the area required for trenches.

1. Location. Test holes shall be spaced uniformly over the proposed absorption field site.
2. Number of tests for individual living unit sites. At least two tests shall be performed on each absorption field site. If the results of the two tests are reasonably close, the average result can be assumed. If the tests show extreme variations, two additional tests should be performed within the test area to secure a more accurate average for the area.
3. Type of test hole. Dig or bore a hole with horizontal dimensions of from four to twelve inches {10.16 to 30.48 centimeters} and vertical sides to the depth of the proposed absorption trench (twenty-four inches {60.96 centimeters} minimum).
4. Preparation of test hole. Carefully scratch the bottom and sides of the hole with a sharp-pointed instrument to remove any smeared soil surfaces. Remove all loose material from the hole. Add two inches {5.08 centimeters} of coarse sand or fine gravel to protect the bottom of hole from scouring and sediment.
5. Saturation and swelling hole. Carefully fill the hole with clear water, and by refilling if necessary or by supplying a surplus reservoir of water such as a five-gallon {18.93-liter} water bottle inverted over the hole, keep water in the hole for at least four hours and preferably overnight. This saturation procedure is extremely important in soils containing little or no clay, the swelling procedure is not essential and the test may be performed after the water from one filling of the hole has completely seeped away.
6. Percolation rate measurement.
  - a. Sandy soils. The test hole may be filled with water to bring the depth to six inches {15.24 centimeters} over the two inches {5.08 centimeters} of gravel. The total time required for the total six inches {15.24 centimeters} of water to seep away, divided by six, will give the average time for the water to fall one inch {2.54 centimeters}, which may be used to calculate the amount of absorption field required.
  - b. Clay soils. If the water remains in the test hole after the swelling period, adjust the depth to approximately six inches {15.24 centimeters} over the two inches {5.08 centimeters} of gravel. From a fixed reference point,

measure the drop in water over two 30-minute periods. If the two results are equal, the result of the sixty-minute period may be used to calculate the percolation rate in minutes per inch [2.54 centimeters]. Additional thirty-minute measurements may be necessary to secure two equal results.

If no water remains in the hole after the swelling period, add water to bring the depth to six inches [15.24 centimeters] over the gravel and follow the procedure as described above.

7. Tile length. The tile length for each one hundred gallons [378.54 liters] of sewage per day is as follows:

Time in Minutes for One-inch Drop	Tile Length for Trench Widths of		
	One-foot	Two-feet	Three-feet
1	25	13	9
2	30	15	10
3	35	18	12
5	42	21	14
10	59	30	20
15	74	37	25
20	91	46	31
25	105	53	35
30	125	63	42

8. Seepage pits. When seepage pits are contemplated, test pits approximately five feet [1.52 meters] in diameter to permit a man entering the pit by means of a ladder and to such depth as to reach a porous soil shall be prepared. In the bottom of this pit a one foot square [30.48 centimeter square] by one foot [30.48 centimeters] deep hole is made at the time of testing and the percolation test conducted as indicated under subsections 1, 2, and 3.

9. Absorption area. The absorption area of a seepage pit (effective sidewall area) required can be obtained from the table in this subsection. In no case, however, shall the absorption area in the porous soil be less than one hundred twenty-five square feet [11.61 square meters]. The bottom of the pit shall not be considered part of the absorption area.

EFFECTIVE SIDEWALL ABSORPTION AREA IN SEEPAGE PITS FOR  
EACH ONE HUNDRED GALLONS OF SEWAGE PER DAY

Time in Minutes	Effective Absorption Area
-----------------	---------------------------

for One-inch Drop

Square Feet

---

1	32
2	40
3	45
5	56
10	75
15	96
20	108
25	139
30	167

---

10. Porous soil thickness. The thickness of the porous soil below the point of percolation test must be determined by means of digging a pit or using a soil auger. The effective absorption area shall be calculated only within this porous soil.

Where percolation tests are required, they must be made as follows: (See appendix I)

1. Test hole dimensions and locations. Each test hole must be six inches to eight inches [15.24 centimeters to 20.32 centimeters] in diameter, have vertical sides, and be bored or dug to the depth of the bottom of the proposed individual sewage treatment system. Soil texture descriptions must be recorded noting depths where texture changes occur.

2. Preparation of the test hole. The bottom and sides of the hole must be carefully scratched to remove any smearing and to provide a natural soil surface into which water may penetrate.

All loose material must be removed from the bottom of the test hole and two inches [5.08 centimeters] of one-fourth-inch to three-fourths-inch [.635-centimeter to 1.90-centimeter] gravel must be added to protect the bottom from scouring.

3. Soil saturation and swelling. The hole must be carefully filled with clear water to a minimum depth of twelve inches [30.48 centimeters] over the soil at the bottom of the test hole and maintained for no less than four hours. The soil must then be allowed to swell for at least sixteen, but no more than thirty hours. In sandy soils, the saturation and swelling procedure is not required and the test may proceed if one filling of the hole has seeped away in less than ten minutes.

4. Percolation rate measurement.

a. In sandy soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in

water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately ten-minute intervals. A measurement can also be made by determining the time it takes for the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point. If eight inches [20.32 centimeters] of water seeps away in less than ten minutes, a shorter interval between measurements must be used, but in no case may the water depth exceed eight inches [20.32 centimeters]. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent.

b. In other soils. Adjust the water depth to eight inches [20.32 centimeters] over the soil at the bottom of the test hole. From a fixed reference point, the drop in water level must be measured in inches [centimeters] to the nearest one-eighth inch [.34 centimeter] at approximately thirty-minute intervals, refilling between measurements to maintain an eight-inch [20.32-centimeter] starting head. The test must continue until three consecutive percolation rate measurements vary by a range of no more than ten percent. The percolation rate can also be made by observing the time it takes the water level to drop one inch [2.54 centimeters] from an eight-inch [20.32-centimeter] reference point if a constant water depth of at least eight inches [20.32 centimeters] has been maintained for at least four hours prior to the measurement.

5. Calculating the percolation rate. Divide the time interval by the drop in water level to obtain the percolation rate in minutes per inch [2.54 centimeters].

Percolation rates determined for each test hole must be averaged to determine the final soil treatment system design.

A percolation test may not be run where frost exists below the depth of the proposed soil treatment system.

History: Amended effective September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-05.1. Soil borings. Where soil borings are required, they must be made as follows:

1. Each boring or excavation must be made to a depth at least three feet [0.91 meters] deeper than the bottom of the

proposed system or until bedrock or a water table is encountered, whichever is less.

2. A soil texture description must be recorded by depth and notations made where texture changes occur.
3. Particular effort must be made to determine the highest known water table by recording the first occurrence of mottling observed in the hole, or if mottling is not encountered, the open holes in clay or loam soils must be observed after standing undisturbed a minimum of sixteen hours, and depth to standing water, if present, must be measured.

History: Effective September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-06. Capacity of septic Septic tanks. (See appendix II)

1. Liquid capacity. The liquid capacity of all septic tanks shall conform to the tables contained in subsection 7 of section 62-03-16-03 and this subsection as determined by the number of bedrooms or apartment units in dwelling occupancies and the occupant load or the number of plumbing fixture units as determined from the table in subsection 1 of section 62-03-11-04, whichever is greater in other building occupancies.

CAPACITY OF SEPTIC TANKS \*

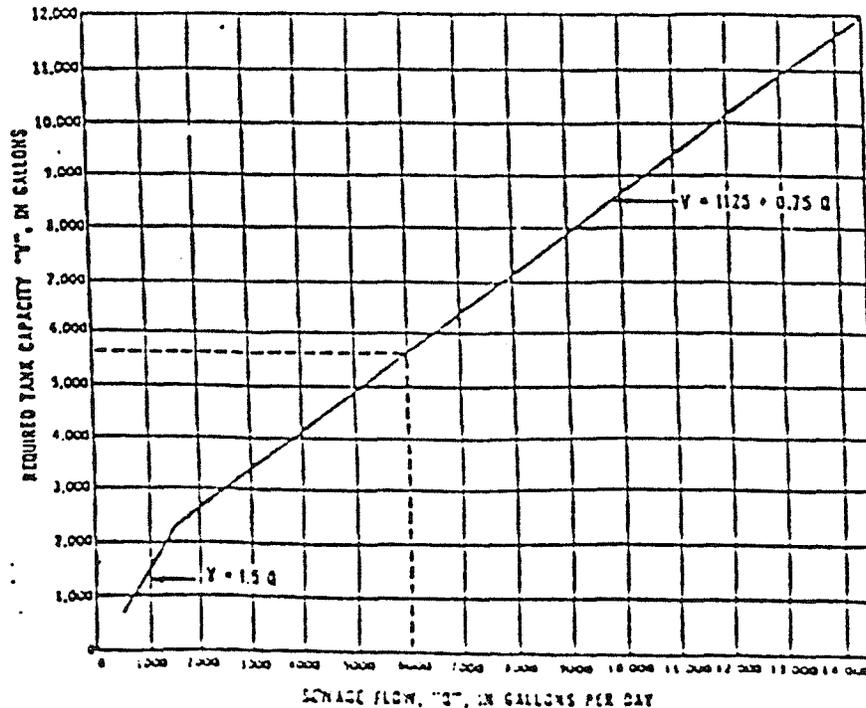
Single family dwellings-number of bedrooms	Multiple dwelling units or apartments-one bedroom each	Other uses; maximum fixture units served	Minimum septic tank working capacity in gallons
1-3		20	1000
4	2 units	25	1200
5 or 6	3	33	1500
7 or 8	4	45	2000
	5	55	2250
	6	60	2500
	7	70	2750
	8	80	3000
	9	90	3250
	10	100	3500

Extra bedroom, 150 gallons each.

Extra dwelling units over 10, 250 gallons each.

Extra fixture units over 100, 25 gallons per fixture unit.

\* NOTE: Septic tank sizes in this table include sludge storage capacity and the connection of domestic food waste disposal units without further volume increase.



2. Multiple compartments. In a tank of more than one compartment the inlet compartment shall have a capacity of not less than two-thirds of the total tank capacity. Septic tank construction. Septic tanks must be constructed of sound durable materials not subject to excessive corrosion or decay and must be watertight. Each such tank must be structurally designed to withstand all anticipated earth or other loads and must be installed level and on a solid bed. All tanks regardless of material or method of construction must conform to the following criteria:
- a. The liquid depth of any septic tank or compartment shall be not less than thirty inches [76.20 centimeters], nor more than six and one-half feet [1.97 meters]. No tank may have an inside horizontal dimension less than twenty-four inches [60.96 centimeters].
  - b. The space in the tank between the liquid surface and the top of the inlet and outlet baffles must be not less than twenty percent of the total required liquid capacity, except that in horizontal cylindrical tanks this space must be not less than fifteen percent of the total required liquid capacity.
  - c. There must be at least one inch [2.54 centimeters] between the underside of the top of the tank and the highest point of the inlet and outlet devices. The inlet invert must be not less than three inches [7.62 centimeters] above the outlet invert.
  - d. Baffles must be integrally cast with the tank, affixed with a permanent waterproof adhesive or affixed with stainless steel connectors, top and bottom, and be constructed of acid-resistant concrete, acid-resistant fiberglass or plastic.
  - e. The inlet baffle must extend at least six inches [15.24 centimeters], but not more than twenty percent of the total liquid depth below the liquid surface and at least one inch [2.54 centimeters] above the crown of the inlet sewer.
  - f. The outlet baffle and the baffles between compartments must extend below the liquid surface a distance equal to forty percent of the liquid depth, except that the penetration of the indicated baffles or sanitary tees for horizontal cylindrical tanks must be thirty-five percent of the total liquid depth. They also must extend above the liquid surface. In no case may they extend less than six inches [15.24 centimeters] above the liquid surface.
  - g. Inlet baffles must be no less than six inches [15.24 centimeters] or no more than twelve inches [30.48 centimeters].

centimeters] measured from the end of the inlet pipe to the nearest point on the baffle. Outlet baffles must be six inches [15.24 centimeters] measured from beginning of the outlet pipe to the nearest point on the baffle. Sanitary tees used as baffles must be at least four inches [10.16 centimeters] in diameter.

- h. The inlet and outlet must be located opposite each other along the axis of maximum dimension. The horizontal distance between the nearest points of the inlet and outlet devices must be at least four feet [1.22 meters].
- i. There may be one or more manholes. Manholes must be at least eighteen inches [45.72 centimeters] in diameter, and located within six feet [1.83 meters] of all walls of the tank. The manhole must extend through the cover to a point within twelve inches [30.48 centimeters] but no closer than six inches [15.24 centimeters] below finished grade. The manhole cover must be corrosion resistant, rated three hundred-pound [136.07-kilogram] load bearing, and covered with at least six inches [15.24 centimeters] of earth. When in the opinion of the administrative authority the manhole is permitted above finish grade, it must be safely secured.
- j. There must be an inspection pipe of at least four inches [10.16 centimeters] in diameter or a manhole over both the inlet and outlet devices. The inspection pipe must extend through the cover and be capped flush or above finished grade. A downward projection of the centerline of the inspection pipe must be directly in line with the centerline of the inlet or outlet device.
3. Septic tank construction: Plans for all septic tanks shall be submitted to the administrative authority for approval. Such plans shall show all dimensions, reinforcing, structural calculations, and such other pertinent data as may be required.

Septic tanks shall be constructed of sound durable materials not subject to excessive corrosion or decay and shall be watertight. Each such tank shall be structurally designed to withstand all anticipated earth or other loads and shall be installed level and on a solid bed.

Multiple tanks.

- a. Where more than one tank is used to obtain the required liquid volume, the tanks must be connected in series.
- b. No more than four tanks in series can be used to obtain the required liquid volume.

- c. The first tank must be no smaller than any subsequent tanks in series.
4. Septic tank materials. See subsection 10 of section 62-03-03.1-03.
5. ~~Concrete tanks.~~
- a. ~~Concrete tanks shall have baffles at least twelve inches {30.48 centimeters} in width or diameter at the point opposite the opening in the tank.~~
- b. ~~The tops shall have an eighteen to twenty four inch {45.72 to 60.96 centimeter} manhole with handle to remove same. In addition at least one inspection pump out opening must be installed on the top of tank. The pump out opening must be large enough to permit a pump out pipe to be inserted. Pump out pipe must extend to ground level and be capped.~~
- c. ~~The minimum thickness of the walls shall be two and three-fourths inches {6.99 centimeters}.~~
- d. ~~The tops and bottoms shall be four inches {10.16 centimeters} thick unless placed under a driveway, then they shall be a minimum of six inches {15.24 centimeters}.~~
- e. ~~All tank walls and bottoms shall be reinforced with "Road Mesh".~~
- f. ~~The tops shall have three-eighths inch {9.53 millimeter} steel reinforcing on six inch {15.24 centimeter} centers.~~
- g. ~~These tanks must be watertight.~~
6. ~~Depth of septic tank. Where septic tanks are installed above frostline, ~~percautions~~ precautions must be taken to prevent the septic tank from freezing.~~
7. 6. Service limited. No septic tank shall serve more than one property unless authorized by the administrative authority.
8. 7. Disposal of effluent. The effluent from all septic tanks shall be disposed of underground by subsurface irrigation or absorption trench, seepage pits beds, or both approved alternative systems.

History: Amended effective July 1, 1985; October 1, 1989; September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-07. Distribution box.

1. Use. A distribution box may be used when more than one line of absorption field or more than one seepage pit bed is used.
2. ~~When required. A distribution box shall be required when more than one line of subsurface irrigation or more than one seepage pit is used.~~
- 3- ~~Connection. Each lateral line shall be connected separately to the distribution box and shall not be subdivided.~~
- 4- 3. Invert level. The inlet invert shall be at least one inch [2.54 centimeters] above the invert of the outlets. The size of the distribution box shall be sufficient to accommodate the number of lateral lines.
- 5- 4. Watertight. The distribution box shall be of watertight construction arranged to receive the septic tank effluent sewer and with an outlet or connecting line serving each trench or seepage pit bed.
- 6- ~~Baffle. A baffle at least six inches [15.24 centimeters] high and twelve inches [30.48 centimeters] long shall rest on the bottom of the box and be placed at right angles to the direction of the incoming tank effluent sewer and twelve inches [30.48 centimeters] in front of it.~~
- 7- ~~When required. A distribution box for septic effluent disposal shall be required when more than one line of subsurface irrigation or more than one seepage pit is used. Each irrigation line shall be connected separately to the distribution box and shall not be subdivided.~~
- 8- 5. Inspection. The sides of the box should extend to within a short distance of the ground surface to permit inspection, and shall have a concrete marker at grade.

History: Amended effective October 1, 1989; September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-08. Seepage pit.

- 1- ~~Seepage pits may be used either to supplement the subsurface disposal field or in lieu of such field where conditions favor the operation of seepage pits, as may be found necessary and approved by the administrative authority.~~
- 2- ~~Deep seepage pits penetrating ground water are prohibited.~~

- 3- Where seepage pits are used for septic tank effluent disposal, the number, diameter, and depth of the pits shall be determined after percolation tests have been made to ascertain the porosity of the soil.
- 4- The excavation for a seepage pit shall be greater in diameter than the outside diameter of the vertical sidewalls to allow for the footing.
- 5- The annular space between the outside of the vertical walls and the excavation shall be backfilled with broken stone, coarse gravel, or other suitable material.
- 6- Seepage pits shall be constructed with the bottom being open with an outer ring, or footing, to support the sidewalls.
- 7- The sidewalls can be made of stone, cement or cinder blocks, or brick laid in cement mortar for strength, with openings at sufficient intervals to permit the septic tank effluent to pass out through the wall to the surrounding porous soil.
- 8- All septic tank tops and pit covers shall be of sufficient strength to carry the load imposed. Seepage pit covers shall be at least as required in subsections 9 and 10.
- 9- A pit cover shall be an approved precast, reinforced concrete slab of two thousand five hundred pounds per square inch {1133.97 kilograms per 6.45 square centimeters} minimum compressive strength, not less than five inches {12.7 centimeters} thick and designed to support an earth load of not less than four hundred pounds per square foot {181.44 kilograms per 929.03 square centimeters}. Each such cover shall extend not less than three inches {7.62 centimeters} beyond the sidewalls of the pit, shall be provided with a minimum six-inch {15.24 centimeter} inspection hole with pipe extended to the surface, and provided with a six-inch {15.24 centimeter} cast iron stand pipe with cleanout to grade.
- 10- The top shall be at least thirty-six inches {91.44 centimeters} below finished grade, except where less is permitted by the administrative authority.
- 11- Where field installed slab are used, the following table indicates the requirements.

DESIGN OF SEEPAGE PIT COVERS

Pit Diameter	Pit Wall Thickness	Cover Thickness	Cover Weight	Reinforcing Steel Required in Two Perpendicular Directions
5 ft	4"	5"	1230lb	# 5 @ 10 1/2"
6 ft	8"	5"	1770lb	# 5 @ 9"
8 ft	8"	6"	3780lb	# 5 @ 7 1/2" c/c
10 ft	8"	8"	7850lb	# 5 @ 6 1/2" c/c

Repealed effective September 1, 1990.

History: ~~Amended effective October 1, 1989.~~

General Authority: ~~NBCC 43-18-09~~

Law Implemented: ~~NBCC 43-18-09~~

62-03-16-09. Absorption trenches. (See appendix III)

1. Design. Absorption trenches shall be designed and constructed on the basis of the required effective percolation area test results or other soil data. Trench bottom area required is shown in the table in subsection 4.
2. Filter material. The filter material shall cover the tile and extend the full width of the trench and shall be not less than six inches [15.24 centimeters] deep beneath the bottom of the tile, and two inches [5.08 centimeters] above the top of the tile. The filter material may be washed rock or crushed stone ranging in size from one-half one inch to two and one-half three inches [12.7 to 63.5 millimeters 2.54 centimeters to 7.62 centimeters]. The filter material shall be covered by untreated red rosin paper, hay, straw, or approved filter fabric, as the laying of the pipe drain proceeds. Approved graveless systems may be used in lieu of rockfill providing an equal surface area of soil is utilized.
3. Spacing. Trenches must have a minimum spacing of undisturbed earth of six feet [1.83 meters] for eighteen-inch to twenty-four-inch [45.72-centimeter to 60.96-centimeter] trench widths, and nine feet [2.74 meters] for trenches up to thirty-six inches [91.44 centimeters] wide.
4. Absorption field. The size and requirements for absorption fields shall conform to those given in the following table:

Table - Recommended absorption trench area.

Percolation rate min/in	Depth of Rock below distribution pipe			
	6"	12"	18"	24"
	-Trench bottom area loading rate, gal/ft <sup>2</sup> /day-			
1 to 5	1.2	1.5	1.80	2.1
6 to 15	0.8	1.0	1.20	1.4
16 to 30	0.6	0.75	0.90	1.05
31 to 45	0.5	0.63	0.76	0.89
46 to 60	0.45	0.57	0.68	0.79
	-Square feet of trench bottom/bedroom *-			
1 to 5	125	100	85	70
6 to 15	190	150	125	110
16 to 30	250	200	165	145
31 to 45	300	240	200	170
46 to 60	330	265	220	190

\* Based on sewage volume of 150/GPD/Bedroom

Absorption field. The size and minimum spacing requirements for absorption fields shall conform to those given in the table in subsection 4.

4. Length. The maximum length of lateral shall not exceed one hundred feet [30.48 meters].

#### SIZE AND SPACING FOR DISPOSAL FIELDS

Width of trench at bottom (Inches)	Recommended depth of trench (Inches)	Spacing tile lines * (Feet)	Effective absorption area per lineal foot of trench (Square feet)
18	18 to 30	6.0	1.5
24	18 to 30	6.0	2.0
30	18 to 36	7.6	2.5
36	24 to 36	9.0	3.0

\* A greater spacing is desirable where available area permits.

#### 5. Absorption lines.

- a. Gravity distribution. Absorption lines shall be constructed of four-inch [10.16-centimeter] pipe of open jointed or horizontally split or perforated clay tile, perforated asbestos cement, perforated bituminized fiber or plastic pipe conforming to Commercial Standard CS 228-61 as defined by ASTM D-2852-69T and Federal Specification

~~#LP-001221~~, or open jointed cast iron soil pipe. In the case of clay tile or open jointed cast iron soil pipe, the sections shall be spaced not more than one half inch [~~12.7 millimeters~~], and the upper half of the joint shall be protected by asphalt treated paper while the piping is being covered. For approved plumbing materials, see table 62-03-03.1 of chapter 62-03-03.1.

- b. Pressure distribution. Absorption lines must be constructed of one and one-half-inch to two-inch [~~3.81-centimeter to 5.08-centimeter~~] to two-inch [~~3.81 centimeters~~] rigid plastic pipe with one-fourth-inch [~~6.35-millimeter~~] holes drilled in the bottom of the pipes every three feet [~~0.91 meters~~]. Pipe must be installed level and capped at ends. Manifold must be supported and backfilled by hand.
6. Grade. The absorption trench bottom shall must be uniformly graded to slope from a minimum of two inches [~~5.08 centimeters~~] to a maximum of four inches [~~10.16 centimeters~~] per one hundred feet [~~30.48 meters~~] level.

History: Amended effective October 1, 1989; September 1, 1990.  
General Authority: NDCC 43-18-09  
Law Implemented: NDCC 43-18-09

62-03-16-10. General specifications for the design and construction of a grease interceptor.

1. A grease interceptor where required shall be placed in an accessible location and shall be placed outside the building. It shall be located on the kitchen waste drain as close as possible to the kitchen. The discharge from a grease interceptor shall pass through a septic tank before it is discharged to the underground disposal system or other treatment facilities.
2. A grease interceptor shall provide at least five gallons [~~18.93 liters~~] per individual seating unit and shall not be less than thirty gallons [~~113.56 liters~~] capacity. It shall be baffled to retain congealed grease on the surface of the liquid. The inlet pipe shall be located six inches [~~15.24 centimeters~~] below the liquid level and the outlet shall be located at least eighteen inches [~~45.72 centimeters~~] below the liquid level. The cover of the interceptor shall be concrete or metal and designed for easy removal for cleaning the interceptor. The inlet pipe shall be baffled to a depth of six inches [~~15.24 centimeters~~] below the liquid level and the outlet shall be baffled to a depth of at least eighteen inches [~~45.72 centimeters~~] below the liquid level. Repealed effective September 1, 1990.

General Authority: ~~NDCC 43-18-09~~  
Law Implemented: ~~NDCC 43-18-09~~

62-03-16-11. Piping material. All piping from building drain to sewage disposal system shall be four inches [10.16 centimeters] or larger service or heavier weight cast iron, schedule 40 acrylonitrile-butadiene-styrene or polyvinyl chloride plastic pipe, type PSP PVC sewer pipe SDR 35, and fittings A.S.T.M. D3033 or D3034, exclusive of the absorption lines, which shall be as in subsection 5 of section 62-03-16-09.

History: Amended effective April 1, 1984; September 1, 1990.  
General Authority: NDCC 43-18-09  
Law Implemented: NDCC 43-18-09

62-03-16-11.1. Pumps and pump systems. This section pertains to pumps installed after the septic tank. Sumps and ejectors installed before the septic tank must meet the requirements set forth in section 62-03-11-07. (See appendix IV)

1. Pumping stations.

- a. The pumping station must be watertight and constructed of corrosion-resistant material.
- b. The working capacity of the pumping chamber must equal one-fourth of the daily sewage flow. Total capacity of the pumping chamber must equal or exceed daily sewage flow.
- c. A secure cover must be provided that is either bolted on or heavy enough to prevent children from moving the cover.
- d. An external electrical outlet must be provided for connection to the pump and control switches. Openings for wiring into the pump chamber must be sealed.

2. Pumps.

- a. Effluent lift pumps must be of cast bronze, cast iron, or plastic construction and must be designed for handling septic tank effluent. Pedestal sump pumps with an open motor are not allowed.
- b. Set the pump on a pedestal on the bottom of the pump chamber to minimize grit and solids entering the impeller.
- c. The pump must have maximum lift capability at least five feet [1.52 meters] greater than the actual elevation, plus pipe friction loss. A pump to a sewage mound shall deliver seven and five-tenths gallons [20.38 liters] per

minute for each one hundred square feet [9.29 square meters] of rock area.

d. Outlet piping must be one and one-fourth inches [31.75 millimeters] in diameter or greater. The pipe must be laid below frostline or uniformly graded to drain back to the pump chamber. Volume of drainage should not exceed ten percent of the working capacity of the pump chamber. If piping is set to drain back, any check valves on the pump should be removed and a one-fourth-inch [6.35-millimeter] drainhole drilled on the low point of the outlet pipe. Piping connection to the pump must be with a union or quick disconnect coupling near the top of the pump chamber.

3. Pump controls.

a. On-off switching for sewage pumps must be sealed mercury float switches or of a type approved by the administrative authority.

b. Electrical connections within the pump chamber must be soldered and have watertight connections.

History: Effective September 1, 1990.

General Authority: NDCC 43-18-09

Law Implemented: NDCC 43-18-09

62-03-16-11.2. Alternative systems.

1. Mounds. Mounds may be constructed on soils having a percolation rate faster than one hundred twenty minutes per inch [2.54 centimeters]. For soils slower than one hundred twenty minutes per inch [2.54 centimeters], either the system must be moved to more amenable soil, or see subsection 2 on lagoons. (See appendix V)

a. Location. Mounds may not be located on sites of greater than three percent slope. For moderately permeable soils, the administrative authority may approve construction on slopes of up to six percent. Mounds may not be built in areas where water may pond.

b. Design. The basal sand area of the mound must be sized on the basis of eighty-three hundredths gallon [3.12 liters] per square foot [0.09 square meter] per day. The basal sand may be twelve inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep and must extend at least five feet [1.52 meters] beyond the rock filter material in all directions. The rock layer may be twelve inches to twenty-four inches [30.48 centimeters to 60.96 centimeters] deep, and may not exceed ten feet [3.05

meters] in width. Only pressure distribution may be used in the mound, so piping shall be one and one-half-inch to two-inch [38.10-millimeter to 50.80-millimeter] diameter rigid ABS or PVC. One and one-fourth-inch [6.35-millimeter] hole must be drilled every thirty-six inches [91.44 centimeters] and ends shall be capped. Laterals shall be spaced no further than forty inches [101.60 centimeters] on center and no further than twenty inches [50.80 centimeters] from the edge of the filter rock. Surface water must be diverted by a berm located uphill from the mound.

c. Specifications. Sand must be uniformly graded, with no more than fifteen percent fines. Filter rock must be one inch to three inches [25.40 millimeters to 76.20 millimeters] in diameter, washed or screened to less than ten percent fines.

d. Construction.

- (1) Scarify the area with backhoe teeth or a cultivator. Do not remove topsoil. Bring outlet pipe from pump up into the center of the mound area.
- (2) Lay sand on scarified area. Do not compact the soil with machinery tires. Level sand to desired depth.
- (3) Lay filter rock down the center of the sand layer. Level.
- (4) Connect piping to manifold and lay pipe on rock. Cover pipe with rock and level by hand. Holes must be on bottom of the pipe.
- (5) Lay sand up to the top of the rock on all sides, sloping sand away at a three to one or four to one slope.
- (6) Cover rock with red rosin paper, hay, or filter fabric.
- (7) Backfill entire mound to a three to one or four to one grade. Downhill side of mound on slopes must be backfilled at a four and to one or longer grade. Cover mound with topsoil.
- (8) Seed grass over mound. Trees and shrubs may be planted on the toe and up the sides of the mound, but do not plant shrubs or trees on top. If vegetation is not established before winter, cover mound with hay or straw to prevent freezing.

2. Lagoons - Total containment. In areas where normal septic systems will not function, and where the administrative authority finds that a nuisance will not be presented, a lagoon may be used for onsite sewage disposal.
  - a. Design. Depth may not exceed five feet [1.52 meters], and side berms shall be graded to three to one for proper aeration. The site must be fenced, and the berms must be seeded. The berms must be at least one foot [0.30 meter] higher than the liquid level at design capacity. Inlet pipes must discharge onto a splash pad to minimize erosion. Outlet pipes may not be installed without the approval of the administrative authority.
  - b. Maintenance. Weeds must be controlled in the lagoon and on the berms to maximize aeration.
  - c. Prohibitions. Lagoons may not be constructed on sand, gravel, or light loamy soils. No lagoon may be discharged into receiving waters or onto the ground without the approval of the state department of health and consolidated laboratories.
3. Alternative design. Alternate designs for construction of sewage disposal systems complying with the intent of this code may be submitted to the administrative authority for approval.

History: Effective September 1, 1990.

General Authority: NDCC 43-18-09

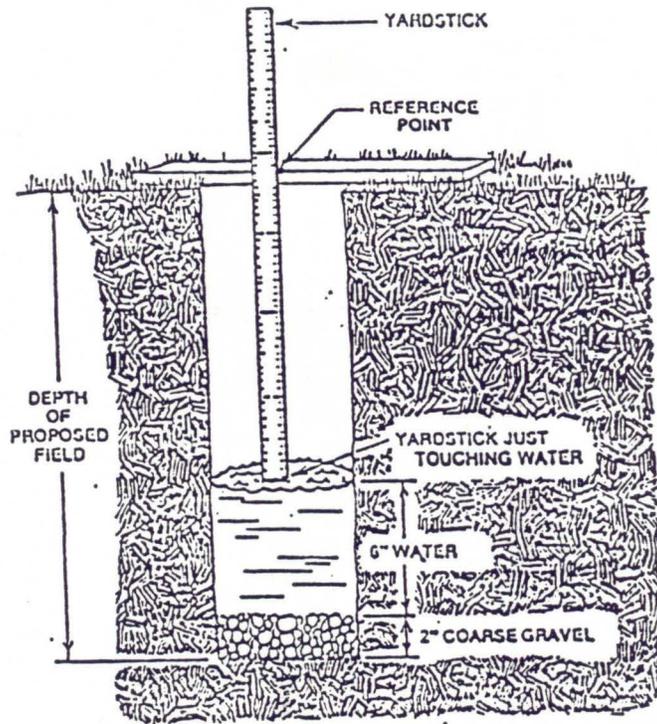
Law Implemented: NDCC 43-18-09

#### 62-03-16-12. Sand filters.

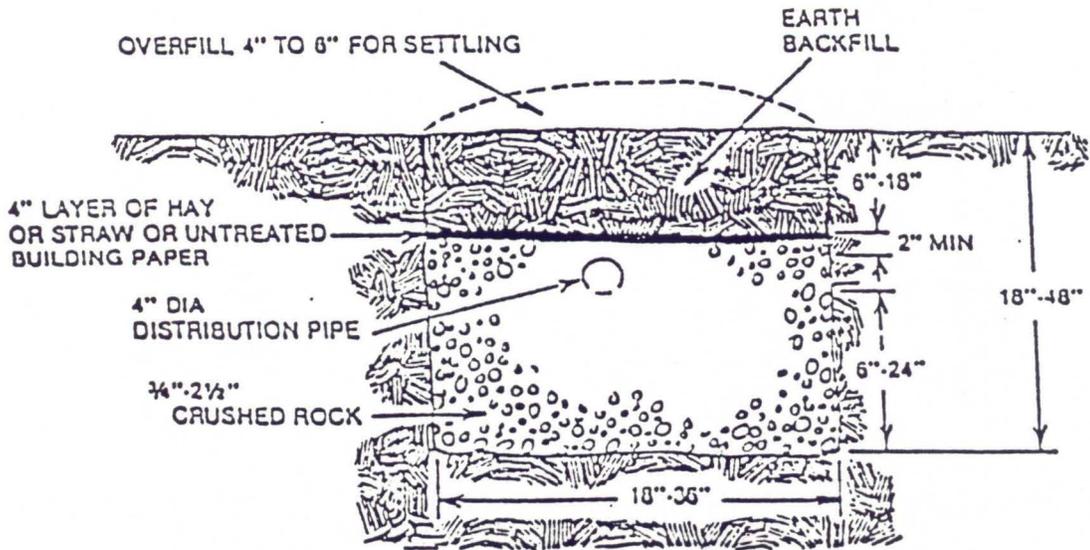
1. A sand filter shall consist of a bed of clean, graded sand on which septic tank effluent is distributed by means of a siphon and pipe, with the effluent percolating through the bed to a series of underdrains through which it passes to the point of disposal.
2. The filter size shall be determined on the basis of one and fifteen hundredths gallons [4.35 liters] per square foot [929.03 square centimeters] per day.
3. The septic tank effluent shall enter a dosing siphon tank of a size to provide a one-inch [2.54 centimeter] coverage of the sand filter.
4. The siphon shall be of a commercial type and shall discharge the effluent to the sand filter intermittently. The siphon shall be omitted if a pump is used to lift septic tank effluent to the sand filter.

5. A surge tank shall be used to receive the pump discharge prior to dosing on the sand filter.
6. Four-inch ~~{10.16 centimeter}~~ diameter vitrified clay pipe in two-foot ~~{60.96 centimeter}~~ lengths laid with one-half-inch ~~{12.7 millimeter}~~ open joints or unglazed farm tile in one-foot ~~{30.48 centimeters}~~ lengths laid with open joints, with the top half of each joint covered with four-inch ~~{10.16 centimeter}~~ wide strips of tar paper, burlap, or copper screen, or perforated bituminized fiber pipe or other approved material shall be used for the underdrains.
7. They shall be laid at the bottom of fine sand filter, surrounded by washed gravel, crushed stone, slag or clean bank run gravel ranging in size from one-half inch ~~{12.7 millimeter}~~ to two and one-half inches ~~{63.5 millimeters}~~ and free of fines, dust, ashes, or clay, with the gravel at least two inches ~~{5.08 centimeters}~~ below the bottom of the tile, and two inches ~~{5.08 centimeters}~~ above the top of the tile.
8. The underdrains shall have a slope from two inches to four inches per one hundred feet ~~{5.08 to 10.16 centimeters per 30.48 meters}~~ and shall be placed at six-foot to eight-foot ~~{1.83 meter to 2.44 meter}~~ intervals.
9. Above the gravel or other material surrounding the underdrain shall be placed two feet ~~{60.96 centimeters}~~ of washed and graded sand having an effective size of from 0.35-0.5 millimeters and a uniformity coefficient of not over three and five-tenths. (The effective size of a sand is that size of which ten percent by weight is smaller and the uniformity coefficient is the ratio of that size of which sixty percent by weight is smaller to the effective size.)
10. The distribution pipes shall be laid at the surface of the sand, surrounded by gravel as specified for the underdrains.
11. The gravel should be covered with untreated building paper and the entire area covered with a minimum of twelve inches ~~{30.48 centimeters}~~ of earth.
12. The chlorine contact tank for disinfection of sand filter effluent shall provide twenty minutes detention at average flow but in no case shall it be smaller than fifty gallons ~~{189.27 liters}~~ capacity. Chlorine control should be provided by the use of hypochlorite or chlorine machines commercially available. Repealed effective September 1, 1990.

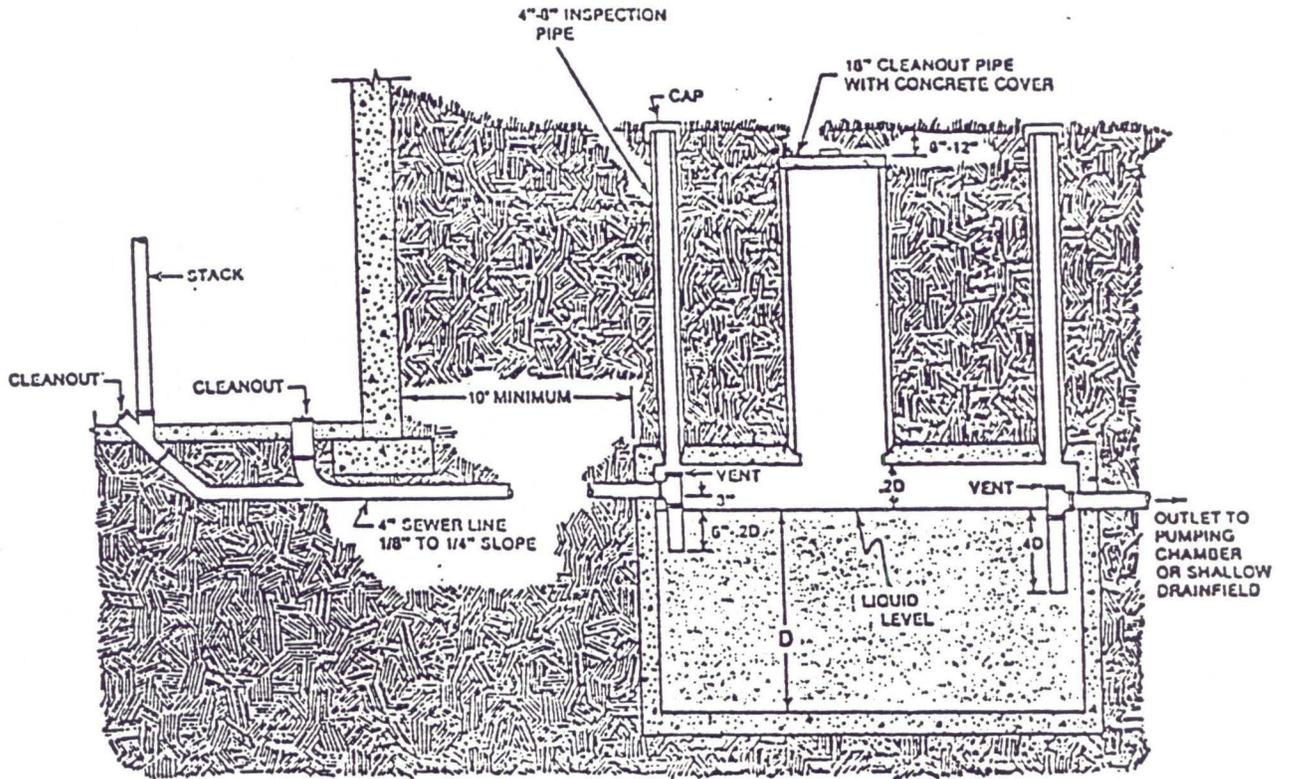
General Authority: NDCE 43-18-09  
 Law Implemented: NDCE 43-18-09



Appendix I

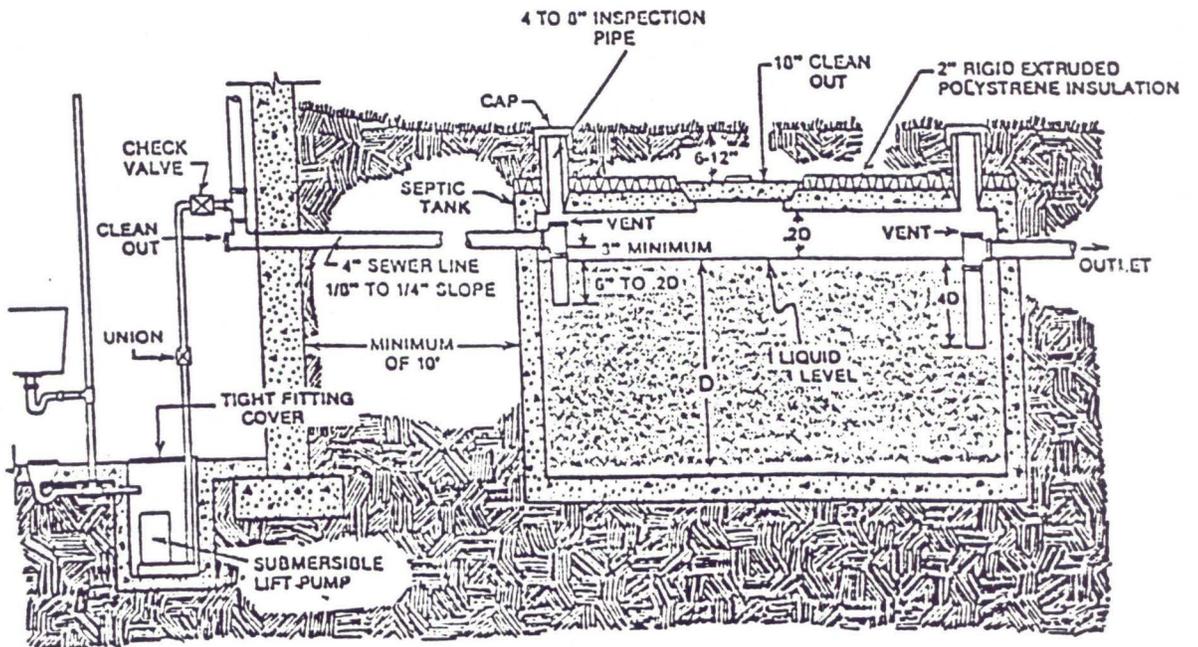


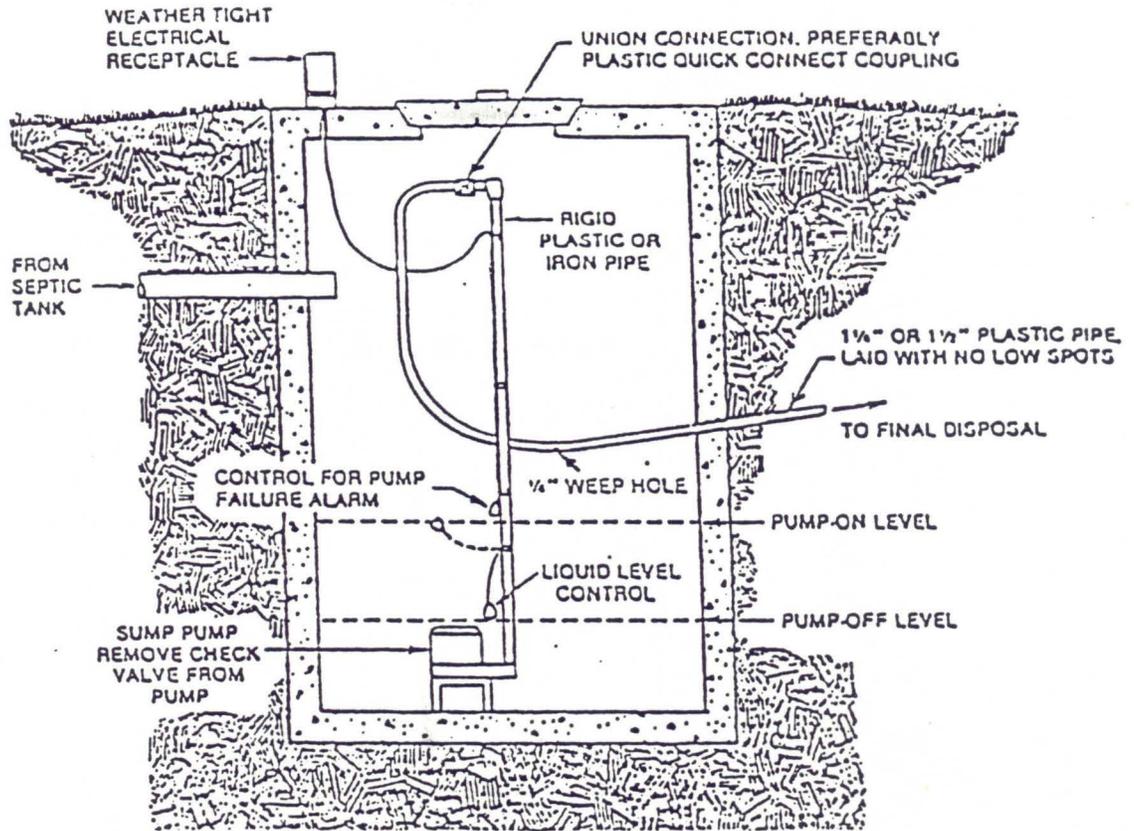
Appendix III



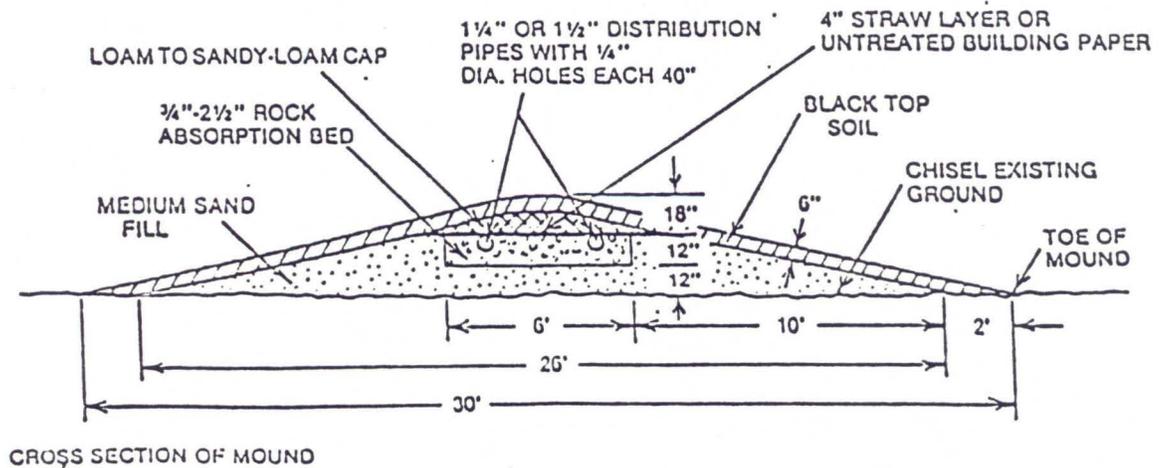
DEEP TANK INSTALLATION

SHALLOW TANK INSTALLATION





Appendix IV



Appendix V



TITLE 67  
Public Instruction, Superintendent of



SEPTEMBER 1990

STAFF COMMENT: Article 67-06 contains all new material but is not underscored so as to improve readability.

ARTICLE 67-06

HOME-BASED INSTRUCTION QUALITY ASSURANCE

Chapter

67-06-01	Definitions
67-06-02	Responsibilities of the Parent
67-06-03	Responsibilities of Local School Districts
67-06-04	Determination of Reasonable Academic Progress
67-06-05	Student Assessment for Certain Students

CHAPTER 67-06-01  
DEFINITIONS

Section

67-06-01-01	Definitions
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67-06-01-01. Definitions. For the purposes of this chapter, the following terms mean:

1. "Appropriately licensed professional" means a state-approved school psychologist or clinical psychologist.
2. "Assessment plan" means the written document which:

- a. Identifies the members of the multidisciplinary assessment team;
  - b. States the purpose of the assessment;
  - c. Outlines the procedures to be followed; and
  - d. Identifies the information which is to be gathered.
3. "Cumulative folder":
- a. "District cumulative folder" means the student file kept by the local superintendent which contains the student's nationally standardized achievement test results, nationally standardized academic aptitude test results, along with supporting documentation and evidence of the work and progress of the student.
  - b. "Parent cumulative folder" means the student file which is maintained by the parent on an ongoing basis to show academic progress which contains nationally standardized achievement test results, nationally standardized academic aptitude test results, subject area test documentation, products of subject area work, anecdotal records, and any other relevant information.
4. "Developmentally disabled" means the condition of a person who has a severe, chronic disability which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - b. Is manifested before the person attains age twenty-two;
  - c. Is likely to continue indefinitely;
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity:
    - (1) Self-care;
    - (2) Receptive and expressive language;
    - (3) Learning;
    - (4) Mobility;
    - (5) Self-direction;
    - (6) Capacity for independent living; and
    - (7) Economic sufficiency; and

- e. Reflects the person's needs for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
- 5. "Empirical norming period" means the period of time during which a nationally normed standardized achievement test is given for the purpose of collecting grade level national norms.
  - 6. "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.
  - 7. "Individual education program" means a written statement for a handicapped child developed in a meeting by the individual education program team which includes:
    - a. A statement of the present levels of educational performance of the child;
    - b. A statement of annual goals, including short-term objectives;
    - c. A statement of the specific educational services to be provided to the child;
    - d. The projected date for initiation and anticipated duration of such services; and
    - e. Appropriate criteria and evaluation procedures and schedules for determining, on an annual basis, whether instructional objectives are being achieved.
  - 8. "Individual education program team" means the group of people assembled to develop a written statement for a handicapped child which will determine the educational programming to be provided including:
    - a. The local director of special education who will serve as team chairperson;
    - b. The local school superintendent;
    - c. The parents;
    - d. The supervising teacher, in supervised programs;
    - e. The child, when appropriate; and
    - f. Additional members at the discretion of the team.

9. "Local superintendent" means the superintendent of the public school district in which the student resides or, in the absence of one, the county superintendent of schools in the student's county of residence.
10. "Multidisciplinary assessment team" means a group including:
  - a. The local director of special education who will serve as team chairperson;
  - b. At least one specific learning disabilities teacher or other specialist with knowledge in the area of suspected disability;
  - c. The parents;
  - d. A state-approved school psychologist or clinical psychologist;
  - e. The supervising teacher in supervised programs or, in unsupervised programs, the parents' choice of a classroom teacher from a state-approved public, private, or parochial school currently teaching in a grade equivalent to the grade the student is in; and
  - f. Additional members at the discretion of the team.
11. "Nationally standardized test" means a test developed by subjecting items and subtests to a norming process involving stratified samples of students by grade, geographical distribution, grade level, sex, etc., and administered according to identical instructions.
  - a. "Nationally standardized academic aptitude test" means a test which is designed to measure a student's academic aptitude and thereby predict the level of achievement to be anticipated in school.
  - b. "Nationally standardized achievement test" means a test which is designed to measure a student's knowledge and skills acquired in specific content areas at a certain time.
12. "Reasonable academic progress" means performance at the expected competency level established for grade and age level and commensurate with the student's academic aptitude.
13. "Statement of intent" means the document which the parent intending to supervise home-based instruction files for each student for which instruction is intended with the local superintendent at least thirty days prior to the beginning of the school semester for which the parent requests the exemption. The statement must include:

- a. The name and address of the parent who will supervise and the student who will receive home-based instruction;
  - b. The date of birth and grade level of each student;
  - c. The intention of the parent to supervise home-based instruction;
  - d. The qualifications of the parent who will supervise the home-based instruction;
  - e. A list of courses or extracurricular activities in which the student intends to participate in the public school district; and
  - f. An oath or affirmation that the parent will comply with all provisions of North Dakota Century Code chapter 15-34.1.
14. "Supervised program" means a program of home-based instruction in which the parent does not meet the statutory requirements which would allow the parent to teach and, therefore, must be supervised by a certificated teacher employed by the local school district or, if requested by the parent, a certificated teacher employed by a state-approved private or parochial school.
  15. "Test administrator" means a certificated teacher employed by the district, or if requested by the parent, a certificated teacher employed by a state-approved private or parochial school, who administers the nationally standardized achievement test and the nationally standardized academic aptitude test to students receiving home-based instruction.
  16. "Unsupervised program" means a program of home-based instruction in which the parent meets the statutory requirements and thus, can teach without the supervision of a certificated teacher.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, §§ 4, 5

#### CHAPTER 67-06-02 RESPONSIBILITIES OF THE PARENT

Section

67-06-02-01	Parent Cumulative Folder
67-06-02-02	Transfer to Public, Private, or Parochial School
67-06-02-03	Responsibilities of the Parent

67-06-02-01. Parent cumulative folder. A parent cumulative folder for each student must be maintained by every parent who is providing home-based instruction. The material contained in the parent cumulative folder must document student progress in the minimum curriculum areas contained in North Dakota Century Code sections 15-38-07, 15-41-06, and 15-41-24.

History: Effective September 1, 1990.  
General Authority: S.L. 1989, Ch. 198, § 5  
Law Implemented: S.L. 1989, Ch. 198, § 4

67-06-02-02. Transfer to a public, private, or parochial school. Documentation of courses taken and academic progress assessments, including nationally standardized achievement test results and nationally standardized academic aptitude test results, must be furnished upon request of the local superintendent in the event a student transfers to a public school or state-approved private or parochial school.

History: Effective September 1, 1990.  
General Authority: S.L. 1989, Ch. 198, § 5  
Law Implemented: S.L. 1989, Ch. 198, § 4

67-06-02-03. Responsibilities of the parent. It is the responsibility of the parent to:

1. File a statement of intent annually with the local superintendent for each student who is to receive home-based instruction;
2. Teach the courses required by statute;
3. Conduct classes for the required length of time and number of days;
4. Maintain a parent cumulative folder for each student receiving home-based instruction;
5. Arrange for annual testing using a nationally standardized achievement testing instrument and a nationally standardized academic aptitude testing instrument;
6. Serve on a multidisciplinary assessment team for the purpose of evaluating the student who scores below the thirtieth percentile on the nationally standardized achievement test;
7. Develop and implement a plan of program adaptation for the student who is not handicapped but whose nationally standardized achievement test score falls five points below the nationally standardized academic aptitude score; and

8. Transfer the parent cumulative folder, upon request of the local superintendent, if the student enrolls in a public, private, or parochial school.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, §§ 4, 5

#### CHAPTER 67-06-03 RESPONSIBILITIES OF LOCAL SCHOOL DISTRICTS

Section

67-06-03-01	Provision of Information to Parent
67-06-03-02	Responsibility for Determining Reasonable Academic Progress
67-06-03-03	Responsibility for Supervision by a Certificated Teacher
67-06-03-04	Responsibility for Maintaining a District Cumulative Folder

67-06-03-01. Provision of information to parent. Upon receipt of a statement of intent, the local superintendent shall provide information to the parent, including the following:

1. The supervising teacher of a supervised program who shall:
  - a. Be a certificated teacher employed by the school district, or if requested by the parent, a certificated teacher employed by a state-approved private or parochial school; and
  - b. Provide a minimum average each month of one hour of supervision for each student per week.
2. Each parent is responsible for maintaining a parent cumulative folder for each student which contains a list of the courses taken and documentation of academic progress, including nationally standardized achievement test results for each year the student receives home-based instruction and nationally standardized academic aptitude test results for tests administered twice in the span of grades one through six and once in grade seven or eight.
3. The local school district's expectations of appropriate grade level for each student in the subjects required by statute to be taught. (See North Dakota Century Code sections 15-38-07, 15-41-06, and 15-41-24.) These subjects are as follows:
  - a. At the elementary level: spelling, reading, writing, arithmetic, language, English grammar, geography, United

States history, civil government, nature study, elements of agriculture, physiology, and hygiene.

b. At the secondary level:

(1) The following units of study must be made available to all students at least once during each four-year period:

(a) Four units of English;

(b) Three units of mathematics;

(c) Four units of science;

(d) Three units of social studies;

(e) One unit of health and physical education;

(f) One unit of music; and

(g) Six units of any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education. Vocational education includes home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

(2) Four units of high school work is considered the minimum number of any year from the ninth grade through the twelfth grade.

4. Information regarding the nationally standardized achievement test and nationally standardized academic aptitude test must include:

a. The name of the achievement test and academic aptitude test used by the district;

b. The dates of the empirical norming period.

c. The place of test administration must be the child's learning environment; and

d. A statement that the test must be administered by a certificated teacher employed by the district or, if requested by the parent, a certificated teacher employed by a state-approved private or parochial school.

The financial responsibility of the parent for purchasing, administering, and scoring the tests must be as follows:

There is no cost to the parent if the tests are administered by a certificated teacher employed by the district. The parent will be responsible for payment of the cost if the tests are administered by a certificated teacher employed by a state-approved private or parochial school.

5. The school district requirements which must be met before high school credit for a course will be issued include:
  - a. Course content;
  - b. Textbook and materials used;
  - c. Periodic progress report (six-week or nine-week periods);
  - d. Tests used to measure progress; and
  - e. Other pertinent information to establish competency.
6. A list of the requirements which must be met before a high school diploma will be issued by the school district must include:
  - a. The issuance of acceptable high school credits by a school district or a state-approved private or parochial school.
  - b. Completion of the credit requirements for high school graduation as established by the school district.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, §§ 4, 5

67-06-03-02. Responsibility for determining reasonable academic progress. The local superintendent will determine reasonable academic progress of each student receiving home-based instruction pursuant to chapter 67-05-04.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, § 5

67-06-03-03. Responsibility for supervision by a certificated teacher. The school district shall assure that a supervising teacher in a supervised program is certificated and employed by the school district or, at the parent's request, by a state-approved private or parochial school.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, §§ 5, 7

67-06-03-04. Responsibility for maintaining a district cumulative folder. The local school district shall maintain a district cumulative folder for each student receiving home-based instruction.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, § 5

CHAPTER 67-06-04  
DETERMINATION OF REASONABLE ACADEMIC PROGRESS

Section

67-06-04-01	Responsibility of the Local Superintendent
67-06-04-02	Basis for Determination of Reasonable Academic Progress

67-06-04-01. Responsibility of the local superintendent. The local superintendent, as part of the responsibility for all students in the school district, shall determine whether reasonable academic progress is being made by the student receiving home-based instruction.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, § 5

67-06-04-02. Basis for determination of reasonable academic progress. The determination of reasonable academic progress must be based upon each of the factors described in subsections 1 through 5:

1. Nationally standardized achievement test results.
  - a. Every student receiving home-based instruction must be tested annually using a nationally standardized achievement test.
  - b. The nationally standardized achievement test must be administered on a date to be set within the empirical norming period of the test used.
  - c. The test must be administered by a certificated teacher employed by the district or, if requested by the parent, a certificated teacher employed by a state-approved private or parochial school.
  - d. The results of the nationally standardized achievement test must be submitted directly to the parent by the test administrator within five calendar days following receipt of the test results. A copy must be submitted to the local superintendent at the same time.

- (1) The parent shall file the nationally standardized achievement test results in the parent cumulative folder maintained for each student receiving home-based instruction.
  - (2) The local superintendent shall file the nationally standardized achievement test results in the district cumulative folder which is maintained for each student receiving home-based instruction.
2. Nationally standardized academic aptitude test results.
- a. Every student receiving home-based instruction must be tested using a nationally standardized academic aptitude test in order to provide a basis to determine whether the student is making reasonable academic progress consistent with the student's age and stage of development.
  - b. The nationally standardized academic aptitude test:
    - (1) Must be administered twice during the span of grades one through six and once in grade seven or eight; and
    - (2) Must be administered at the designated grade levels along with the nationally standardized achievement test on a date to be set within the empirical norming period of the test used.
  - c. The results of the nationally standardized academic aptitude test must be submitted directly to the parent by the test administrator within five calendar days following the receipt of the test results. A copy must be submitted to the local superintendent at the same time.
    - (1) The parent shall file the nationally standardized academic aptitude test results in the parent cumulative folder maintained for each student receiving home-based instruction.
    - (2) The local superintendent shall file the nationally standardized academic aptitude test results in the district cumulative folder which is maintained for each student receiving home-based instruction.
3. Teacher's progress reports in supervised programs.
- a. Every student in a supervised program must be evaluated for academic progress by the supervising teacher based upon:
    - (1) The program of studies which includes the subjects required by statute to be taught;

- (2) Observation of the student;
  - (3) Conference with the parent; and
  - (4) Data recorded by the parent.
- b. The supervising teacher's evaluations must be compiled in a progress report which documents the continuing progress of the student in each subject area. The supervising teacher shall submit two progress reports in each school year to the local superintendent. The first progress report must be submitted in December and the second progress report must be submitted in May.
4. Program adaptation documentation provided by the parent. The parent of every student who has scored below the thirtieth percentile nationally on the nationally standardized achievement test and has been found to be in need of program adaptation by the multidisciplinary assessment team shall submit documentation of the adapted plan and academic progress at the end of each school year pursuant to subdivision c of subsection 3 of section 67-06-05-01, subsection 5 of section 67-06-05-01, and subsection 1 of section 67-06-05-02.
5. Individual education program reviews provided by the individual education program team.
- a. An individual education program required in subdivision c of subsection 3 of section 67-06-05-01 must have periodic reviews completed by the individual education program team.
  - b. The individual education program team shall review progress on goals and objectives set for the student and such progress must be a determinant of academic progress.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, § 5

#### CHAPTER 67-06-05 STUDENT ASSESSMENT FOR CERTAIN STUDENTS

Section

67-06-05-01

Student Assessment Procedures

67-06-05-02

Determining Reasonable Academic Progress

67-06-05-01. Student assessment procedures. An assessment must be conducted for students who score below the thirtieth percentile on the nationally standardized achievement test.

1. A student receiving home-based instruction whose annual nationally standardized achievement test results show a composite score below the thirtieth percentile must be evaluated by a multidisciplinary assessment team using the following procedure. Within fifteen calendar days of receipt by the local superintendent of a nationally standardized achievement test composite score which is below the thirtieth percentile, the local superintendent shall appoint, notify, and assemble the multidisciplinary assessment team. The multidisciplinary assessment team shall develop an assessment plan which:
  - a. Identifies the members of the multidisciplinary assessment team;
  - b. States the purpose of the assessment;
  - c. Outlines the procedures to be followed; and
  - d. Identifies the information which is to be gathered such as:
    - (1) Levels of achievement and ability;
    - (2) Discrepancy between achievement and ability;
    - (3) Severity of discrepancy; and
    - (4) Cause of the discrepancy; such as, specific learning disability; visual, hearing, or motor handicap; emotional disturbance; environmental, cultural, or economic disadvantage; or mental retardation.
2. The parent may seek an independent educational evaluation at the parent's expense. Such an evaluation must become part of the assessment plan.
3. The multidisciplinary assessment team shall submit the assessment plan to the local superintendent within thirty calendar days of the time the team is assembled. The assessment plan must include one of the following determinations:
  - a. The student is developmentally disabled according to subsection 1 of North Dakota Century Code section 25-01.2-01 and, therefore, the parent is not entitled to an exemption under North Dakota Century Code section 15-34.1-03, as amended by section 2 of chapter 198 of the 1989 Session Laws.
  - b. The student is not handicapped according to the eligibility criteria of the department of public instruction and does not require specially designed

instruction. The parent may continue to provide home-based instruction upon filing a statement from the school psychologist or clinical psychologist who is a member of the multidisciplinary assessment team. The statement must be filed with the superintendent of public instruction and must assure that:

- (1) The student is making reasonable academic progress consistent with the student's learning abilities; and
- (2) Whenever the nationally standardized achievement test score is five or more points lower than the nationally standardized academic aptitude test score, the parent shall adopt and implement a plan of program adaptation. The plan must be submitted to the local superintendent within thirty calendar days or before the start of the next school year, whichever comes first.

c. The student is handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction. The student requires specially designed instruction which cannot be provided without special education and related services. To continue providing home-based instruction, the parent shall file an individual education program with the superintendent of public instruction which:

- (1) Has been developed within rules adopted by the department of public instruction; and
- (2) Shows that the student's needs for special education are being addressed by persons qualified to provide special education.

4. The state-approved school psychologist or clinical psychologist, who is a member of the multidisciplinary assessment team, shall issue to the parent, the local superintendent, and the state superintendent of public instruction the team's written statement attesting to subdivision a, b, or c of subsection 3 of section 67-06-05-01 within ten calendar days following the completion of the assessment plan.

5. A copy of the assessment plan must be filed in the district cumulative folder by the local superintendent.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, §§ 2, 5

67-06-05-02. Determining reasonable academic progress. For the student subject to section 67-06-05-01, the local superintendent shall annually determine if the student is making reasonable academic progress.

1. Determination of reasonable academic progress must be based upon a review of:
  - a. The results of the nationally standardized achievement test given annually;
  - b. The results of the nationally standardized academic aptitude test given twice during the span of grades one through six and one in grade seven or eight.
  - c. The parent's plan of program adaptation developed in paragraph 2 of subdivision b of subsection 3 of section 67-06-05-01 and documentation of academic progress made in accordance with that plan; and
  - d. The supervising teacher's documentation of academic progress in a supervised program.
2. The local superintendent shall reconvene the multidisciplinary assessment team for the student who scored below the thirtieth percentile and is not making reasonable academic progress. The team shall reevaluate the student and make recommendations for improving the academic achievement of the student.

History: Effective September 1, 1990.

General Authority: S.L. 1989, Ch. 198, § 5

Law Implemented: S.L. 1989, Ch. 198, § 5



TITLE 71  
Retirement Board



NOVEMBER 1990

71-02-01-01. Definitions. As used in North Dakota Century Code chapter 54-52 and this article:

1. "Accumulated contributions" means the total of all of the following:
  - a. The employee account fund balance accumulated under the prior plan as of June 30, 1977.
  - b. The vested portion of the employee's "vesting fund" accumulated under the prior plan as of June 30, 1977.
  - c. The member's mandatory contributions made after July 1, 1977.
  - d. The interest on the sums determined under subdivisions a, b, and c, compounded annually at the rate of five percent from July 1, 1977, to June 30, 1981, ~~and~~ six percent from July 1, 1981, through June 30, 1986, and one-half of one percent less than the actuarial interest assumption from July 1, 1986, to the member's termination of employment or retirement.
  - e. The sum of any employee purchase or repurchase payments.
2. "Actuarial equivalent" means a benefit calculated to be of equal value to the benefit otherwise payable when computed on the basis of assumptions and methods adopted for this purpose by the board.
3. "Alternative retirement system" means the teachers' fund for retirement, the highway patrolmen's retirement system, and the teachers' insurance and annuity association of America.

4. "Annual enrollment period" is the period of time between May fifteenth and June fifteenth when temporary or part-time employees can enroll in the public employees retirement system.
5. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
6. "Claim" means the right to receive a monthly retirement allowance, the receiving of a retirement allowance, or the receiving of a disability benefit.
- 4- 7. "Continuously employed" means any period of employment uninterrupted by voluntary or involuntary quit termination or discharge. A member who has taken a leave of absence approved by the member's employer, not to exceed a year unless approved by the board executive director, and returns to employment shall be regarded as continuously employed for the period.
- 5- "Eligible employee" means:
- a- A permanent employee who has attained age eighteen.
  - b- A person elected or appointed to the office of judge of the supreme court or judge of the district court for the first time, as defined in North Dakota Century Code section 54-52-02.3, from the date the person qualifies and takes office.
  - c- An appointive or elective official of a participating governmental unit, from the date the official takes office.
- 6- "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the federal government through any of its executive or administrative officials; certified employees of a school district means those employees eligible to participate in the teachers' fund for retirement who shall not be eligible employees under North Dakota Century Code 54-52.
- 7- "Employer" means a governmental unit.
8. "Governmental unit" means the state of North Dakota or a county or city thereof, a school district, including the Fargo school district, a district health unit, and the Garrison Diversion Conservancy District. An "eligible" or "participating" governmental unit is one which has agreed to extend the benefits of the public employees retirement system to its employees as provided in North Dakota Century Code section 54-52-02.1. "Contribution" means the payment into the

fund of nine and twelve-hundredths percent of the salary of a member.

9. "Member" and "participating member" means an eligible employee who through payment into the plan has established a claim against the plan and who has not withdrawn the employee's accumulated contributions. This definition includes a person who, although no longer a permanent employee, has attained eligibility for a deferred vested retirement benefit. "Leave of absence" means the period of time up to one year for which an individual may be absent from covered employment without being terminated. At the executive director's discretion, the leave of absence may be extended not to exceed two years.
10. "Normal retirement date" means the first day of the month next following the month in which a member attains age sixty-five.
- ~~11.~~ "Office" means the administrative office of the public employees retirement system.
11. "Pay status" means a member is receiving a retirement allowance from the fund.
12. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed for more than twenty hours per week and more than five months each year.
- ~~13.~~ "Plan year" means the twelve consecutive months commencing July first of the calendar year and ending June thirtieth of the subsequent calendar year.
- ~~14.~~ 13. "Prior plan" means the state employees' retirement system which existed from July 1, 1966, to June 30, 1977.
- ~~15.~~ "Prior service" means service or employment prior to July 1, 1966.
- ~~16.~~ 14. "Retiree" as used in subdivisions a and c of subsection 4 of North Dakota Century Code section 54-52-17 means a member an individual receiving a monthly allowance pursuant to chapter 54-52.
- ~~17.~~ "Service" means employment on or after July 1, 1966.
- ~~18.~~ 15. "Termination of employment" means a severance of employment by not being on a the payroll of a covered employer for a minimum of one month. Approved leave of absence does not constitute termination of employment.
- ~~19.~~ "Wages" and "salaries" means the actual dollar compensation excluding overtime paid to or for an employee for services.

History: Amended effective September 1, 1982; November 1, 1990.  
General Authority: NDCC ~~54-52-01~~ 54-52-04  
Law Implemented: NDCC ~~54-52-01~~ 54-52

71-02-02-01. Membership - General rule. Each eligible employee shall ~~automatically~~ become a member of the public employees retirement system ~~and shall file~~ upon filing a membership form with the office, ~~except~~ and the beginning of contributions to the fund. In addition, the following requirements apply:

1. An eligible employee who was a member of the prior plan on June 30, 1977, shall be deemed to have concurred in the plan in writing as provided in North Dakota Century Code section 54-52-05. A temporary employee must complete a participation agreement before becoming a member. Application must be completed within: six months of the date of hire as a temporary employee; change in status from a permanent position to temporary; or during the annual enrollment period.
2. An elected official of a participating governmental unit may elect whether to become a member. Contributions for temporary employees must be submitted no later than the sixth working day of the month for the previous month's salary.
3. Delinquent payments of over thirty days, for reasons other than leave of absence, will result in termination of eligibility to participate as a temporary member for the remainder of the plan year.
4. Upon taking a refund, future participation as a temporary member is waived.
5. A member may not participate as both a permanent and a temporary member. Permanent employment has precedence.

History: Amended effective September 1, 1982; November 1, 1990.  
General Authority: NDCC ~~54-52-05~~ 54-52-04  
Law Implemented: NDCC ~~54-52-02.4~~ 54-52-01(3), 54-52-02.9, 54-52-05

71-02-03-01. Service credit - General rule. A member ~~shall receive a month of service credit during each month in which the member works at least twenty hours per week~~ receives credit for each month a contribution is made ~~except if the enrollment date is after the fifteenth of the month. If the enrollment date is after the fifteenth, then the member's enrollment date will automatically be the next month.~~ Service credit shall ~~not~~ be granted ~~upon proper verification without member contribution after an employee has participated in eligible employment not less than two years for:~~

1. Prior service unless the member was continuously employed from July 1, 1966, to June 30, 1977, by a governmental unit participating in the prior plan during such period employment.
2. Any service between July 1, 1966, and July 1, 1977, for which the member did not make contributions under the prior plan or does not purchase service credit as provided in North Dakota Century Code section 54-52-02.4. The contribution rate, excluding interest, for purchase of credit for those years is as follows:

July 1, 1966, to June 30, 1969: four percent of total salary plus four percent of salary up to seven thousand five hundred dollars;

July 1, 1969, to June 30, 1973: four percent of total salary plus four percent of salary up to twelve thousand five hundred dollars;

July 1, 1973, to June 30, 1977: four percent of total salary plus four percent of salary up to fifteen thousand dollars.

Probationary employment prior to July 1, 1979, that was previously excluded from eligible employment.

3. Any period, exceeding a year, in which the member is on a leave of absence and returns to employment. A member may receive service credits for a leave of absence approved by the member's employer and certified to the office, not to exceed a year unless approved by the board, if the member pays an amount to the fund equal to the member and employer contributions on the member's first salary upon return to service multiplied by the months to be purchased, plus six percent interest. Election to purchase service credit for an approved leave of absence must be made within ninety days of reemployment. Payment may be made in lump sum or on an installment basis of ten percent per year plus six percent interest on the outstanding balance. Payment must start within twelve months of reemployment. Eligible employment between the ages of eighteen and twenty-one that was previously excluded by the age limitation of twenty-one for participation in the retirement program.
4. Summer months for eligible school employees for the period July 1, 1979, to July 1, 1982.
5. Former members of the teachers' fund for retirement, job service North Dakota, or highway patrolmen's retirement systems will be granted credit for previous service in these funds if they received a lump sum refund prior to September 1, 1976.

History: Amended effective September 1, 1982; November 1, 1990.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-01(11)(12), 54-52-17

71-02-03-01.1. Noneligible service credit. Service credit will not be granted to:

1. A member who withdrew under the special withdrawal of July 1, 1977, will not receive service credit for service prior to that date.
2. Any eligible employee of a political subdivision who has waived in writing the employee's right to participate at the time the employee's employer joined the fund, and later joined the fund, may not be granted credit for prior service or waived service.
3. A member who received a refund of contributions after July 1, 1966.

History: Effective November 1, 1990.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-05, 54-52-17, 54-52-19.2

71-02-03-02. Military credit. A member whose employment is interrupted by military service and who returns to employment within ninety days after discharge may purchase credit for such military service, if the member pays an amount to the fund equal to the employer and member contributions on the member's first salary upon return to service multiplied by the months to be purchased, plus six percent interest. The time period to elect repurchase, to begin repayment and the maximum time period to repurchase are the same as in subsection 3 of section 71-02-03-01.

History: Amended effective September 1, 1982.  
General Authority: NDCC 54-52-17  
Law Implemented: NDCC 54-52-17

Repealed effective November 1, 1990.

71-02-03-02.1. Purchase of additional credit and repurchase of service benefit. In order to purchase additional credit or repurchase past service, a participating member, or participating member of an alternative retirement system, must complete and submit a purchase or repurchase application to the executive director. In addition to an application for purchase of additional credit, the following information must be submitted if applicable:

1. Verification by the former employer of previous public service.

2. Documentation of military service by submitting a DD214 or NGB22 or other appropriate verification.
3. Certification of approval by the member's employer of any leave of absence and length of that leave.
4. Verification of current annual salary by the employer of members participating in an alternative retirement system.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-02.6, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17.2, 54-52-17.4

71-02-03-02.2. Payment. The participating member or member of an alternative retirement system must pay nine and twelve-hundredths percent of their present monthly salary times the number of months to be purchased or repurchased. The total dollar amount for the purchase or repurchase may be paid on a monthly, quarterly, semiannual, or annual basis. If the installment method is used, the following conditions apply:

1. Simple interest at the actuarial rate of return will accrue monthly on the unpaid balance.
2. A minimum payment of fifty dollars per month is required.
3. The installment schedule can be a maximum term of five years.
4. There is no penalty for early payoff.
5. Installment payments can be made by a payroll deduction where available. However, it is the responsibility of the member to initiate and terminate the payroll reduction. The first payment is due within ninety days of notice by the public employees retirement system of the total amount due or the amount due pursuant to the installment method selected. Payments are due by the fifteenth of the month to be credited for the month.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-02.6, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17.2, 54-52-17.4

71-02-03-02.3. Delinquent payment. If no payment is received within thirty days of the due date, the executive director shall send a letter to the participating member or member of an alternative retirement system advising them of the delinquency. If no payment is received within sixty days after the due date, the account must be closed. Payments received on any closed account will be returned to the member.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-02.6, 54-52-17.2, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17.2, 54-52-17.4

71-02-03-02.4. Crediting purchased or repurchased service. Service purchased or repurchased will be credited in the following manner:

1. The employee's record will be updated with the credited benefit once the account is paid in full.
2. If the member or member of an alternative retirement system terminates, retires, or the member's account is closed due to delinquency, service credit will be granted in proportion to the actual payments.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-02.6, 54-52-17.4

Law Implemented: NDCC 54-52-02.6, 54-52-17.4

71-02-03-04. Cancellation of credits. If a member terminates service and receives a return of the member's accumulated contributions, service credit for the years of such contributions shall be canceled.

General Authority: NDCC ~~54-52-17~~ 54-52-04

Law Implemented: NDCC 54-52-17

71-02-04-01. Normal and early retirement benefits - Application. Except as provided in section 71-02-04-02 for retirement options, a member shall file an application with the office for normal or early retirement benefits at least ~~sixty~~ thirty days before normal retirement date or before the commencement of early retirement.

History: Amended effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-02. Special retirement options - Application.

1. A member may elect a retirement option by filing an application with the office at least one hundred eighty no less than thirty days prior to the beginning date of benefit payments. The beginning date of such benefit payments shall be the first day of the month which follows the member's retirement.
2. A member may revoke the election of an optional benefit as provided in subsection 1 and make a new election, if ~~applicable,~~ if such revocation and new election (a) is filed

with the office not less than ninety days prior to the beginning date of benefit payments; and (b) if the member furnishes the office satisfactory evidence of good health at the time of making such revocation is received in writing before the first retirement check is cashed but no later than fifteen days after the first retirement check has been issued. If the member changes the member's election less than fifteen days prior to the named beginning date of benefits, the first retirement payment may be delayed up to two months. Any delayed payment must be adjusted to include any deferred retirement payments.

3. A member may not revoke the elected benefit after receiving and cashing the first benefit check, unless, the member can provide sufficient evidence to the executive director that the factual basis by which the election was made later proved to be incorrect and such was due in part to representation or misrepresentations made by the employer or the office.

History: Amended effective November 1, 1990.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-17

71-02-04-03. Payment date - Regular early and normal retirement benefits. Except for retirement options provided in section 71-02-04-02, a member's normal or early retirement benefit shall commence on the first day of the month which follows the member's eligibility for the benefit and which is at least ~~sixty~~ thirty days after the date on which the member filed an application with the office.

History: Amended effective November 1, 1990.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-17

71-02-04-04. Optional benefits. A member may elect, as provided in section 71-02-04-02, to receive one of the following optional benefits in lieu of the regular early or normal retirement benefit. ~~These benefits shall be computed on the basis of tables adopted from time to time by the board.~~

1. One hundred percent joint and survivor benefit. A member shall receive a ~~smaller monthly benefit than the normal~~ an actuarially reduced retirement benefit during the member's lifetime and after the member's death such smaller the same amount will be continued to the member's designated beneficiary surviving spouse during the beneficiary's spouse's lifetime. The designated beneficiary is limited to the member's spouse. Should the member remarry and wish to change such designation, a new actuarial retirement benefit will be calculated. Payments of benefits to a member's beneficiary surviving spouse shall be made on the first day of each month

commencing on the first day of the month following the member's death, ~~if the member's beneficiary is then living, and providing the beneficiary has supplied a marriage certificate, death certificate, and is still living.~~ Benefits shall terminate in the month in which the death of the beneficiary occurs.

2. Fifty percent joint and survivor benefit. A member shall receive a ~~smaller monthly~~ an actuarially reduced benefit during the member's lifetime and after the member's death one-half the rate of ~~such smaller amount~~ the reduced benefit will be continued to the member's ~~designated beneficiary~~ spouse during the ~~beneficiary's~~ spouse's lifetime, and shall terminate in the month the death of the beneficiary occurs.
3. ~~Social~~ Level social security ~~adjustment~~ option. A member who retires prior to the member's normal retirement date with an early retirement benefit, may elect a social security adjustment option ~~under which the~~. The member will receive such early retirement benefit actuarially adjusted for the years before and after the member attains age sixty-two, or before and after the member retires, if later than age sixty-two but before age sixty-five, so that the monthly benefit payments until such date will be substantially the same as the monthly benefit payments plus the amount of primary benefits under the federal Social Security Act expected to become payable to the member ~~after such date~~. A member shall submit an estimated benefit from social security that was computed no more than six months before retirement or termination.
4. ~~Five~~ Five-year or ten-year certain option. A member may elect an option which is the actuarial equivalent of the member's normal, early, or deferred vested retirement pension payable for life with a ~~five~~ five-year or ten-year certain feature, as designated by the member.

History: Amended effective September 1, 1982; November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-05. Designation of beneficiary. A member may designate a beneficiary or beneficiaries by filing such designation with the office. Except in the case of the joint and survivor option, a member shall have the right to change the member's designation of beneficiary without the consent of the beneficiary, but no such change shall be effective or binding unless it is received by the office prior to the date of issuance of the first benefit check to death of the member.

History: Amended effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-04-06. Lack of a designated beneficiary. If no beneficiary is designated by a member, any benefits due and payable shall be paid to the estate. If the member has elected a joint and survivor option, and the designated beneficiary predeceases the member, the option shall be canceled and the member's benefit shall be returned to its unreduced amount.

General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-17

71-02-04-07. Amount of early retirement benefit. The early retirement benefit shall be an amount actuarially reduced from the normal retirement benefit by one-half of one percent for each month (six percent per year) that the member is younger than age sixty-five on the date the member's early retirement benefit commences.

History: Amended effective September 1, 1982.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-17

71-02-05-01. Eligibility. A member shall be entitled to a disability retirement benefit provided all of the following occur:

- ~~1.~~ The member becomes totally disabled, prior to the member's normal retirement date.
- ~~2.~~ The member has accumulated one hundred eighty days of service credit to the first day of the month immediately following the determination that total disability exists.
- ~~3.~~ The member retires from active employment with the employer and files a written application for a disability retirement benefit with the office on a form prescribed for that purpose by the board.
- ~~4.~~ 2. The member has been approved for a disability benefit under the federal Social Security Act.
- ~~5.~~ 3. The member has executed a release of information form authorizing the social security administration to furnish the board with evidence of continued disability when requested by the board.
4. The member is not eligible for normal retirement benefits.

History: Amended effective September 1, 1982; November 1, 1990.  
General Authority: NDCC ~~54-52-17~~ 54-52-04  
Law Implemented: NDCC 54-52-17, 54-52-17(3)(d)

71-02-05-02. Commencement of benefit. If the application is filed within sixty days of the date of the determination that the member is entitled to a social security disability benefit, the state disability benefit shall be payable beginning the first of the month coincident with or following the effective date of the social security award or date of ~~termination~~ last retirement contribution, whichever is the later date. If the application is not filed within sixty days of the social security determination, the benefit shall commence on the first day of the month which follows such determination ~~and which is at least sixty days after filing such application.~~

History: Amended effective September 1, 1982; November 1, 1990.

General Authority: NDCC ~~54-52-17~~ 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-03. Continuation or cancellation of benefit.

1. A member who receives disability retirement benefits shall continue to receive such benefits only so long as the member's total and permanent disability shall continue. The board shall have the right to verify the continued existence of the member's total disability at reasonable times prior to the member's normal retirement date. Should the member refuse to submit to medical examination, the disability benefit shall be discontinued until the member submits to such examination.
2. If a member receiving a disability benefit ceases to be eligible for social security disability prior to attainment of age sixty-five, such fact shall be reported in writing to the board within twenty-one days of the date the member receives notice from the social security administration of such loss. If such written report is not provided, the member will, upon the member's subsequent retirement, not be eligible for benefits for a period of six months following the date of the member's retirement, in addition to the months which may have elapsed since the member received notice of the termination of social security disability and in which the member received a disability benefit under this plan.

General Authority: NDCC ~~54-52-17~~ 54-52-04

Law Implemented: NDCC 54-52-17

71-02-05-04. Calculation of disability benefit. ~~Calculation of a member's disability benefit will be based on the following:~~

- ~~1. The member's average monthly salary, which is the average of the best sixty months of salary out of the last one hundred twenty months of salary. Should a member have less than sixty months of salary, then those months of salary available shall be averaged to determine the average monthly salary.~~

2. Once the average monthly salary has been determined, then sixty percent will be applied to the average monthly salary to determine the basic benefit. The basic benefit will then be reduced by the primary social security benefit and any workmen's compensation benefit paid. The net amount will then be paid to the disabled member on a monthly basis.

History: Effective September 1, 1982;  
General Authority: NDCC ~~54-52-17~~  
Law Implemented: NDCC ~~54-52-17~~

Repealed effective November 1, 1990.

71-02-05-05. Conditions for changing to a disability retirement benefit from an early reduced retirement benefit. A member may elect to start receiving an early reduced retirement benefit, should the member be eligible to do so, pending a disability determination by the federal social security office. Upon receipt of the disability determination letter, the member ~~or~~ retiree may apply for a disability retirement benefit to be paid subject to the following criteria:

1. Should the retiree provide proof of disability prior to receiving the equivalent of twelve installments of the early reduced benefit, the disability benefit will be calculated and a differential payment made retroactive from the date of the first early reduced benefit payment.
2. Should the retiree not provide proof of disability prior to receiving the equivalent of twelve installments of the early reduced benefit, the disability benefit will be calculated and paid on the first of the month following application for a disability retirement benefit. The disability benefit will be calculated and a differential payment made retroactive from the date of the first early reduced benefit payment if the application is filed within sixty days of the social security determination. If the application is not filed within sixty days of the social security determination, the benefit commences on the first day of the month following such determination.

History: Effective September 1, 1982; amended effective November 1, 1990.  
General Authority: NDCC ~~54-52-17~~ 54-52-04  
Law Implemented: NDCC 54-52-17

71-02-06-01. Conditions for return. The accumulated contributions of a member who terminates permanent employment:

1. Before accumulating ten five years of service credit shall be automatically refunded unless the member elects to remain in an inactive status.
2. After accumulating ten five years of service credit shall be refunded upon application filed with the board executive director.

Return of contributions shall be made no later than the first of January next following the date of termination.

History: Amended effective November 1, 1990.

General Authority: NDCC ~~54-52-17.7~~ 54-52-04

Law Implemented: NDCC ~~54-52-17.7~~ 54-52-17

71-02-06-02. Effect of return. Refund of accumulated contributions shall cancel all service credit accumulated prior to the refund and shall extinguish the right to any benefits provided by North Dakota Century Code chapter 54-52 (except as provided in section 71-02-07-01). Any former member returning their refund, with interest at the actuarial rate of return, within sixty days from withdrawal must be reinstated.

History: Amended effective November 1, 1990.

General Authority: NDCC ~~54-52-17.7~~ 54-52-04, 54-52-17

Law Implemented: NDCC ~~54-52-17.7~~ 54-52-17

71-02-07-01. Return to service - Unretired member. A member who terminates service and receives a return of the member's accumulated contributions, then subsequently is reemployed:

- 1- Shall not receive service credit for any period prior to reemployment if the member had earned ten or more years of service credit prior to reemployment; or
- 2- May receive service credit for any period prior to reemployment if the member had less than ten years of service credit and applies with the office within ninety days after reemployment to repay the fund the total amount of accumulated contributions together with six percent interest compounded from the date of return of such contributions to date of repayment. The member must begin repayment of the returned contributions within twelve months of reemployment. A member may choose to pay such required amount to the fund in installments of ten percent per year plus six percent annual interest. If a member elects to repay on an installment basis, there shall be a schedule of payments (amortization table) developed showing the amount of the payment and when the payment is due. Failure to remit payment in fifteen days of due date will cause the account to become delinquent and the member has an additional forty-five days to make payment.

if after sixty days from the due date payment has not been received, the terms of the repurchase agreement shall be considered void and the amount repaid to date, excluding interest charged, shall be refunded. Once a member fails to meet the terms of the original agreement, the member shall be excluded from repurchasing that service in the future. If a member retires before paying the entire amount, the member's benefit shall be correspondingly reduced.

History: Amended effective September 1, 1982.

General Authority: NDCC ~~54-52-17~~

Law Implemented: NDCC ~~54-52-17, 54-52-02.6~~

Repealed effective November 1, 1990.

71-02-07-02. Return to service - Retired member. The benefits of a retired member who returns to permanent employment shall be suspended. Upon final retirement, the member's benefit shall be recalculated as follows:

1. If the period of subsequent employment is less than two years, the member may elect:
  - a. A return of the member's contributions made after reemployment, and the suspended benefit restored, adjusted for the member's age at final retirement and for benefit payments received prior to reemployment; or
  - b. A recalculation of the member's benefit based on the benefit provisions in effect at the member's initial retirement, but adjusted to take account of age at final retirement, benefit payments received prior to reemployment, and salary and service credits accrued during the period of subsequent employment.
2. If the period of subsequent employment is more than two years, the member's benefit shall be based on the benefit provisions in effect at final retirement and shall include the member's age and salary earned during the period of reemployment together with total service credits earned before and after reemployment, adjusted to take account of benefit payments received prior to reemployment. If a different option is selected at the second retirement date, the member and office will submit information as required to make an actuarial determination of the elected benefit and the related payment of such.

History: Amended effective November 1, 1990.

General Authority: NDCC 54-52-04, 54-52-17

Law Implemented: NDCC 54-52-17

71-02-07-03. Return to service - Disabled member. If the recipient of a disability benefit under North Dakota Century Code chapter 54-52 returns to work, said member is responsible for reporting employment to the public employees retirement system.

1. If a member is working in a permanent full-time position and is eligible to participate in the public employees retirement system and receiving a monthly social security disability benefit, monthly benefits from the public employees retirement system must be suspended. If an individual is not able to continue employment for at least nine months as a result of the disability and continues to be eligible for a social security disability benefit, said member may resume disability status with the public employees retirement system.
2. If a member is receiving a disability benefit from social security and returns to employment not covered under the public employees retirement system, the disability benefit will continue for as long as the individual retains eligibility for the social security benefit and receives a monthly disability benefit payment from that agency.
3. If a member becomes ineligible for a social security disability benefit, the disability benefit from the public employees retirement system will be discontinued on the date said member became ineligible for disability status.

History: Effective November 1, 1990.  
General Authority: NDCC 54-52-04, 54-52-17  
Law Implemented: NDCC 54-52-17

71-02-08-01. Participation. Any governmental unit not participating in the retirement system on July 1, 1977, may choose to participate in the retirement system. Prior to the governmental unit's governing authority contracting with the retirement board, the governmental unit must furnish the board with information concerning the permanent employees of the governmental unit. This information should contain, but is not limited to: (1) name; (2) social security number; (3) date of birth; (4) date of employment; (5) current monthly salary; and (6) any previous public employment.

After receipt of this data, the retirement office will calculate the cost to the governmental unit to participate in the retirement plan as offered in North Dakota Century Code section 54-52-17. The governmental unit's governing authority will then decide whether or not to participate in the plan and whether or not to provide service credit for employment prior to the date of participation.

History: Amended effective September 1, 1982.  
General Authority: NDCC ~~54-52-02.1~~ 54-52-04  
Law Implemented: NDCC 54-52-02.1

71-02-08-02. Withdrawal. Any political subdivision may discontinue participation in the fund. The political subdivision must first provide the board with a copy of a resolution adopted by the governing authority authorizing withdrawal from the fund. After receiving the resolution, the board will then calculate, with the help of the fund's actuary, the amounts to be deposited with the fund to provide future benefit payments for those who are eligible.

History: Effective September 1, 1982.

General Authority: NDCC ~~54-52-02.1~~ 54-52-04

Law Implemented: NDCC 54-52-02.1

71-02-08-03. Transfer of funds. Pursuant to subdivision e of subsection 13 of North Dakota Century Code section 15-10-17, funds may be transferred on behalf of those persons who are eligible through their employment with the state board of higher education. The following requirements apply:

1. Applicant must file a completed application for the teachers insurance and annuity association-college retirement equities fund.
2. Notice of termination and verification of teachers insurance and annuity association-college retirement equities fund eligibility must be filed by either the applicant or appropriate payroll officer.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17

71-02-08-04. Transfer date. Transfer of funds will be sent to the teachers insurance and annuity association-college retirement equities fund program within six months of receiving the application package. Any application received prior to the applicant's eligibility to participate in the alternate retirement program will be considered ineffective and the applicant shall reapply upon achieving eligible status.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 15-10-17

71-02-09-01. Review procedure. A member who has received notice that the member's application for benefits has been denied in whole or in part may within sixty days of receipt of such notice secure review by written request addressed to the board in care of the executive director of the public employees retirement system. In connection with such a review, the applicant shall have the right to information available to the board which may be relevant to the applicant's review and may submit

arguments or comments in writing. The board will render a decision as soon as possible and within one hundred twenty days after the request for a review. The decision will be by the board submitted to the applicant in writing and including the specific reason or reasons for the decision and the specific references to the provisions of the plan on which the decision is based, and such decision shall be final and binding on the applicant.

General Authority: NDCC ~~54-52-03~~ 54-52-04

Law Implemented: NDCC ~~54-52-03~~ 54-52-04

STAFF COMMENT: Chapter 71-02-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 71-02-10  
QUALIFIED DOMESTIC RELATIONS ORDERS

Section

71-02-10-01 Payment in Accordance With Qualified Domestic Relations Orders  
71-02-10-02 Qualified Domestic Relations Orders Procedures

71-02-10-01. Payment in accordance with qualified domestic relations orders. Retirement benefits must be paid in accordance with any qualified domestic relations order (QDRO) issued in compliance with North Dakota Century Code section 54-52-17.6.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.6

71-02-10-02. Qualified domestic relations orders procedures.

1. Upon receipt of a domestic relations order, the board shall send an initial notice to each person named therein, including the member and the alternate payee named in the order, together with an explanation of the procedures followed by the fund.
2. Upon receipt of a domestic relations order, the board shall, if the account is in pay status or begins pay status during the review, segregate in a separate account of the fund or in an escrow account amounts which the alternate payee would be entitled to by direction of the order, if any.
3. Upon receipt of a domestic relations order, the board shall review the domestic relations order to determine if it is a qualified order.

4. If the order becomes qualified within eighteen months of the initial receipt, the executive director shall:
  - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
  - b. Comply with the terms of the order.
  - c. If a segregated account or an escrow account has been established for an alternate payee, distribute the amounts, plus interest at a rate determined by the board, to the alternate payee.
5. In the event that the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order, the board shall:
  - a. Send written notification of such to all parties.
  - b. If a segregated account or an escrow account has been established for an alternate payee, distribute the amounts in the segregated account or escrow account, plus interest at a rate determined by the board, to the person or persons who would be entitled to receive such amount in the absence of an order.
  - c. If determined after the expiration of the eighteen-month period the order (as modified, if applicable) is a qualified domestic relations order, the qualified domestic relations order must be applied prospectively only.

History: Effective November 1, 1990.

General Authority: NDCC 54-52-04

Law Implemented: NDCC 54-52-17.6

71-03-03-05. Enrollment for retirees. An eligible employee who retires and elects to take a monthly retirement benefit is eligible for coverage with the group health insurance program. The employee must submit application within ~~ten~~ thirty-one days of the last day of employment. Coverage will become effective on the first day of the month following the date of retirement. If the application is not submitted on time and subsequent coverage is desired, the retiree must submit evidence of insurability and coverage may be denied. If coverage is accepted, coverage will become effective on the first day of the month following approval by the carrier.

1. Individuals eligible for the health plan, regardless of interruption of coverage include:

- a. A retired employee receiving a retirement allowance from the public employees retirement system, travelers retirement system of job service of North Dakota, teachers' fund for retirement, or teachers insurance and annuity association-college retirement equities fund.
  - b. A surviving spouse receiving a retirement allowance from the public employees retirement system, travelers retirement system of job service of North Dakota, teachers' fund for retirement, or teachers insurance and annuity association-college retirement equities fund.
  - c. Deferred retirees and their spouses.
2. A surviving spouse not receiving a retirement allowance, but whose spouse had received a retirement allowance from the public employees retirement system, travelers retirement system of job service of North Dakota, teachers' fund for retirement, or teachers insurance and annuity association-college retirement equities fund, will be eligible for the health plan, provided, there is no interruption of coverage.
3. Individuals not eligible for the health plan include:
- a. A terminated employee who received a refund of the employee's retirement account.
  - b. A nonspouse beneficiary (eligible for Consolidated Omnibus Reconciliation Act).
  - c. A formerly deferred retiree who received a refund of his or her retirement account.

History: Effective October 1, 1986; amended effective November 1, 1990.  
 General Authority: NDCC 54-52.1-08  
 Law Implemented: NDCC 54-52.1-03

71-03-03-06. Continuation of hospital and medical coverages after termination. An employee who terminates employment and applies for continued hospital and medical coverages with the group health plan, may continue such coverages by remitting timely payments to the board for a maximum of eighteen months. The employee desiring coverage shall notify the board within sixty days of the termination. Coverage will become effective on the first day of the month following the last day of coverage by the employing agency, provided an application is submitted in a timely manner. An individual who fails to notify the board within the sixty days, and who desires subsequent coverage, will not be eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990.  
 General Authority: NDCC 54-52.1-08

Law Implemented: Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 222; 26 U.S.C. 162 etc.)

71-03-03-07. Continuation of health benefits for dependents. Dependents of employees with family coverage may continue coverage with the group after their eligibility would ordinarily cease. This provision includes divorced or widowed spouses and children when they are no longer dependent on the employee. Coverage is contingent on the prompt payment of the premium, and in no case will coverage continue for more than thirty-six months. Dependents desiring coverage shall notify the board within sixty days of the qualifying event and must submit an application in a timely manner. An individual who fails to notify the board within the sixty days, and who desires subsequent coverage, will not be eligible for coverage.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08

Law Implemented: Consolidated Omnibus Budget Reconciliation Act (Pub. L. 99-272; 100 Stat. 232; 42 U.S.C. 300 etc.)

71-03-03-09. Leave of absence without pay. An employee on an approved leave of absence without pay may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An employee electing not to continue coverage during a leave of absence must furnish evidence of insurability upon returning to work.

In the event an employee is on an approved leave without pay during an open enrollment period and new coverage is selected, such coverage would not be effective until the first day the employee returns to work.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-03

71-03-04-01. Employer contribution. Each agency shall pay to the board the full amount of the employer contribution by the fifteenth of each month. The agency will verify the number of eligible employees and the level of coverage for each. An employee is eligible for an employer contribution for the month following the month of employment. The employer contribution ends the month following the month of termination of employment. When an employee transfers from one state agency to another, the new agency is responsible for the payment of the premium for the first of the month following employment.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-06

71-03-04-02. Information to employee. Each agency shall inform its employees of their right to group insurance and the process necessary to enroll. The agency shall, ~~within five working days of the date of employment,~~ provide each eligible employee such forms as necessary to enroll in the group insurance program.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-03

71-03-05-02. Retiree billing. Retirees receiving a monthly retirement benefit from the board in a sufficient amount to pay premium will have the total monthly premium deducted from their benefit check. Retirees not paying a premium from their benefit check will receive a monthly billing. The billing will be mailed on or about the twenty-fifth of the month preceding the month of coverage. Premium is due no later than the ~~tenth~~ fifteenth of the month for which coverage is intended.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-03

71-03-05-03. Late premium for retirees. If the premium is not received by the due date, a late premium reminder is included in the next month's billing. If the premium is not received by the next due date, a special notice is sent by certified mail. The notice advises the retiree that coverage will be canceled retroactively to the last day of the period for which payment was received if payment ~~if~~ is not received by the first of the following month.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-03

71-03-05-05. Appeal process. If an employee's application for benefits has been denied in whole or in part by the board or its agent, the employee will be notified in writing of the denial and the reasons. Within sixty days of the date shown on the denial notice, the employee may file a petition for review. The petition must be in writing, the reasons stated for disputing the denial and be accompanied by any documentary material. Should the employee filing a petition for review, or should the board or its agent desire information which cannot be presented satisfactorily by correspondence, the board or its designated appeals committee may schedule a hearing. The person filing the appeal will be notified in writing at least fifteen days prior to hearing of the time, date, and place.

The board or its agent will render a decision as soon as possible, but not later than one hundred twenty days after the receipt of the petition for review. The decision will be in writing.

History: Effective October 1, 1986; amended effective November 1, 1990.  
General Authority: NDCC 54-52.1-08  
Law Implemented: NDCC 54-52.1-08

71-04-06-06. Retirement board report. The provider shall deliver quarterly semiannual reports to the retirement board detailing the activity of each participant's account. The quarterly semiannual report must be delivered within forty-five days of the quarter's end of the reporting period and must include, but is not limited to, name of the participant, social security number of the participant, the provider's contract number for the participant (if any), type of account for each participant, account balance at the beginning of the quarter reporting period, contributions made by the participant for the current quarter reporting period, investment earnings added to the account (if any for the quarter reporting period), any withdrawals made during the quarter reporting period, administrative charges assessed against the account during the quarter reporting period, and the account balance at the end of the quarter reporting period, and must be in alphabetical order.

The quarterly semiannual report must include active, inactive, and retired participants and be for all payroll divisions for the plan. The report may be submitted on microfiche plates or on a computer printout.

History: Effective April 1, 1989; amended effective November 1, 1990.  
General Authority: NDCC 28-32-02  
Law Implemented: NDCC 54-52.2-03

71-04-06-11. Provider reporting failure - Penalty. Should the provider fail to deliver the required report within a ~~ninety-day~~ sixty-day period beyond the end of a calendar quarter reporting period, notice must be given by certified mail of the provider's failure to comply. The provider shall then have fifteen days from the date of the certified letter to comply with the reporting requirement.

If the provider fails to deliver the required report within the fifteen-day period, the provider is in violation of the administrative agreement and shall lose active provider status.

Loss of active provider status results in all current contributions of active participants being suspended effective in the next payroll cycle. The retirement board will notify all participants of the company's failure to deliver the required reports. Current participants will be required to either select a new provider for future contributions, or allow their account to go into a dormant status with the company losing provider status. The provider will then remain on an inactive status for a period of twelve months. At that time, an

inactive provider may reapply for active provider status by signing a new administrative agreement.

History: Effective April 1, 1989; amended effective November 1, 1990.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 54-52.2-03

STAFF COMMENT: Article 71-05 contains all new material but is not underscored so as to improve readability.

## ARTICLE 71-05

### HIGHWAY PATROL RETIREMENT SYSTEM

#### Chapter

71-05-01 Definitions

71-05-02 Disability

### CHAPTER 71-05-01 DEFINITIONS

#### Section

71-05-01-01 Definitions

71-05-01-01. Definitions. As used in North Dakota Century Code chapter 39-03.1:

1. "Covered employment" means employment with the North Dakota highway patrol.
2. "Medical examination" means an examination conducted by a doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a highway patrolman.
3. "Permanent and total disability" means any medically determinable physical or mental impairment which is static or deteriorating, and the prognosis does not indicate an anticipated recovery from the disability, and results in the individual's inability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

4. "Plan administrator" means the executive director of the North Dakota public employees retirement system.

History: Effective November 1, 1990.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1

## CHAPTER 71-05-02 DISABILITY

### Section

71-05-02-01	Disability Retirement Eligibility
71-05-02-02	Determination of Disability - Procedures
71-05-02-03	Aggrieved Parties' Rights

71-05-02-01. Disability retirement eligibility. A member of the highway patrol retirement system, who has completed at least one hundred eighty days of employment, is eligible for disability retirement benefits if the member became permanently and totally disabled during the period of covered employment and otherwise complies with section 71-05-02-02. A member eligible for normal retirement shall receive the normal retirement benefit if it exceeds the disability retirement benefit.

History: Effective November 1, 1990.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

### 71-05-02-02. Determination of disability - Procedures.

#### 1. Application.

- a. Application for disability benefits must be made within one year from the last date of covered employment on the form provided by the plan administrator.
- b. If the member is unable or unwilling to file an application, the member's employer or legal representative may file the member's disability application.
- c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to be engaged in any gainful occupation for which the person is, or could become, reasonably fitted by education, training, or experience.

#### 2. Medical examination.

- a. The applicant for disability retirement must provide the plan administrator with medical examination reports.
- b. An initial medical examination should be completed by the member's attending or family physician on the medical examination form provided by the plan administrator. If deemed necessary by the board's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the medical consultant.
- c. The member is liable for any costs incurred by the member in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.

### 3. Medical consultant.

- a. The board will retain a medical doctor to act as its consultant on disability retirement applications.
- b. The medical consultant shall review all medical information provided by the applicant.
- c. The medical consultant will be responsible to advise the plan administrator of the medical diagnosis and whether the condition is a permanent and total disability. The medical consultant shall use the medical evaluation criteria established by the social security administration as a basis for determining whether an applicant suffers a permanent and total disability.

### 4. Decision.

- a. The plan administrator shall consider applications for disability benefits and shall make a written decision whether an applicant is entitled to benefits. The decision must be mailed to the applicant's address of record.
- b. The applicant may appeal an adverse determination to the board by providing a written notice of appeal within sixty days of the date that the plan administrator mailed the decision.
- c. The board shall consider all appeals at regularly scheduled board meetings. The applicant must be notified of the time and date of the meeting and may attend or be represented. The plan administrator shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the medical consultant's conclusions and

recommendations. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed. The discussion concerning disability applications must be confidential and closed to the general public.

5. Payment of annuity. If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the member's termination from covered employment.
6. Redetermination and recertification.
  - a. A disabled annuitant's eligibility must be recertified on July first following the second anniversary date of disability retirement. An additional recertification is required on July first five years thereafter. The plan administrator may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.
  - b. The plan administrator will send a recertification form to the disabled annuitant to be completed and sent back to the fund.
  - c. The plan administrator may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the member, and the review of those reports by the board's medical consultant, may satisfy the reexamination requirement.
  - d. The plan administrator will make the recertification decision and bring the matter to the board only if warranted.
  - e. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the plan administrator may do all things necessary to recover the erroneously paid benefits.

History: Effective November 1, 1990.

General Authority: NDCC 39-03.1-06, 39-03.1-11

Law Implemented: NDCC 39-03.1-11

71-05-02-03. Aggrieved parties' rights. Any applicant aggrieved by a decision of the board may initiate a formal administrative action against the board in accordance with North Dakota Century Code chapter 28-32 (Administrative Agencies Practice Act). The board shall request appointment of an independent hearing officer from the attorney general's office to officiate the hearing and make findings of fact, conclusions of law, and order. The applicant may appeal the final decision resulting from this procedure to the district court in accordance with the Administrative Agencies Practice Act.

History: Effective November 1, 1990.  
General Authority: NDCC 39-03.1-06, 39-03.1-11  
Law Implemented: NDCC 39-03.1-11

TITLE 73  
Securities Commissioner



SEPTEMBER 1990

73-02-01-01. Small corporate offering registration.

1. Preliminary notes. This chapter is intended to encourage investment in small businesses. This chapter offers an optional method of registration for corporations issuing securities exempt from registration with the securities and exchange commission under rule 504 of Regulation D or under section 3(a)(11) of the Securities Act of 1933. The commissioner recognizes that small issuers raising small amounts of money face special problems not faced by issuers raising larger amounts, and that standards appropriate to registrations of larger offerings may become unduly burdensome when applied to registrations of small offerings. The optional registration method offered by this chapter is intended to reduce the costs and burdens of raising capital for small business without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible for this method of registration shall use the registration form SCOR as the disclosure document for the offering. This method of registration must be known as SCOR registration.

2. Application.

a. This chapter applies to SCOR registrations. While applications not conforming to the standards contained herein will be looked upon with disfavor, where good cause is shown, certain rules may be modified or waived by the commissioner.

b. Where individual characteristics of specific offerings warrant modification from these standards, they will be accompanied, insofar as possible, while still being consistent with the spirit of this chapter.

3. Availability.

a. This chapter is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements must be met:

(1) The issuer must be a corporation organized under the laws of one of the states or possessions of the United States.

(2) The issuer must engage in a business other than petroleum exploration or production or mining or other extractive industries.

(3) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(4) The offering price for common stock (and the exercise price, if the securities offered are options, warrants or rights for common stock, and the conversion price if the securities are convertible into common stock) must be equal to or greater than five dollars per share.

(5) The aggregate offering price of the securities offered, within or outside this state, may not exceed one million dollars less the aggregate offering price of all securities sold within the twelve months before the start of and during the offering of the securities under securities and exchange commission rule 504 in reliance on any exemption under section 3(b) of the Securities Act of 1933, in reliance on the exemption under section 3(a)(11) of that Act, or in violation of section 5(a) of that Act.

b. SCOR registration is not available to investment companies subject to the Investment Company Act of 1940, nor is it available to issuers subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934.

c. SCOR is available for registration of debt offerings only if the issuer can demonstrate reasonable ability to service its debt.

4. Disqualification from use of SCOR registration. SCOR registration is not available for securities of any issuer if that issuer or any of its officers, directors, ten percent

stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director, or partner of such selling agent:

- a. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the SCOR registration application;
- b. Has been convicted within five years prior to the filing of the SCOR registration application of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;
- c. Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the SCOR registration application or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the SCOR registration application;
- d. Is subject to any state's administrative enforcement, order, or judgment which prohibits, denies, or revokes the use of any exemption for registration in connection with this offer, purchase, or sale of securities; or
- e. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the SCOR registration application; provided, however, the prohibition of this subdivision and subdivisions a through c of this subsection do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form BD filed

in this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this section may act in any capacity other than that for which the person is licensed or registered. Any disqualification caused by this subsection is automatically waived if the state securities administrator or other state or federal agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

5. Agreement by registrant on stock splits and stock dividends. By filing for SCOR registration in this state, the registrant agrees with the commissioner that the registrant will not split its common stock, or declare a stock dividend, for two years after the effectiveness of the registration without the prior written approval of the commissioner.
6. Documents to be filed with commissioner by SCOR registrant. In addition to filing a properly completed SCOR form, applicants for SCOR registration shall file the following exhibits with the commissioner:
  - a. Form of selling agency agreement;
  - b. The issuer's articles of incorporation or other charter documents and all amendments thereto;
  - c. The issuer's bylaws, as amended to date;
  - d. Copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued;
  - e. Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants, or rights to be offered;
  - f. Specimen of security to be offered, including any legend restricting resale;
  - g. Consent to service of process accompanied by appropriate corporate resolution;
  - h. Copy of all advertising or other material directed to or to be furnished investors in the offering;
  - i. Form of escrow agreement for escrow of proceeds;
  - j. Consent to inclusion in disclosure document of accountant's report;
  - k. Consent to inclusion in disclosure document of tax advisor's opinion or description of tax consequences;

- l. Consent to inclusion in disclosure document of any evaluation of litigation or administrative action by counsel;
- m. Form of any subscription agreement for the purchase of securities in this offering;
- n. Opinion of attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable, and binding on the issuer in accordance with their terms; and
- o. Schedule of residence street addresses of officers, directors, and principal stockholders.

History: Effective September 1, 1990.

General Authority: NDCC 10-04-03

Law Implemented: NDCC 10-04-03

73-02-03-01. Limited offeree exemption.

1. Application form. Except as otherwise specifically provided, application for approval of the limited offeree exemption under subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 shall be made on the form attached to this section, which is incorporated herein by reference.
2. Supplemental filings. In addition to the information specified in the application, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to determine whether the application should be approved.
3. Filing fee. Except as otherwise specifically provided, the application form shall be accompanied by a nonrefundable filing fee of one hundred dollars.
4. Term of effectiveness. Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, approval under this section shall be effective for the period of twelve consecutive months beginning with the date of the letter by which approval is granted. A new application must be filed with and approved by the commissioner if offers or sales will extend beyond the twelve-month period.
5. Conditions. The commissioner may place such conditions, limitations, or restrictions on this exemption as the

commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.

6. Reports. Within thirty days after the ~~end of any quarter of the issuer's fiscal year during which offers or sales of securities are effected in reliance upon this exemption~~ completion of the offering or expiration of the twelve-month approval period, whichever occurs first, the offeror shall file a report of such all offers or and sales in this state on a form prescribed by the commissioner.
7. Waiver.
  - a. Except as otherwise provided under subdivisions c and d, if the number of offerees in connection with all offers of securities, whether of the same or of a different issue, in this state during a consecutive twelve-month period is three or fewer and if the conditions in paragraphs 1 and 2 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 are met, the application, approval, filing fee, and reporting requirements prescribed under this section are waived.
  - b. In addition to the waiver of the filing fee provided under subdivision a, the commissioner may also waive the filing fee in any other case where the commissioner determines that the time and effort involved in processing the application do not justify the imposition of the fee.
  - c. The waiver provided under subdivision a shall not apply where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
    - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession; or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.
    - (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction,

cease and desist order, or similar order has been issued either by a court or by an administrative agency.

- (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
- (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
- (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
- (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.

- d. If the security is issued by a corporation engaged in the business of farming or ranching which is organized under and operated in compliance with North Dakota Century Code chapter 10-06, the permissible number of offerees in this state during a consecutive twelve-month period shall not exceed fifteen, and the conditions in paragraphs 1, 2, and 3 of subdivision a of subsection 9 of North Dakota Century Code section 10-04-06 and the application, approval, filing fee, and reporting requirements prescribed under this section are waived.

History: Amended effective August 1, 1980; July 1, 1981; November 1, 1981; July 1, 1987; August 1, 1987; September 1, 1990.

General Authority: NDCC 10-04-06(9)

Law Implemented: NDCC 10-04-06(9)

73-02-03-02. Limited sales exemption North Dakota issuer exemption.

1. Statement Application form. The statement application required under subdivision b of subsection 9 of North Dakota Century Code section 10-04-06 must be made on the form attached to this section, which is incorporated herein by reference.
2. Supplemental filings. In addition to the information specified in the statement application, the commissioner may require the filing of such supplemental schedules, projections, appraisals, opinions, documents, memoranda, briefs, or other matter as the commissioner deems convenient, appropriate, or necessary to carry out the purposes of the Securities Act of 1951.
3. Term of effectiveness. Unless earlier suspended or revoked or unless otherwise limited or restricted by the commissioner, this exemption is effective for the period of twelve consecutive months beginning with the date of the first sale letter by which approval is granted. A new statement application must be filed if sales will extend beyond the twelve-month period.
4. Conditions. The commissioner may place such conditions, limitations, or restrictions on this exemption as the commissioner deems appropriate or necessary to carry out the purposes of the Securities Act of 1951.
5. Reports. Within thirty days after the end of any quarter of the issuer's fiscal year during which sales of securities are effected in reliance upon this exemption completion of the offering or expiration of the twelve-month approval period, whichever occurs first, the issuer shall file a report of such sales on a form prescribed by the commissioner.
6. Disqualifications.
  - a. Except as otherwise provided in subdivision b, this exemption is not available where any person involved in the offering, either directly or indirectly, as promoter, issuer, underwriter, broker-dealer, salesman, investment adviser, investment adviser representative, partner, officer, director, manager, controlling shareholder, or in any similar capacity or position:
    - (1) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by any securities, insurance, banking, real estate, or commodities agency, jurisdiction, or organization; or been refused membership therein or withdrawn an application for such membership; or been refused or denied a license or registration or had one suspended or revoked by any such agency, jurisdiction, or organization or by any other business or profession;

or has knowledge of being the subject of any investigation or proceeding by any such agency, jurisdiction, or organization or by any other business or profession.

- (2) Has been the subject of or has been associated in any capacity with another person against whom a temporary restraining order, temporary or permanent injunction, cease and desist order, or similar order has been issued either by a court or by an administrative agency.
  - (3) Has been arrested for, complained against, informed against, or indicted for, convicted of, or pleaded nolo contendere to any felony or misdemeanor, except minor traffic offenses.
  - (4) Is now or has been a defendant or respondent in any litigation or proceeding alleging the violation of any securities, insurance, banking, real estate, or commodities law or regulation.
  - (5) Has been associated with any firm, corporation, or association which has failed in business, made a compromise with creditors, filed or been declared bankrupt under any bankruptcy acts, or for which a trustee has been appointed under the Securities Investor Protection Act of 1970 [Pub. L. 91-598; 84 Stat. 1636; 15 U.S.C. 78aaa et seq.], as amended, or which has been liquidated under any other circumstances.
  - (6) Has been suspended, expelled, fined, barred, censured, or otherwise disciplined by an employer in the securities, insurance, banking, real estate, or commodities industry; or in previous business connections or employment has been a subject of a major complaint or legal proceeding or has been discharged or requested to resign by an employer because of dishonest or unethical acts.
- b. Subdivision a does not apply to any issuer if the commissioner determines, upon a showing of good cause, that it is not necessary or appropriate in the public interest or for the protection of investors that the exemption be denied. Any such determination is without prejudice to any other action by the commissioner in any other proceeding or matter with respect to the issuer or any other person.

7. Security transfer. Securities purchased pursuant to this exemption must be held by the purchaser for a period of two

years from the date of purchase from the issuer, except that a purchaser at any time may transfer such security:

- a. To the issuer, or to a director or officer of the issuer;
- b. To any relative, spouse, or relative of a spouse of the purchaser who has the same principal residence as the purchaser;
- c. To a corporation or other organization in which the purchaser and any of the persons specified in subdivision b own one hundred percent of the equity securities;
- d. To any trust or estate in which the purchaser and any of the persons specified in subdivision b own one hundred percent of the beneficial interest; or
- e. To a trust in which the purchaser has a one hundred percent beneficial interest during the purchaser's lifetime.

The foregoing transferees are subject to the restrictions on transfer contained in this subsection, provided that the two-year holding period begins on the date the securities were first purchased from the issuer. A legend must be placed upon certificates for the security purchased pursuant to this exemption referring to the restrictions on transfer contained in this subsection.

History: Effective July 1, 1987; amended effective September 1, 1990.

General Authority: NDCC 10-04-06(9)

Law Implemented: NDCC 10-04-06(9)

73-02-03-03. Uniform limited offering exemption.

1. Preliminary notes.

- a. Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities laws.
- b. In view of the objective of this section and the purposes and policies underlying this Act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this section is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this section.

- c. Nothing in this section is intended to relieve registered dealers or salesmen from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered persons.
2. Exemption. The following transaction is determined to be exempt from the registration provisions contained in North Dakota Century Code chapter 10-04. Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, rules 230.505, including any offer or sale made exempt by application of rule 508(a), as made effective in release no. 33-6389 and as amended in release nos. 33-6437, 33-6663, 33-6758, and 33-6825, and which satisfies the following further conditions and limitations:
- a. No commission, fee, or other remuneration may be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.
- b. No exemption under this section is available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, rule 230.252, sections (c), (d), (e), or (f):
- (1) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption.
  - (2) Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.
  - (3) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this exemption.

- (4) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
- (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.
- (6) The prohibitions of paragraphs 1, 2, 3, and 5 do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subdivision may act in a capacity other than that for which the person is licensed or registered.
- (7) Any disqualification caused by this subdivision is automatically waived if the commissioner or agency of the state which created the basis for disqualification determines upon showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subsection existed.
- c. The issuer shall file with the commissioner a notice on form D (17 CFR 239.500):
- (1) No later than ten days prior to the receipt of consideration or the delivery of a subscription agreement to an investor in this state which results from an offer being made in reliance upon this exemption and at such other times and in the form required under Regulation D, rule 230.503 to be filed with the securities and exchange commission. This

notice must be accompanied by one copy of any written information furnished to investors and a consent to service of process.

(2) Every person filing the initial notice provided for in paragraph a of this subdivision shall pay a filing fee of one hundred dollars.

d. In all sales to nonaccredited investors in this state, one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry, shall believe that one of the following conditions is satisfied:

(1) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation, and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent of the investor's net worth, it is suitable.

(2) The purchaser, either alone or with the purchaser's representative, has such knowledge and experience in financial and business matters that the purchaser is or they are capable of evaluation the merits and risks of the prospective investment.

3. A failure to comply with a term, condition, or requirement of subdivisions a, c, and d of subsection 2 will not result in loss of the exemption from the requirements of North Dakota Century Code section 10-04-04 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

a. The failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity;

b. The failure to comply was insignificant with respect to the offering as a whole; and

c. A good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of subdivisions a, c, and d of subsection 2.

4. Where an exemption is established only through reliance upon this subsection, the failure to comply is nonetheless actionable by the commissioner under North Dakota Century Code section 10-04-16.

5. Transactions which are exempt under this section may not be combined with offers and sales exempt under any other rule or provision of North Dakota Century Code chapter 10-04; however, nothing in this limitation acts as an election. Should, for any reason, the offer and sale fail to comply with all the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.
6. The commissioner may, by rule or order, waive any conditions of this exemption.

History: Effective September 1, 1990.  
General Authority: NDCC 10-04-06(9)(c)  
Law Implemented: NDCC 10-04-06(9)(c)







NAME AND ADDRESS	POSITION	TITLE OF CLASS	TYPE OF OWNERSHIP	AMOUNT	PERCENT OF CLASS

(g) General character and location of issuer's business:

\_\_\_\_\_

\_\_\_\_\_

(h) General description of issuer's physical properties and equipment: \_\_\_\_\_

\_\_\_\_\_

3. (a) List the states in which the issuer proposes to sell securities.

\_\_\_\_\_

(b) List the states, if any, in which the securities are eligible for sale.

\_\_\_\_\_

(c) List the states, if any, which have refused, by order, or otherwise, to authorize the sale of securities or have suspended or revoked the right to sell the securities, or in which an application has been withdrawn.

\_\_\_\_\_

4. (a) Title of class of securities to be sold: \_\_\_\_\_

\_\_\_\_\_

(b) Total dollar amount of securities to be sold in all jurisdictions:

\_\_\_\_\_

(c) Dollar amount of securities proposed to be sold in North Dakota: \_\_\_\_\_

\_\_\_\_\_

(d) Number of shares or other units proposed for sale in all jurisdictions: \_\_\_\_\_

- (e) Number of shares or other units proposed for sale in North Dakota: \_\_\_\_\_
- (f) Price per share or other unit of securities to be sold:  
\_\_\_\_\_
- (g) Have any securities of the kind to be sold pursuant to this exemption been offered for sale or sold for a consideration other than or different from that at which they are now proposed to be sold? Yes \_\_\_\_\_ No \_\_\_\_\_ If "yes", please explain the difference.  
\_\_\_\_\_
- (h) Have any of the issuer's securities ever been registered or exempted for sale in North Dakota? Yes \_\_\_\_\_ No \_\_\_\_\_ If "yes", indicate whether the securities were registered or exempted and the date.  
\_\_\_\_\_
5. (a) Furnish the names and addresses of any dealers, salesmen, finders, or other persons who will act on behalf of the issuer in effecting sales of securities (The Commissioner may require that the persons indicated furnish additional information.).  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Will commissions or other forms of remuneration be paid or given directly or indirectly in connection with offers or sales? Yes \_\_\_\_\_ No \_\_\_\_\_ If "yes", indicate the amount of such commissions or other forms of remuneration in dollar amount and as a percentage of the offering price.  
\_\_\_\_\_  
\_\_\_\_\_
6. (a) Estimated cash proceeds to be received by the issuer from the offering:  
\_\_\_\_\_  
\_\_\_\_\_
- (b) Purposes for which the proceeds are to be used:  
\_\_\_\_\_  
\_\_\_\_\_

(c) The amount of proceeds to be used for each purpose specified: \_\_\_\_\_

(d) Amount and other sources of funds to be raised to achieve the purposes stated: \_\_\_\_\_

7. Provide an estimated itemization of all costs and expenses to be incurred in connection with the offering.

8. The issuer, through its duly authorized agent whose signature appears below, represents as follows:

(a) That it will only sell the securities to buyers which it reasonably believes are purchasing for investment. In support of this representation, the issuer will require that each buyer sign a copy of a subscription agreement disclosing an investment intent in the form of Exhibit A. The issuer will maintain copies of such letter or instrument in its files and will make them available to the Commissioner for inspection upon a reasonable request for a period of five years from the date of the last sale made pursuant to this filing. The issuer will cause all certificates and the disclosure document to bear the following legend: "These securities have not been registered under the Securities Act of 1951 and it is unlawful to sell or transfer this security except pursuant to registration or an exemption. Any person purchasing these securities from the issuer may not sell or transfer this security for a period of two years from the date of purchase."

(b) That no public advertising matter or general solicitation has been or will be used in connection with any offers or sales.

9. Attach the following exhibits to this statement:

Exhibit A - Subscription Agreement

Exhibit B - A copy of the offering disclosure document, escrow agreement and impoundment agreement.

Exhibit C - A certificate of the issuer, signed by its duly authorized agent, containing the following recitation:



ND

Securities Commissioner  
State Capitol  
Bismarck, ND 58505  
(701) 224-2910

Limited Offeree Exemption  
Application

Form  
E  
Rev. 7-87

SECURITIES COMMISSIONER OF THE STATE OF NORTH DAKOTA:

Pursuant to the provisions of Section 10-04-06(9) (a), N.D.C.C., the undersigned hereby applies for an exemption from the registration provisions of the Securities Act of 1951 and submits the following SWORN answers to the questions contained herein for the purpose of inducing the Securities Commissioner to approve the requested exemption:

- 1. (a) Name of applicant: \_\_\_\_\_
- (b) Address and telephone number of applicant: \_\_\_\_\_  
(street)
- \_\_\_\_\_ (city) (state) (zip code) (area code & tel. no.)

(c) Relationship of applicant to issuer: \_\_\_\_\_

- 2. (a) Name of issuer: \_\_\_\_\_
- (b) Address, telephone number, and I.R.S. identification number of issuer:  
\_\_\_\_\_ (street) (city) (state) (zip code)
- \_\_\_\_\_ (area code & tel. no.) (I.R.S. i.d. no.)

(c) Issuer's state of incorporation or jurisdiction of organization: \_\_\_\_\_

(d) Date of incorporation or organization: \_\_\_\_\_

(e) Names and addresses of all promoters, incorporators, directors, and executive officers of the issuer, indicating all positions and offices with the issuer presently held by each such person. Furnish the following information as to the voting securities of the issuer owned of record or beneficially by each person who owns of record, or is known by the issuer to own beneficially, more than ten percent of any class of such securities. Indicate whether the securities are owned both of record and beneficially, of record only, or beneficially only, and show the respective amounts and percentages owned in each such matter.

NAME AND ADDRESS	POSITION	TITLE OF CLASS	TYPE OF OWNERSHIP	AMOUNT	PERCENT OF CLASS

(f) General character and location of issuer's business:

---

---

(g) General description of issuer's physical properties and equipment:

---

3. (a) List the states in which it is proposed to offer the securities for sale:

---

(b) List the states, if any, in which the securities are eligible for sale:

---

(c) List the states, if any, which have refused, by order or otherwise, to authorize the sale of securities or have suspended or revoked the right to sell the securities, or in which an application has been withdrawn: \_\_\_\_\_

---

4. (a) Title of class of securities to be offered for sale: \_\_\_\_\_

---

(b) Total dollar amount of securities to be sold in all jurisdictions:

---

(c) Dollar amount of securities proposed to be offered in North Dakota:

---

(d) Number of shares or other units proposed for sale in all jurisdictions:

---

(e) Number of shares or other units proposed for sale in North Dakota:

---

(f) Price per share or other unit of securities to be offered for sale:

---

(g) Have any securities of the kind to be offered pursuant to this application for exemption been offered for sale or sold for a consideration other than or different from that at which they are now proposed to be offered for sale? \_\_\_\_\_  
If so, please explain the difference:

---

(h) Minimum dollar amount of securities which will be offered to any one offeree:

---

5. (a) Number of offerees to whom securities will be offered in North Dakota: \_\_\_\_\_

(b) Names and state briefly the relationship of each of the proposed offerees to the issuer and offeror and any of their directors, officers, stockholders, agents, or employees. If the identities of any of the offerees have not been determined as of the date of application, indicate the standards which have been established for selecting offerees in terms of their relationship to or familiarity with the issuer and its financial and business matters:

---

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---

---

(c) What precautions, if any, will be taken to assure that the securities being offered for sale are suitable investment vehicles for the offerees?

---

---

(d) Number of offerees to whom securities were offered in North Dakota during the twelve consecutive months preceding the date of this application, other than offerees designated in Section 10-04-06(5), N.D.C.C.:

---

(e) Number of North Dakota offerees designated in Section 10-04-06(5), N.D.C.C., to whom securities were offered during the twelve consecutive months preceding the date of this application:

---

6. Furnish the names and addresses of any dealers, salesmen, finders, or other persons who will act on behalf of the issuer or offeror in effecting the offers and sales of securities (The Commissioner may require that the persons indicated furnish additional information.):

---

---

7. (a) Estimated cash proceeds to be received by the offeror from the offering:

---

(b) Purposes for which the proceeds are to be used: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) The amount of proceeds to be used for each purpose specified:

\_\_\_\_\_

\_\_\_\_\_

(d) Amounts and other sources of funds to be raised to achieve the purposes stated: \_\_\_\_\_

\_\_\_\_\_

8. Furnish copies of all written or printed matter to be used in connection with the offers, including current financial statements of the issuer as of a date within four months of the date of this application.

9. Provide an estimated itemization of all costs and expenses to be incurred in connection with the offering:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. If the issuer is incorporated in or organized under a jurisdiction other than North Dakota, furnish the following: a consent to service of process; copies of the issuer's articles of incorporation and bylaws or similar documents, as currently in effect; a specimen of the security; and a copy of any indenture or other instrument covering the security to be offered.

11. If there is any information not elicited by the foregoing questions which you feel is material and might influence the Commissioner in his determination of whether to approve the requested exemption, state that information hereunder:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name of Applicant)

\_\_\_\_\_  
(Title)



<b>ND</b> Securities Commissioner State Capitol Bismarck, ND 58505 (701) 224-2910	Limited Offeree Exemption Instructions	<b>Form E(1)</b> Rev. 7-87
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In most instances involving the flotation of securities in North Dakota, the securities in question, as well as the persons who offer or sell them, must be registered with the Securities Commissioner. Under narrowly circumscribed conditions, however, the Commissioner may, pursuant to Section 10-04-06(9) (a) of the North Dakota Century Code ("N.D.C.C."), exempt an offering of securities to a limited number of offerees from the registration provisions of the Securities Act of 1951. (CAVEAT: Even though the Commissioner approves of the use of the limited offeree exemption in connection with a particular offering, the fraudulent practices, remedies, and penalties provisions codified under Sections 10-04-15, 10-04-17, and 10-04-18, respectively, N.D.C.C., as well as other provisions of the Securities Act, are applicable to the offering.)

As a practical matter, the Commissioner will only grant an exemption if he is satisfied that registration is unnecessary or inappropriate in the public interest or for the protection of investors. In determining whether an exemption should be granted, the Commissioner will evaluate each application on an ad hoc basis and will generally disapprove an application which does not meet the following minimal criteria:

**SECTION 1. LIMITATIONS ON MANNER OF OFFERING**

1. Neither the offeror nor any person acting on its behalf shall offer, offer to sell, offer for sale, or sell the securities by means of any form of general solicitation or general advertising, including, but not limited to, the following:
  - a. Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over television or radio;
  - b. Any seminar or meeting, except that if Section 2(1) is satisfied as to each person invited to or attending such seminar or meeting, and, as to persons qualifying only under Section 2(1) (b), such persons are accompanied by their offeree representative(s), then such seminar or meeting shall be deemed not to be a form of general solicitation or general advertising; and
  - c. Any letter, circular, notice, or other written communication, except that if Section 2(1) is satisfied as to each person to whom the communication is directed, such communication shall be deemed not to be a form of general solicitation or general advertising.
2. No commission or other remuneration shall be paid or given directly or indirectly for soliciting any offeree in this state (other than those designated in Section 10-04-06(5), N.D.C.C.).
3. The term "offeree representative" shall mean any person or persons, each of whom the offeror and any person acting on its behalf, after making reasonable inquiry, have reasonable grounds to believe and believe satisfies all of the following conditions:

a. Is not an affiliate, director, officer, or other employee of the offeror, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the offeror, except where the offeree is:

(1) Related to such person by blood, marriage, or adoption, no more remotely than as first cousin;

(2) Any trust or estate in which such person or any persons related to him as specified in Paragraph (1) or (3) collectively have 100 percent of the beneficial interest (excluding contingent interests) or of which any such person serves as trustee, executor, or in any similar capacity; or

(3) Any corporation or other organization in which such person or any persons related to him as specified in Paragraph (1) or (2) collectively are the beneficial owners of 100 percent of the equity securities (excluding directors' qualifying shares) or equity interest;

b. Has such knowledge and experience in financial and business matters that he, either alone or together with other offeree representatives or the offeree, is capable of evaluating the merits and risks of the prospective investment;

c. Is acknowledged by the offeree in writing during the course of the transaction to be his offeree representative in connection with evaluating the merits and risks of the prospective investment; and

d. Discloses to the offeree in writing prior to the acknowledgment specified in Subdivision c any material relationship between such person or his affiliates and the offeror or its affiliates which then exists or is mutually understood to be contemplated or which has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

NOTE 1: Persons acting as offeree representatives should consider the applicability of the fraudulent practices provisions and registration provisions relating to dealers, salesmen, and investment advisers under the Securities Act.

NOTE 2: The acknowledgment required by Subdivision c and the disclosure required by Subdivision d must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements", is not sufficient.

NOTE 3: Disclosure of any material relationships between the offeree representative or his affiliates and the offeror or its affiliates does not relieve the offeree representative of his obligation to act in the interest of the offeree.

SECTION 2. NATURE OF OFFEREES.) The offeror and any person acting on its behalf who offer, offer to sell, offer for sale, or sell the securities shall have reasonable grounds to believe and shall believe:

1. Immediately prior to making any offer, either:

a. That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or

b. That the offeree is a person who is able to bear the economic risk of the investment; and

2. Immediately prior to making any sale, after making reasonable inquiry, either:
  - a. That the offeree has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or
  - b. That the offeree and his offeree representative(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment and that the offeree is able to bear the economic risk of the investment.

**SECTION 3. ACCESS TO OR FURNISHING OF INFORMATION.**

**NOTE:** Access can only exist by reason of the position with respect to the issuer. Position means an employment or family relationship or economic bargaining power that enables the offeree to obtain information from the issuer in order to evaluate the merits and risks of the prospective investment.

**1. Either**

- a. Each offeree shall have access during the course of the transaction and prior to the sale to the same kind of information that is specified in Section 10-04-08(1), N.D.C.C., to the extent that the offeror possesses such information or can acquire it without unreasonable effort or expense; or
  - b. Each offeree or his offeree representative(s) or both shall have been furnished during the course of the transaction and prior to sale by the offeror or any person acting on its behalf the same kind of information that is specified in Section 10-04-08(1), N.D.C.C., to the extent that the offeror possesses such information or can acquire it without unreasonable effort or expense;
- 2. The issuer shall make available during the course of the transaction and prior to sale to each offeree or his representative(s) or both the opportunity to ask questions of and receive answers from the offeror or any persons acting on its behalf concerning the terms and conditions of the offering and to obtain any additional information, to the extent the offeror possesses such information or can acquire it without unreasonable effort or expense, necessary to verify the accuracy of the information obtained pursuant to Section 3(1) above; and**

**3. The offeror or any person acting on its behalf shall disclose to each offeree in writing prior to sale:**

- a. Any material relationship between his offeree representative(s) or his affiliates and the offeror or its affiliates which then exists or mutually is understood to be contemplated or which has existed at any time during the previous two years and any compensation received or to be received as a result of such relationship;
- b. That a purchaser of the securities must bear the economic risk of the investment for an indefinite period of time, because the securities have not been registered under the Securities Act and, therefore, cannot be sold unless they are subsequently registered under the Securities Act or an exemption from such registration is available; and
- c. The limitations on disposition of the securities set forth in Sections 5(2), 5(3), and 5(4).

NOTE: Information need not be provided and opportunity to obtain additional information need not be continued to be provided to any offeree or offeree representative who, during the course of the transaction, indicates that he is not interested in purchasing the securities offered or to whom the offeror or any person acting on its behalf has determined not to sell the securities.

SECTION 4. NUMBER OF OFFEREEES.) Except under very special circumstances, there shall not be more than 25 offerees in North Dakota during any twelve consecutive months; provided, however, that there shall be excluded in determining such number those persons designated in Section 10-04-06(5), N.D.C.C.

SECTION 5. LIMITATIONS ON DISPOSITION.) The offeror and any person acting on its behalf shall exercise reasonable care to assure that the offerees of the securities in the offering are not underwriters. Such reasonable care shall include, but not necessarily be limited to, the following:

1. Making reasonable inquiry to determine if the offeree is acquiring the securities for his own account or on behalf of other persons;
2. Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the Securities Act and setting forth or referring to the restrictions on transferability and sale of the securities;
3. Issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer; and
4. Obtaining from the purchaser a signed written agreement that the securities will not be sold without registration under the Securities Act or exemption therefrom.

#### APPLICATION FOR EXEMPTION

INSTRUCTIONS: The answers provided in this application are submitted UNDER OATH. Any applicant who willfully and contrary to such oath shall state or subscribe any material fact which he does not believe to be true is guilty of perjury and is punishable by imprisonment in the penitentiary. In addition, it is unlawful for any person knowingly to subscribe to or make or cause to be made any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of the Securities Act or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

All questions in this application must be answered legibly, responsively, and fully, and failure to do so may result in rejection of the application. If additional space is required in which to answer a question, attach a separate sheet and specify the number of the question in response to which the answer is given.

73-02-04-01. Exemption. Advertising matter relating to exempt securities under North Dakota Century Code section ~~10-04-05~~ or exempt transactions under North Dakota Century Code section ~~10-04-06~~ is exempt from the filing requirement imposed under subsection 1 of North Dakota Century Code section ~~10-04-08.2~~. The following advertising matter is exempt from the filing requirement imposed under subsection 1 of North Dakota Century Code section 10-04-08.2:

1. Advertising matter relating to exempt securities under North Dakota Century Code section 10-04-05.
2. Advertising matter relating to exempt transactions under North Dakota Century Code section 10-04-06.
3. Advertising matter relating to securities of an open end management company registered under the Investment Company Act of 1940, when it has been prepared in conformity with the applicable regulations of the securities and exchange commission.
4. Tombstone advertisements placed in newspapers or periodicals and containing no more than the following:
  - a. Date of issuance or release;
  - b. Name and address of issuer;
  - c. Identity or title of securities;
  - d. Per unit offering price;
  - e. Amount of offering;
  - f. Brief statement of general character of the business; and
  - g. Address where prospectus or offering circular may be obtained.

History: Amended effective September 1, 1990.  
General Authority: NDCC 10-04-08.2(2)  
Law Implemented: NDCC 10-04-08.2(1)

STAFF COMMENT: Chapter 73-02-07 contains all new material but is not underscored so as to improve readability.

CHAPTER 73-02-07  
RECORDS

Section  
73-02-07-01 Recordkeeping requirements

73-02-07-01. Recordkeeping requirements. All dealers, salesmen, investment advisers, and investment adviser representatives shall keep and maintain all books and records required to be kept by the securities and exchange commission and the national association of securities dealers.

History: Effective September 1, 1990.  
General Authority: NDCC 10-04-10.3  
Law Implemented: NDCC 10-04-10.3

STAFF COMMENT: Chapter 73-02-08 contains all new material but is not underscored so as to improve readability.

CHAPTER 73-02-08  
FEES AND CHARGES

Section  
73-02-08-01 Charges for Interpretative Opinions and  
No-action Determinations  
73-02-08-02 Fees for Investigations

73-02-08-01. Charges for interpretative opinions and no-action determinations. All requests for interpretative opinions and no-action determinations must be accompanied by a one hundred fifty dollar filing fee. When such requests are denied or withdrawn, the commissioner shall retain the fee.

History: Effective September 1, 1990.  
General Authority: NDCC 10-04-03  
Law Implemented: NDCC 10-04-03

73-02-08-02. Fees for investigations. The maximum fee to be charged for any investigation, examination, or audit must be the actual amount of the salary or other compensation paid to the persons making the investigation, examination, or audit plus the actual amount of expenses, including meals, lodging, transportation, and overhead, reasonably incurred in the performance of the work.

History: Effective September 1, 1990.  
General Authority: NDCC 10-04-16.1  
Law Implemented: NDCC 10-04-16.1

STAFF COMMENT: Chapter 73-02-09 contains all new material but is not underscored so as to improve readability.

CHAPTER 73-02-09  
FRAUDULENT AND UNETHICAL SALES PRACTICES  
AND MANIPULATIVE CONDUCT

Section  
73-02-09-01           Fraudulent Practices of Dealers and Sales Agents  
73-02-09-02           Unethical Practices of Dealers  
73-02-09-03           Unethical Practices of Sales Agents

73-02-09-01. Fraudulent practices of dealers and sales agents. The purpose of this section is to identify practices in the securities business which are generally associated with schemes to manipulate. A dealer or sales agent who engages in one or more of the following practices must be deemed to have engaged in an "act, practice, or course of business which operates or would operate as a fraud" as used in North Dakota Century Code section 10-04-15. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed fraudulent.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.
2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.
3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would impact on the value of the security.
4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each investor.
5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (a) transferring securities to a customer, another broker-dealer, or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (b) parking or withholding securities.

6. Although nothing in this section precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed in this subsection, the following subsections specifically apply only in connection with the solicitation of a purchase or sale of over the counter non-national association of securities dealers automated quotation system equity securities:
  - a. Failing to disclose the firm's present bid and ask price of a particular security at the time of solicitation, and the firm's bid and ask price at the time of execution on the confirmation.
  - b. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.
  - c. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than five percent of the issued and outstanding shares of the class of securities of the issuer; provided that, this subsection applies only if the firm is a market maker at the time of the solicitation.
  - d. Conducting sales contests in a particular security.
  - e. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.
  - f. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.
  - g. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.
7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive, or other fraudulent device or contrivance including, but not limited to, the use of boilerroom tactics or use of fictitious or nominee accounts.
8. Failure to comply with any prospectus delivery requirement promulgated under federal law.

History: Effective September 1, 1990.  
General Authority: NDCC 10-04-03  
Law Implemented: NDCC 10-04-15

73-02-09-02. Unethical practices of dealers. The purpose of this section is to identify practices in the securities business which are dishonest or unethical. The following must be deemed "dishonest or unethical practices" by any person other than a sales agent, as used in North Dakota Century Code section 10-04-11. This section is not intended to be all inclusive, and thus, acts or practices not enumerated herein may also be deemed dishonest or unethical.

1. Engaging in any unreasonable and unjustifiable delay in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers.
2. Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.
3. Recommending to a customer the purchase, sale, or exchange of any securities without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the dealer.
4. Executing a transaction on behalf of a customer without authorization to do so.
5. Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders.
6. Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement prior to the initial transaction in the account.
7. Failing to segregate customers' free securities or securities held in safekeeping.
8. Hypothecating a customer's securities without having a lien thereon unless the dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission.
9. Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.
10. Failing to furnish to a customer purchasing securities in an offering registered pursuant to North Dakota Century Code section 10-04-07 or 10-04-08, no later than the date of

confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus; if the offering is not registered pursuant to section 10-04-07 or 10-04-08, the dealer shall furnish disclosure documents customarily available.

11. Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safekeeping, or custody of securities, and other services related to its securities business.
12. Offering to buy from or sell to any person any security at a stated price unless such dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.
13. Representing that a security is being offered to a customer at the market or a price relevant to the market price unless such dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by such dealer, or by any person for whom it is acting or with whom it is associated in such distribution, or any person controlled by, controlling, or under common control with such dealer.
14. Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which may include, but not be limited to:
  - a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
  - b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a dealer from entering bona fide agency cross transactions for its customers; or
  - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or

depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

15. Guaranteeing a customer against loss in any securities account of such customer carried by the dealer or in any securities transaction effected by the dealer with or for such customer.
16. Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such dealer believes that such quotation represents a bona fide bid for, or offer of, such security.
17. Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure.
18. Failing to disclose that the dealer is controlled by, controlling, affiliated with, or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer; and if such disclosure is not made in writing, it must be supplemented by the giving of written disclosure at or before the completion of the transaction.
19. Failing to make a bona fide public offering of all of the securities allotted to a dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.
20. Failing or refusing to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.
21. Failing or refusing to provide, within fourteen days or such lesser time as prescribed by the securities commissioner, information requested by the commissioner or the commissioner's representatives pursuant to the commissioner's investigative authority.

22. Extending credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the federal reserve board.
23. Engaging in acts or practices enumerated in section 73-02-09-01.
24. Failing to promptly provide the most current prospectus, the most recently filed periodic report filed under section 13 of the Securities Exchange Act or other research reports when requested to do so by a customer in the solicitation of a sale or purchaser of an over the counter non-national association of securities dealers automated quotation system security.
25. Marking any order tickets or confirmations as unsolicited when in fact the transaction is solicited.
26. Failing to provide each customer with a statement of account which, with respect to all over the counter non-national association of securities dealers automated quotation system equity securities in the account, contains a value for each security based on the closing market bid on a date certain for any month in which activity has occurred in a customer's account, but in no event less than every three months; provided that, this subsection shall apply only if the firm has been a market maker in such security at any time during the period for which the monthly or quarterly statement is issued.
27. Engaging or aiding in boilerroom operations or high pressure tactics in connection with the promotion of speculative offerings or hot issues by means of an intensive telephone campaign, whereby the prospective purchaser is encouraged to make a hasty decision to buy irrespective of the purchaser's investment needs and objectives.
28. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices.
29. Failing to comply with any applicable provision of the Rules of Fair Practice of the national association of securities dealers or any applicable fair practice or ethical standard promulgated by the securities and exchange commission or by a self-regulatory organization approved by the securities and exchange commission.

History: Effective September 1, 1990.

General Authority: NDCC 10-04-03

Law Implemented: NDCC 10-04-11

73-02-09-03. Unethical practices of sales agents. The purpose of this section is to identify practices in the securities industry which are dishonest or unethical. The following must be deemed "dishonest or unethical practices" by an agent, as used in North Dakota Century Code section 10-04-11. This section is not intended to be all inclusive, and thus, act or practices not enumerated herein may also be deemed dishonest or unethical.

1. Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities, or an executed stock power of a customer unless the customer is a member of the agent's family and the act or practice is approved in advance by supervisory personnel.
2. Effecting securities transactions not recorded on the regular books or records of the dealer which the agent represents, unless the transactions are authorized in writing by the dealer prior to execution of the transactions.
3. Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.
4. Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the dealer which the agent represents.
5. Dividing or otherwise splitting the agent's commissions, profits, or other compensation from the purchase or sale of securities with any person not also registered as an agent for the same dealer, or for a dealer under direct or indirect common control.
6. Engaging in acts or practices specified in subsections 2, 3, 4, 5, 6, 9, 10, 14, 15, 16, 17, 21, 23, 24, 25, 26, 27, 28, and 29 of section 73-02-09-02.

History: Effective September 1, 1990.

General Authority: NDCC 10-04-03

Law Implemented: NDCC 10-04-11



TITLE 75  
Department of Human Services



SEPTEMBER 1990

AGENCY SYNOPSIS: 75-03-09-19(1): Amends the subsection requiring annual fire inspections of group child care facilities so as to limit the requirement to facilities where care is provided to seven or more children not members of the immediate family, and with respect to group child care services furnished in manufactured or mobil homes, apartment buildings, basements, and homes with alternative heating devices.

75-03-10-09(3)(w): Replaces a requirement that the child care center operator have certification in cardiopulmonary resuscitation with a requirement that a staff person on duty in the child care center have such a certification.

75-03-11-18(3): Requires health and sanitation inspections only for preschool educational facilities within which food is prepared and served.

75-03-09-19. Fire inspections.

1. Annual fire inspections ~~shall~~ must be completed by local or state fire authorities on all facilities in which care is provided to seven or more children who are not members of the immediate family of the group child care operator and upon facilities providing for any number of children in homes which are manufactured or mobile homes, in apartment buildings, in basements, and in homes that have alternative heating devices such as woodburning stoves, propane heaters, or fireplaces. The operator shall have corrected any code violations noted by the fire inspector and shall file reports of such inspections with the county agency.
2. The home or center shall provide:
  - a. The local fire inspector's written statement of compliance with the local fire code, if there is one;

- b. The local fire inspector's written statement that the home or facility has been inspected and that the inspector is satisfied that it meets minimum fire and safety standards for the facility; or
  - c. A written statement from an appropriate fire official that the home or center meets the minimum fire and safety standards adopted by the state fire marshal.
3. Fire evacuation drills shall be performed in accordance with the local fire department's guidelines.
  4. The facility shall be equipped with sufficient smoke detectors and fire extinguishers as recommended by the local fire department.

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-09. Minimum qualifications and duties of operator.

1. The operator of a child care facility is responsible to the department for compliance with requirements set forth in the standards.
2. The operator may be any individual, group, agency, association, or organization legally responsible for the operation of the facility.
3. The operator shall ensure that all standards are complied with and shall:
  - a. Be responsible for establishing the child care program.
  - b. Make application for a license for each child care center operated.
  - c. Outline a plan of operation for each child care center.
  - d. Notify the county agency of any major changes in the operation or in the ownership or governing body of the facility and of any staff or caregiver changes.
  - e. Carry liability insurance for bodily injury and property damage for the center. This subdivision is effective on July 1, 1987.
  - f. Ensure the formulation of written policies and procedures relating to hiring practices and personnel policies for staff. These must include obtaining references,

employment histories, and a method of conducting staff performance evaluations. Written policies and procedures must also be formulated for children's activities and care, enrollment, the responsibilities and rights of staff and of parents.

- g. Maintain required enrollment, attendance, health, financial, and related records.
- h. Make available office space, furniture, and equipment for parent conferences, maintenance and storage of records for children and staff and for accommodating administrative responsibilities.
- i. Be responsible for all center staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of directors.
- j. Maintain necessary information to verify staff qualifications and ensure that safe care be provided for the children in the facility. If a caregiver or employee who has access to children is employed or retained in the child care center when there has been a probable cause determination that the individual has abused or neglected a child, the person shall furnish information, satisfactory to the department, from which the department can determine the person's current ability to provide care free of abuse or neglect. The determination of current ability will be furnished to the operator and to the regional director of the human service center or his designee for consideration and action on the license or license application.
- k. Cooperate with the department and other appropriate agencies in all reasonable efforts to improve the quality of care and the competence of caregivers.
- l. Designate a qualified center director.
- m. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies and procedures, and content of the child care center's program. An explanation of how accidents and illnesses will be dealt with shall be provided as well as methods of discipline and child management techniques to be used.
- n. Ensure that the center is staffed sufficiently to provide physical care to each child, to offer individual attention to children as needed and to provide time to interact with children for the benefit of their social competence, emotional well-being, and intellectual development.

- o. Ensure that the child care center shall have sufficient qualified caregivers provided to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty.
  - p. Ensure that parents of enrolled children are advised of the center's program, service fees, operating policies and procedures, location, and of any significant changes in the services offered by the center. Written notice shall be provided to the parents and the department of such changes and their effective date, duration, scope, and impact on the center.
  - q. Ensure that written agreements with the parent or parents of each enrollee specify the fees to be paid, methods of payment, and policies regarding delinquency of fees.
  - r. Ensure that written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs (if children with these needs are in care) and the treatment of illness and accident.
  - s. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by enrollees or others on their behalf.
  - t. Provide parents with opportunities to observe the center at any time children are in care and to discuss their children's needs before enrollment; regularly offer parents opportunities to observe their children and to meet with caregivers to advise and comment on their children's needs.
  - u. Provide parents upon request any progress reports on their individual child or children and the compliance of the facility with standards contained in this chapter.
  - v. Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and develop a policy for staff to handle this reporting.
  - w. Ensure that there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.
4. If the operator of the child care center is also the center director, the operator must also meet the qualifications of

the child care center director set forth in section 75-03-10-10.

History: Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-10-10. Minimum qualifications of child care center director.

1. A child care center director shall be an adult of good mental and physical health, capable of mature judgment, and possessing knowledge and experience in management and interpersonal relationships.
2. The director shall certify that at least one of the following qualifications, in addition to those set out in subsection 1, are met:
  - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting.
  - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or fields directly related thereto, with at least six months' experience in a child care center or similar setting.
  - c. An associate of arts degree in the field of early childhood development with at least six months' experience in a child care center or similar setting.
  - d. A teaching certificate in elementary education with at least six months' experience in a child care center and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.
  - e. Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year's experience in a child care center or similar setting.
  - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year's experience in a child care center or similar setting.

- g. Certification for a Montessori teacher training program with at least one year's experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.
- h. Qualification under regulations in force and effect prior to July 1, 1984, and continuous employment as a director from that time, and at all times subsequent, at the same center.
- i. When responsible for only a school-age child care program, a high school diploma with at least three years' experience as a licensed group child care supervisor and at least three positive reference letters from parents whose children were in the supervisor's care.

~~3. The director shall meet current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department. This subsection is effective on July 1, 1987.~~

History: Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990.

General Authority: NDCC 50-11.1-08

Law Implemented: NDCC 50-11.1-04

75-03-11-18. Minimum sanitation and safety requirements.

- 1. The preschool educational facility's bathroom lavatories, toilets, tables, chairs, and floors shall be cleaned daily.
- 2. The preschool educational facility's building and equipment shall be located, cleaned, and maintained to protect the health and safety of children.
- 3. The A preschool educational facility shall have within which food is prepared and served must receive an annual health and sanitation inspection completed by a local, district, or state environmental health practitioner. Reports of such inspections ~~shall~~ must be filed with the county agency and any problems found ~~shall~~ must be corrected.
- 4. Indoor and outdoor equipment and supplies shall be safe, strong, and in good repair for children.
- 5. There shall be adequate ventilation and heating in the facility.

6. Exterior play areas in close proximity to busy streets and other unsafe areas which are used by the facility shall be contained, fenced, or have natural barriers to restrict children from unsafe areas.
7. Hazardous or potentially injurious or poisonous substances should be kept in locked storage in a space designed solely for this purpose and shall be inaccessible to children.
8. Indoor floors and steps shall not be slippery or have splinters. All steps and walkways shall be kept free from accumulations of water, ice, or snow.
9. Elevated areas such as stairs or porches shall have railings and safety gates where necessary to prevent falls.
10. All heating devices shall be approved by the local fire authorities.
11. The operator shall take steps to keep the facility free of insects and rodents. Chemicals for insect and rodent control shall not be applied in areas accessible to children when children are present in the facility.
12. Combustible materials shall be kept away from light bulbs and other heat sources.
13. Doors and pathways shall not be blocked.
14. All buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chipped condition in any area where children may be present, shall have such surfaces repainted or shall submit evidence that such surfaces do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health and consolidated laboratories.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04

**STAFF COMMENT:** Chapter 75-03-18 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-18  
PROCEDURES FOR REVIEW OF CHILD ABUSE  
AND NEGLECT INVESTIGATIONS

Section	
75-03-18-01	Definitions
75-03-18-02	Who May File Request for Review
75-03-18-03	Request for Review to be in Writing - Content - Time for Filing
75-03-18-04	Where Request for Review to be Filed
75-03-18-05	Informal Meeting
75-03-18-06	Request for Formal Hearing
75-03-18-07	Formal Hearing - Notice
75-03-18-08	Hearing Decision
75-03-18-09	Probable Cause Finding not Directly Reviewable
75-03-18-10	Confidentiality

75-03-18-01. Definitions.

1. "Department" means the North Dakota department of human services.
2. "Director" means the executive director of the North Dakota department of human services, or the executive director's designee.
3. "Investigating agency" means the county social service board in the county where the report of suspected abuse or neglect was investigated, or, in certain instances, a regional human service center.
4. "Regional human service center" means a facility which is established according to the provisions of North Dakota Century Code section 50-06-05.3.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-02. Who may file request for review. The following subjects of a report of suspected child abuse or neglect who are aggrieved by the conduct of the investigating agency's investigation of the suspected child abuse or neglect may file a complaint and request a review of the investigation:

1. A child's parent, guardian, foster parent, an employee of a public or private school or nonresidential child care facility, an employee of a public or private residential home, institution or agency, or other person responsible for the

child's health and welfare in a residential setting who is a subject of a report of suspected child abuse or neglect; or

2. A child who is a subject of a report of suspected abuse or neglect may file a request for review directly or such a request for review may be made on behalf of such a child by a parent, guardian, legal representative, or other relative acting on behalf of and in the best interests of such a child.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-03. Request for review to be in writing - Content - Time for filing. A request for a review of an investigation must be in writing on forms developed and provided by the department. It must contain a succinct statement of the reasons why the subject is aggrieved by the conduct of the investigation. The request for review may be filed no sooner than the date of notification of a case determination and no later than ninety days from the date of the case determination. A review must normally be initiated within fifteen days from the date of receipt of the written request for the review, but such time may be extended for a further reasonable period in the discretion of the investigating agency.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-04. Where request for review to be filed. The written request for review of a child abuse and neglect investigation must be filed with the director, or director's designee, of the county social service board wherein the investigation took place. In the event that the investigation was conducted by a regional human service center, the written request for review must be filed with the director of the regional human service center, or the director's designee.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-05. Informal meeting.

1. The agency which conducted the investigation under review shall schedule an informal meeting with the complaining subject. The meeting must normally be held within twenty days of the receipt of the written request for review, but such time period may be extended for a further reasonable time in the discretion of the investigating agency. The purpose of

this meeting is to resolve the concerns addressed in the written request for review.

2. The agency which has conducted the investigation and held the informal meeting shall render a written decision on the complaint. The written decision must be submitted to the complaining subject.
3. If a decision is made that the investigation was incomplete or the requirements of the department were not met, the investigating agency may determine any appropriate corrective or other action to be taken.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-06. Request for formal hearing. If the complaining subject of a report does not agree with the decision made by the investigating agency, the complaining subject may submit a written request for a formal hearing to appeals supervisor, North Dakota department of human services, state capitol - judicial wing, 600 east boulevard avenue, Bismarck, ND 58505-0250. This request must be received by the appeals supervisor on or before 5:00 p.m. on the thirty-first day after the date of mailing of the written decision of the informal meeting. The written request must include the following:

1. A copy of the written decision of the investigating agency with which the subject disagrees; and
2. A succinct statement by the subject as to why the subject disagrees with the written decision of the investigating agency.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05.4

Law Implemented: NDCC 50-25.1-05.4

75-03-18-07. Formal hearing - Notice.

1. The office of the appeals supervisor shall mail or deliver to the complaining subject and the investigating agency a written notice of the time and place of the hearing at least ten days before the hearing date.
2. The investigating agency shall provide the appeals supervisor with pertinent files and records for review by the appeals supervisor.
3. The appeals supervisor, or the appeals supervisor's designee, shall conduct the hearing, swear witnesses, and maintain

order. The appeals supervisor's designee may be a hearing officer provided by the hearings officer division, attorney general's office.

4. Testimony taken at the hearing must be preserved by a suitable recording device. A party may receive a transcribed copy of the testimony upon request and payment of the transcription costs; provided, that the request is received within ninety days of the hearing.
5. The statements received at the hearing must be limited to those probative of the complaints under review. The formal hearing must be conducted in substantial conformity with applicable provisions of chapter 75-01-03.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-08. Hearing decision. The appeals supervisor or designee shall, within thirty days of the close of the formal hearing, prepare written findings and conclusions based upon the files, records, and testimony received at the hearing, and present it to the director for a decision in conformity with chapter 75-01-03. The director's decision constitutes the final determination of the complaint concerning the investigation. The written findings, conclusions, and decision must be sent to the complaining subject and the investigating agency.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-09. Probable cause finding not directly reviewable. The review processes outlined in this chapter are not intended as mechanisms for directly reviewing the findings of probable cause. As a result of the review of the conduct of an investigation, the agency only may elect to amend or alter the probable cause determination. The outcome of the investigation under review may or may not differ from the outcome of the original investigation.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4

75-03-18-10. Confidentiality. Information furnished at the informal meeting and formal hearing is confidential and subject to the provisions of North Dakota Century Code section 50-06-15. The identity of a reporter of any incident of suspected abuse and neglect may not be disclosed at the informal meeting or at any formal hearing conducted under this chapter.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05.4  
Law Implemented: NDCC 50-25.1-05.4, 50-06-15, 50-25.1-11

STAFF COMMENT: Chapter 75-03-19 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-19  
INVESTIGATION OF CHILD ABUSE AND NEGLECT REPORTS

Section	
75-03-19-01	Definitions
75-03-19-02	County Social Service Boards to Receive Reports and Conduct Investigations - Reimbursement
75-03-19-03	Time for Initiating Investigations - Emergencies
75-03-19-04	Time for Completing Investigations
75-03-19-05	Time for Submitting Written Investigative Reports
75-03-19-06	Investigation Procedures
75-03-19-07	Caseload Standards
75-03-19-08	Exchange and Transfer of Information

75-03-19-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-25.1, except:

1. "Determination" means the decision that probable cause does or does not exist to believe that child abuse or neglect is indicated.
2. "Investigation" is the factfinding process designed to provide information which enables a determination to be made that probable cause does or does not exist to believe child abuse or neglect is indicated.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05

75-03-19-02. County social service boards to receive reports and conduct investigations - Reimbursement. County social service boards shall act as designee of the department for the purpose of receiving reports of suspected child abuse or neglect and conducting investigations, except as otherwise provided for by law or as otherwise determined by the department in a particular case. The department shall reimburse such designees, in a reasonable amount determined by the department, to the extent of funds made available to the department for such purposes. No person or agency may be required to act as the department's designee if the department is unable to provide such reimbursement.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-02(3), 50-25.1-04, 50-25.1-05,  
50-25.1-05.1

75-03-19-03. Time for initiating investigations - Emergencies. All nonemergency child abuse or neglect investigations must be initiated no later than seventy-two hours after receipt of a report by the investigating agency unless the department shall prescribe a different time in a particular case. In emergency cases involving a serious threat or danger to the life or health of a child, the investigation and any appropriate protective measures must commence immediately upon receipt of a report by the investing agency. An investigation is initiated by an interview with a subject of the report or with a collateral contact.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05

75-03-19-04. Time for completing investigations. Investigations of reports of suspected child abuse or neglect must be completed and a determination made within thirty-one days from the date of receipt of the report unless an extension of the time is requested of and granted by the department.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05

75-03-19-05. Time for submitting written investigative reports. The written investigative report must be completed and submitted to the regional child protective service supervisor or other person designated by the department to receive the investigative report within thirty-one days of the date of the determination, unless an extension of time is requested of and granted by the department.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05

75-03-19-06. Investigation procedures. Investigations of reports of suspected child abuse or neglect must be conducted in substantial conformity with the policies and procedures contained in North Dakota department of human services manual chapter 640, to the extent such policies and procedures are not in conflict with any provisions of this chapter.

History: Effective September 1, 1990.

General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05

75-03-19-07. Caseload standards. Any agency designated by the department to receive reports and conduct reports of suspected child abuse or neglect shall adhere to the caseload standards establishing minimum staff to client ratios, as such standards are developed and disseminated by the department.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05, 50-25.1-06.1

75-03-19-08. Exchange and transfer of information. The department and any agency designated by the department to receive reports and conduct investigations of suspected child abuse or neglect may exchange or transfer information and records concerning such reports or investigations among and between personnel of each respective agency to the extent necessary to perform the duties and effectuate the purposes set forth in North Dakota Century Code chapter 50-25.1.

History: Effective September 1, 1990.  
General Authority: NDCC 50-25.1-05  
Law Implemented: NDCC 50-25.1-05, 50-25.1-11

TITLE 82

Teachers' Fund for Retirement, Board of Trustees of the



SEPTEMBER 1990

STAFF COMMENT: Articles 82-02, 82-03, 82-04, 82-05, 82-06, 82-07, 82-08, and 82-09 contain all new material but are not underscored so as to improve readability.

ARTICLE 82-02

DEFINITIONS

Chapter  
82-02-01            Definitions

CHAPTER 82-02-01  
DEFINITIONS

Section  
82-02-01-01            Definitions

82-02-01-01. Definitions. Unless made inappropriate by context, all words used in this title have the meanings given to them under North Dakota Century Code chapter 15-39.1. The following definitions are not established by statute and apply for the purpose of this title:

1. "Account balance" or "value of account" means the teacher's assessments plus interest compounded annually.
2. "Benefit service" means employment service used to determine benefits payable under the fund.
3. "Covered employment" means employment as a teacher.

4. "Participating employer" means the employer of a teacher.
5. "Vested" means the status attained by a teacher when the teacher has paid assessments for a period of five years for covered employment in this state.

History: Effective September 1, 1990.  
 General Authority: NDCC 15-39.1-07  
 Law Implemented: NDCC 15-39.1, 15-39.1-07

## ARTICLE 82-03

### PARTICIPATION

Chapter  
 82-03-01            Membership in the Fund

#### CHAPTER 82-03-01 MEMBERSHIP IN THE FUND

Section	
82-03-01-01	Vested Teachers' Withdrawal From Fund - Refund
82-03-01-02	Nonvested Teachers' Withdrawal From Fund - Refund
82-03-01-03	Termination of Participation
82-03-01-04	Repurchase of Forfeited Service Credit
82-03-01-05	Purchase of Benefit Service Credit

82-03-01-01. Vested teachers' withdrawal from fund - Refund. When a teacher who is vested terminates covered employment, the teacher may claim a refund of assessments paid to the fund during membership. A teacher wishing to claim a refund of assessments must request an application from the fund office, complete the form, and return it for processing. Once the application has been processed, the refund will be paid after one hundred twenty calendar days have expired from the last date of covered employment.

The waiting period may be waived by the board if the teacher produces evidence that the teacher will not be returning to covered employment in North Dakota. The following evidence is required before the board will grant a waiver:

1. Copy of the teacher's resignation letter;
2. Proof that the teacher's employer has accepted the resignation, i.e., letter or copy of official school board minutes; and

3. Proof that the individual has either accepted noncovered employment or permanently relocated out of state.

No refund can be issued to a teacher who has terminated a teaching position only for the summer months or for a leave of absence.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-20

82-03-01-02. Nonvested teachers' withdrawal from fund - Refund. The accumulated assessments of a teacher who is not vested must be automatically refunded to the teacher in accordance with the North Dakota Century Code. A nonvested teacher, who terminates a position of covered employment in North Dakota, may request a waiver of the automatic refund by filing the appropriate forms and necessary information with the fund prior to the automatic refund being issued.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-20

82-03-01-03. Termination of participation. A teacher who terminates covered employment and receives a refund of the teacher's account balance forfeits all benefit service credit under the fund.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-20

82-03-01-04. Repurchase of forfeited service credit. An individual who has forfeited service credit under section 82-03-01-03 may repurchase such service upon return to teaching in accordance with the following:

1. The teacher must have earned at least one year of benefit service credit following the return to teaching.
2. If the repurchase payment is made within five years from the date of initial eligibility, the repurchase cost must be the amount withdrawn plus interest. If the repurchase payment is not made within five years, the cost of the remaining service credit will be calculated on an actuarial equivalent basis. The board may allow the repurchase to be made on a monthly, quarterly, semiannual, or annual basis. Interest is calculated from the date the teacher's account balance is refunded.

3. If a teacher retires prior to full payment of the repurchase amount, service credit will be granted in proportion to the actual payments made or the teacher may elect to have the payments included in a refund of the account balance.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-15

82-03-01-05. Purchase of benefit service credit. A teacher may purchase additional eligible benefit service credit in accordance with the following:

1. Out-of-state teaching service must be verified by the out-of-state retirement system under which the service was earned.
2. Military service must be verified by submitting military service discharge documents.
3. Professional education time must be verified by submitting an official transcript from the educational institution attended.
4. Nonpublic teaching service must be certified by the nonpublic employer.
5. Legislative service must be certified by the teacher's participating employer and must indicate the number of uncompensated days and salary information as required by the fund.
6. Service as a federal administrator or teacher must be verified by the federal agency which employed the teacher.

In all cases, the purchase cost must be on an actuarial equivalent basis determined by applying the actuarial factors adopted by the board.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-24

## ARTICLE 82-04

### CONTRIBUTIONS

Chapter  
82-04-01 Contributions

CHAPTER 82-04-01  
CONTRIBUTIONS

Section	
82-04-01-01	Employer Contributions and Teachers' Assessments
82-04-01-02	Employer Payment of Teachers' Assessments
82-04-01-03	Taxation of Contributions and Benefits
82-04-01-04	Rollover Contributions Not Permitted

82-04-01-01. Employer contributions and teachers' assessments. Teachers' assessments and employer contributions must be paid to the fund administrative office by the fifteenth day of the month following collection of the teachers' assessments.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-09

82-04-01-02. Employer payment of teachers' assessments. Section 414(h) of the Internal Revenue Code of 1986, as amended, allows the employer to pay its employees' contributions to a retirement plan. A participating employer that elects to pay the teachers' assessments may reduce the teachers' current salaries or offset future salary increases by an amount equal to the teachers' assessments paid by the employer. Employer payment of teachers' assessments to the fund is allowed only if the following conditions are satisfied:

1. The participating employer must specify that the contributions are being paid by the employer in lieu of assessments paid by the teacher.
2. Teachers must not have the option of choosing to receive the contributed amounts directly instead of having them paid by the participating employer to the retirement fund.
3. All teachers of a participating employer must be covered by the plan for employer payment of teachers' assessments.
4. All teachers covered under such a plan must be treated equally.
5. The participating employer's plan to pay teachers' assessments must comply with the fund's "plan for employer payment of member assessments to the fund" or other instructions prepared by the fund.
6. The participating employer's contributions paid to the fund must equal assessments paid by the teacher plus the assessments paid by the employer on behalf of the teacher.

7. Salaries, assessments, and contributions paid by the participating employer must be certified by the disbursing official on the required fund reports.
8. Participating employers implementing the plan must report the payment of teachers' assessments to the fund on forms provided by the fund. The employer payment plan will remain in effect until a notice of cancellation is filed with the fund.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-09

82-04-01-03. Taxation of contributions and benefits. Contributions to the fund by participating employers are not subject to taxation as income or wages under state or federal law. Benefits paid by the fund to a member are subject to taxation as income under state and federal law when distributed.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-07, 15-39.1-09(2), 21-10-07

82-04-01-04. Rollover contributions not permitted. Teachers are not permitted to roll over to the fund any moneys from other pension plans, individual retirement accounts, tax-sheltered annuities, or other plans of deferred compensation.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-15

## ARTICLE 82-05

### RETIREMENT BENEFITS

Chapter	
82-05-01	Procedural Requirements
82-05-02	Forms of Benefit Payments
82-05-03	Payment of Benefits
82-05-04	Actuarial Factors
82-05-05	Deferred Retirement Eligibility

CHAPTER 82-05-01  
PROCEDURAL REQUIREMENTS

Section	
82-05-01-01	Application for Benefits
82-05-01-02	Proof of Age
82-05-01-03	Designation of Beneficiary

82-05-01-01. Application for benefits. A teacher or beneficiary must make written application for benefits on enrollment forms provided by the fund before benefits can be paid. The enrollment form must be signed and notarized. The form of payment option selected may not be changed after the first benefit payment has been accepted by the teacher or beneficiary.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-10

82-05-01-02. Proof of age. A teacher applying for a retirement benefit and each beneficiary entitled to a continuing annuity under the joint and survivor option must provide proof of age. The following documents will be accepted as proof of age: birth certificate, baptismal certificate, passport, or official military record.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-10

82-05-01-03. Designation of beneficiary. The teacher shall designate a survivor or a beneficiary on written forms provided by the fund prior to the beginning of benefit payments under a joint and survivor annuity. After benefit payments have begun, the teacher may not change the designated survivor or beneficiary.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-16

CHAPTER 82-05-02  
FORMS OF BENEFIT PAYMENTS

Section	
82-05-02-01	Standard Form of Benefit Payments
82-05-02-02	Optional Forms of Benefit Payments
82-05-02-03	Level Income Option
82-05-02-04	Retroactive Retirement Eligibility

82-05-02-01. Standard form of benefit payments. The standard form of benefit payments under article 82-05 is an annuity payable for the life of the teacher with no survivor annuity.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-10

82-05-02-02. Optional forms of benefit payments. A teacher may elect to receive benefits under article 82-05 in any one of the following forms:

1. Option I. A one hundred percent joint and survivor annuity.
2. Option II. A fifty percent joint and survivor annuity.
3. Option III. An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or sixty months, whichever is longer.
4. Option IV. An annuity payable to the teacher or the teacher's designated beneficiary for the life of the teacher or one hundred twenty months, whichever is longer.

Benefits under the optional forms of payment must be determined on an actuarial equivalent basis. The teacher's choice of benefit under this section is irrevocable; provided, however, that if a teacher's beneficiary predeceases the teacher under options I or II, the form of benefits automatically reverts to the standard form of benefit under section 82-05-02-01.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-16

82-05-02-03. Level income option. A teacher who retires prior to being eligible for social security benefits may elect the level income option. Under the level income option, the teacher's monthly benefit is adjusted so that the combined benefits received from the fund and social security remain level before, and after, the date social security benefits begin. The adjusted benefit payable from the fund must be determined on an actuarial equivalent basis. A teacher is not eligible for the level income option if the level income benefit is less than two hundred dollars per month.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-16

82-05-02-04. Retroactive retirement eligibility. Upon application, a teacher is entitled to receive benefits retroactive to the date of initial eligibility in accordance with the benefit option selected.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-10, 15-39.1-16

#### CHAPTER 82-05-03 PAYMENT OF BENEFITS

Section	
82-05-03-01	When Benefit Payments Begin - Direct Deposit
82-05-03-02	Death Benefits - Proof of Death

82-05-03-01. When benefit payments begin - Direct deposit. If the teacher terminates covered employment within the first fifteen days of the month, retirement benefits are paid beginning the fifteenth day of the month. If a teacher terminates covered employment after the first fifteen days of the month, retirement benefits are paid beginning the first day of the following month.

Annuity payments will be directly deposited to a teacher's account in a bank, credit union, savings and loan, or other financial institution provided that the financial institution is an automated clearing house (ACH) financial participant. The teacher must complete the official direct deposit form provided by the fund.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-10

82-05-03-02. Death benefits - Proof of death. Death benefits will not be paid until the teacher's beneficiary or legal heir submits to the fund proof of the teacher's death. A death certificate will normally be required as proof of death, but in certain cases, the executive director may accept proof other than a death certificate.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-17

CHAPTER 82-05-04  
ACTUARIAL FACTORS

Section  
82-05-04-01 Actuarial Factors

82-05-04-01. Actuarial factors. The board shall adopt actuarial factors for use in determining benefit amounts under the optional joint and survivor, term certain and survivor, level income, and early retirement forms of annuity payments and in determining the cost of additional credit purchased by a member.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-16, 15-39.1-24

CHAPTER 82-05-05  
DEFERRED RETIREMENT ELIGIBILITY

Section  
82-05-05-01 Deferred Retirement Eligibility

82-05-05-01. Deferred retirement eligibility. A teacher who is vested and terminates covered employment must apply for deferred retirement benefits on an official agency form.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-10, 15-39.1-11

ARTICLE 82-06  
SUSPENSION OF BENEFITS

Chapter  
82-06-01 Suspension of Benefits

CHAPTER 82-06-01  
SUSPENSION OF BENEFITS

Section  
82-06-01-01 Suspension of Benefits



82-07-01-01. Definitions. The following definitions govern the determination of disability benefits under the fund:

1. "Medical examination" means an examination conducted by a medical doctor licensed to practice in North Dakota that includes a diagnosis of the disability, the treatment being provided for the disability, the prognosis and classification of the disability, and a statement indicating how the disability prevents the individual from performing the duties of a teacher.
2. "Permanent disability" means a condition of "total disability" that is static or deteriorating and the prognosis does not indicate an anticipated recovery from the disability.
3. "Temporary disability" means a condition of "total disability" that is expected to last at least twelve months, but is not considered permanent.
4. "Total disability" means any medically determinable physical or mental impairment that is expected to last for a continuous period of not less than twelve months and results in the individual's inability to perform the duties of a teacher.

"Total disability" includes conditions of "temporary disability" and "permanent disability" as defined in this section.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

82-07-01-02. Disability retirement eligibility. A teacher, with at least one year of service credit, who suffers from "total disability" is eligible for disability retirement benefits if the teacher became totally disabled while employed as a teacher and otherwise complies with the requirements of article 82-07. If the teacher is eligible for normal retirement benefits, the teacher is not eligible for disability retirement benefits.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-18

82-07-01-03. Determination of disability - Procedures. The following procedures govern the determination of disability benefits under the fund:

1. Application.

- a. Application for disability benefits must be made within six months from the last date of covered employment on the form provided by the fund.
  - b. If the fund member is unable or unwilling to file an application, the teacher's employer or legal representative may file the teacher's disability application.
  - c. The application must explain the cause of the disability, the limitations caused by the disability, the treatment being followed, and the effect of the disability on the individual's ability to perform as a teacher.
2. Medical examination.
- a. The applicant for disability retirement must provide the fund with medical examination reports.
  - b. An initial medical examination should be completed by the teacher's attending or family physician on the medical examination form provided by the fund. If deemed necessary by the fund's medical consultant, an additional examination must be completed by a specialist in the disability involved. Available medical or hospital reports may be accepted in lieu of a medical examination report if deemed acceptable by the fund's medical consultant.
  - c. The fund is not liable for any costs incurred by the applicant in undergoing medical examinations and completing and submitting the necessary medical examination reports, medical reports, and hospital reports.
3. Medical consultant.
- a. The fund shall retain a medical doctor to act as its consultant on disability retirement applications.
  - b. The medical consultant shall review all medical information provided by the applicant.
  - c. The medical consultant shall advise the board regarding the medical diagnosis and whether the condition is a "total disability".
4. Decision.
- a. The board shall consider applications for disability retirement at regularly scheduled board meetings. The discussion concerning disability applications must be confidential and closed to the general public.

- b. The applicant must be notified of the time and date of the meeting and may attend or be represented.
  - c. The executive director shall provide to the board for its consideration a case history brief that includes membership history, medical examination summary, and the medical consultant's conclusions and recommendations.
  - d. The board shall make the determination for eligibility at the meeting unless additional evidence or information is needed.
  - e. If awarded, the disability annuity is payable on, or retroactive to, the first day of the month following the teacher's termination from covered employment.
5. Redetermination and recertification.
- a. A disabled annuitant is subject to redetermination and recertification to maintain eligibility. The schedule for redetermination and recertification must be as follows:
    - (1) Temporary disability. On July first, following the first anniversary date of disability retirement, and every two years thereafter (unless normal retirement is reached). No further recertification is required after the fourth recertification of temporary disability has been filed and accepted.
    - (2) Permanent disability. On July first, following the second anniversary date or disability retirement, and five years thereafter. No further recertification is required after the second recertification of permanent disability has been filed and accepted.
  - b. The fund may require additional recertifications, or waive the necessity for a recertification, if the facts warrant this action.
  - c. The fund will send a recertification form to the disabled annuitant to be completed and sent back to the fund.
  - d. The fund may require the disabled annuitant to be reexamined by a doctor at the annuitant's own expense. The submission of medical reports by the teacher, and the review of those reports by the fund's medical consultant, may satisfy the reexamination requirement.
  - e. The executive director will make the redetermination and recertification decision and bring the matter to the board only if warranted. The disability annuitant may appeal an adverse recertification decision to the board in the same manner as the initial determination.

- f. If it is determined that the disability annuitant was not eligible for benefits during any time period when benefits were provided, the executive director may do all things necessary to recover the erroneously paid benefits.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-18

#### CHAPTER 82-07-02 AGGRIEVED PARTIES' RIGHTS

Section  
82-07-02-01                      Aggrieved Parties' Rights

82-07-02-01. Aggrieved parties' rights. Any applicant aggrieved by a decision of the board may initiate a formal administrative action against the board in accordance with North Dakota Century Code chapter 28-32 (Administrative Agencies Practice Act). The board shall appoint an independent hearing officer from the attorney general's office to officiate the hearing and make findings of fact, conclusions of law, and order. The applicant may appeal the final decision resulting from this procedure to the district court in accordance with the Administrative Agencies Practice Act.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-18

#### CHAPTER 82-07-03 FORMS OF DISABILITY BENEFITS

Section  
82-07-03-01                      Forms of Disability Benefits

82-07-03-01. Forms of disability benefits. Except for the level income with social security, all optional forms of retirement benefits are available to members entitled to disability retirement annuities. If an optional form is selected and the member returns to covered employment. The option selected will apply to the teacher's subsequent retirement.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-18



1. Send an initial notice to each person named therein, together with an explanation of the procedures followed by the fund.
2. If the account is in pay status or begins pay status during the review, segregate in a separate account of the fund or in an escrow account amounts which the alternative payee would be entitled to by direction of the order, if any.
3. Review the domestic relations order to determine if it is a qualified order.
4. If the order is determined to be qualified within eighteen months of receipt:
  - a. Send notice to all persons named in the order and any representatives designated in writing by such person that a determination has been made that the order is a qualified domestic relations order.
  - b. Comply with the terms of the order.
  - c. Distribute the amounts, plus interest, to the alternate payee if a segregated account or an escrow account has been established for an alternate payee.
5. In the event that the order is determined not to be a qualified domestic relations order or a determination cannot be made as to whether the order is qualified or not qualified within eighteen months of receipt of such order:
  - a. Send written notification of such to all parties.
  - b. Distribute the amounts in the segregated account or escrow account, plus interest, to the person or persons who would be entitled to receive such amount in the absence of an order if a segregated account or an escrow account has been established for an alternate payee.
  - c. Apply the qualified domestic relations order prospectively only if determined after the expiration of the eighteen-month period the order as modified, if applicable, is a qualified domestic relations order.

History: Effective September 1, 1990.

General Authority: NDCC 15-39.1-07

Law Implemented: NDCC 15-39.1-12.2

ARTICLE 82-09  
CONFIDENTIALITY OF RECORDS

Chapter  
82-09-01 Confidentiality of Records

CHAPTER 82-09-01  
CONFIDENTIALITY OF RECORDS

Section  
82-09-01-01 Confidentiality of Records

82-09-01-01. Confidentiality of records. Information and records of a teacher that are confidential under North Dakota Century Code section 15-39.1-30 may be disclosed: (1) to a person other than the teacher only when the teacher has given written consent by executing an official "release of information" form prepared by the fund; (2) to a person legally representing the teacher, upon proper proof of representation satisfactory to the fund and its counsel, unless the teacher has specifically informed the fund that the teacher is withholding consent to any disclosure; or (3) to a person authorized by a court order signed by a judge or duly designated clerk of the court.

History: Effective September 1, 1990.  
General Authority: NDCC 15-39.1-07  
Law Implemented: NDCC 15-39.1-30

TITLE 92

Workers Compensation Bureau



SEPTEMBER 1990

92-01-02-20. Classification of employments - Premium rates. Classifications and premium rates, taking into consideration hazards and risks of different occupations, must be those classifications and premium rates contained in the ~~1989~~ 1990 edition of that publication entitled, "North Dakota Workers Compensation Bureau Rates and Classifications" which is hereby adopted by reference thereto and incorporated within this section as though set out in full herein.

Premium rates must be adjusted annually as recommended by the bureau's actuaries based upon the criteria set forth in North Dakota Century Code section 65-04-01.

The minimum premium charge for all classifications will be twenty-five dollars per year except for the following volunteer classifications:

Classification No.

7710	Fire department, volunteer - minimum will be fifty dollars
7715	Civil defense volunteer disaster - minimum will be fifty dollars
9830	Civil air patrol, volunteer - minimum will be one hundred ten dollars
9385	Volunteer programs - minimum will be one hundred fifty dollars
9840	Vocational training and work evaluation programs, volunteer - minimum will be one hundred fifty dollars

History: Effective June 1, 1990; amended effective July 1, 1990.  
General Authority: NDCC 65-02-08, 65-04-01  
Law Implemented: NDCC 65-04-01