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TITLE 7

Agriculture, Commissioner of

OCTOBER 1993

CHAPTER 7-08-01

7-08-01-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adequate fence" means legal fence as defined in North Dakota Century Code section 47-26-01.
2. "Adjacent lands" means lands bordering the wetland or within one-fourth mile of the wetland.
3. "Commissioner" means the commissioner of agriculture.
4. "Drainage" means vulnerable to destruction through artificial or natural process.
- 4- 5. "Participant" means the landowner participating in the program.
- 5- 6. "Program" means the ~~North Dakota~~ state waterbank program.
- 6- 7. "State assessment team" means representatives from the ~~North Dakota~~ department of agriculture, the ~~North Dakota~~ game and fish department, the ~~North Dakota~~ state engineer's staff, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-01

7-08-01-03. State assessment team. The commissioner shall assemble a state assessment team that may assist the commissioner in fulfilling the objectives of the program; make recommendations to the commissioner regarding the areas submitted for participation; and develop management guidelines to be approved by the commissioner which must include technical and management practices and rates of payment and a standardized priority system for evaluating applications. Repealed effective October 1, 1993.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05, 61-31-08, 61-31-10

7-08-01-04. Procedure for participation in the program.

1. Applications for participation in the program are to be submitted to the local United States department of agriculture's soil conservation service representative who will date and review the applications for compliance with approved application procedures and forward the applications to the North Dakota department of agriculture. Applications for the program may be submitted to any representatives of the state assessment team or their agencies to be reviewed and submitted to the commissioner.
2. The state assessment team shall submit recommendations to the commissioner who will make the final determination of applications to be funded according to the commissioner's evaluation of the recommendations and available waterbank funds. A letter of nonacceptance will be mailed to unsuccessful applicants. Unsuccessful applications may be resubmitted to the local United States department of agriculture's soil conservation service along with new applications prior to the next application deadline. Applications may be resubmitted at any time.
3. Renewal of agreements can take place after a written proposal to do so is received from the participant prior to termination of the contract. Such renewal will be subject to redetermination of payment rates.
4. The acreage designated for participation must be documented on an agricultural stabilization and conservation service farm photo, ~~described by linear measurements,~~ and attached to the application or contract, or both.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-05. Reassessment procedure. Repealed effective October 1, 1993.

1. If an applicant is denied participation in the program, the applicant may request a reassessment of his application. The request must be made in writing to the commissioner.
2. The commissioner may request the state assessment team to reassess the application. Upon reassessment, the commissioner may change the original determination if the claim has merit and funds are available.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-08. Acreage limitations and designations. Unless otherwise approved by the commissioner in consultation with the state assessment team:

1. Total acreage [hectarage] of adjacent land must be at least equal to qualifying wetland acreage [hectarage] included in the application but may not exceed four times the acreage [hectarage] of the wetlands. Wetlands previously drained may be offered if the participant will agree to restore such wetlands to levels which will qualify them under North Dakota Century Code section ~~6-31-03~~ 61-31-03.
2. Total acreage [hectarage] allowed for a participant in the program must be at least ten acres [4.05 hectares] and not more than one hundred sixty acres [64.75 hectares] ~~unless otherwise approved by the commissioner upon consultation with the state assessment team.~~
3. The acreage [hectarage] designated for participation must be described by metes and bounds or other legal description or method specifically delineating the acreage [hectarage] to be included in the program.
4. Acreage [hectarage] selected for the program must have signs posted to indicate participation in the program and whether walking public access is allowed on that acreage [hectarage].

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-03, 61-31-05

7-08-01-09. The waterbank agreement. Repealed effective October 1, 1993. ~~The waterbank agreement must include the following:~~

1. ~~The number of years of participation.~~
2. ~~The present rate and conditions that vary the rate of payment.~~
3. ~~The incentive payments, if applicable.~~
4. ~~Duties of the parties to the waterbank agreement as prescribed in North Dakota Century Code sections 61-31-04 and 61-31-05.~~
5. ~~Signatures of the commissioner and the participant.~~
6. ~~Whether or not the participant will allow the land to be open for emergency haying or grazing and conditions applicable to the allowance of emergency haying or grazing.~~
7. ~~A clause permitting access to the program lands for inspection by a representative of the commissioner.~~
8. ~~A copy of the waterbank program rules and the management guidelines.~~
9. ~~A statement that the participant agrees to manage wetland acreage and adjacent land in accordance with the waterbank agreement and management guidelines adopted by the state assessment team.~~

History: ~~Effective August 1, 1987, amended effective February 1, 1988, May 1, 1990.~~

General Authority: ~~NBCE 61-31-01~~

Law Implemented: ~~NBCE 61-31-03, 61-31-04, 61-31-05~~

7-08-01-10. Drought emergency. If the governor or the United States department of agriculture declares a drought emergency, the grass cover on lands included in the program may be released to a qualified participant for haying or grazing with the authorization of and under the terms prescribed by the commissioner as provided in subsection 4 of North Dakota Century Code section 61-31-05.

1. A written request to open program lands for haying or grazing must be submitted to the commissioner by the participant.
2. The release date must be determined by the commissioner of agriculture with the approval of the state game and fish ~~commissioner~~ director. Under no circumstances shall emergency haying or grazing be allowed prior to July fifth.
3. Notice of approval of the request to hay or graze a waterbank tract and the conditions to do so must be mailed to the participant.
4. Conditions shall include, but are not limited to, the following: date on which entry can be made on the land and

date by which all hay, machinery, or livestock must be removed from the tract; the amount and date by which, or how payment is to be submitted to the commissioner's office; the date on which the tract will be open to haying or grazing, or both. The payment for hay or grass may be deducted from the next waterbank payment, provided it is not the last year of the contract period.

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-05

7-08-01-11. Violations.

1. It is a violation of the waterbank agreement if the participant does not fulfill each and every term of the waterbank agreement established between the participant and the commissioner, including the management guidelines adopted by the state assessment team which are incorporated by reference into the waterbank agreement.
2. ~~If the commissioner determines a violation of the waterbank agreement has occurred, a hearing must be held in accordance with North Dakota Century Code chapter 28-32.~~ If the commissioner determines a violation of the waterbank agreement has occurred, the commissioner may take enforcement in concert with North Dakota Century Code chapter 61-31 or other applicable statutes as the commissioner deems appropriate. The participant may appeal the decision pursuant to North Dakota Century Code chapter 28-32.
- 3- ~~The penalties for violations must be imposed in accordance with subsection 5 of North Dakota Century Code section 61-31-04.~~

History: Effective August 1, 1987; amended effective February 1, 1988; May 1, 1990; October 1, 1993.

General Authority: NDCC 61-31-01

Law Implemented: NDCC 61-31-04

TITLE 13

Banking and Financial Institutions, Department of

AUGUST 1993

CHAPTER 13-03-05

13-03-05-00.1. Definitions.

1. "Continuing credit union" means the credit union whose charter continues upon merging with the merging credit union.
2. "Merging credit union" means the credit union whose charter ceases to exist upon merging with the continuing credit union.

History: Effective August 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-01. Procedure. Any state-chartered credit union planning to merge shall follow and comply with the following procedure:

1. The board of directors of each affected state-chartered credit union shall pass a resolution by a majority of the directors, in favor of the merger, stating specific terms, if any.
2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. The commissioner board, in the exercise of the commissioner's board's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members.

3. When subsections 1 and 2 have been completed, application to the state credit union board may be made, by letter, duly signed by the president and attested to by the secretary of the respective boards of directors, to consummate the merger. An application to merge must be filed with the board to approve the merger by the proper officials of each of the credit unions.

4. Prior to action on the proposed merger by the board, the secretary or the board shall notify all credit unions in the field of membership, or within a fifty-mile [80.47 kilometers] radius of a closed field of membership credit union's office, of the merging credit union of the proposed merger. The notice must specify the names and locations of both the merging credit union and the continuing credit union, and the time and place of the board meeting at which the proposed merger will be considered. Interested credit unions will be given an opportunity to comment on the proposed merger in writing and at the meeting at which the proposal is considered. The board may, when it believes it to be in the public interest, request a hearing be held. Notice of hearing on an application will, if requested, be at least thirty days prior to the hearing. Notice of the proposed merger does not have to be given or a hearing held when the continuing credit union is to receive assistance from the national credit union administration.

5. All laws and regulations of the national credit union share insurance fund applicable to merging insured credit unions must be complied with before the merger is consummated.

6. Upon approval of the merger, the continuing credit union may apply to assume the field of membership of the merging credit union, pursuant to the requirements of chapter 13-03-14.

History: Amended effective February 1, 1981; August 1, 1993.

General Authority: NDCC 6-01-04, ~~6-06-36~~, ~~6-06-37~~

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-02. Determination by board - Surrender of charter. When section ~~13-03-05-01~~ has been completed, the state credit union board, by resolution shall approve or disapprove the proposed merger, within thirty days after receipt of the application, and so advise the credit unions involved of its decision. If approved, the absorbed credit union shall surrender its charter to the commissioner of banking and financial institutions, who shall forward it to the secretary of state for cancellation. Repealed effective August 1, 1993.

General Authority: NDCC ~~6-01-04~~, ~~6-06-36~~, ~~6-06-37~~

Law Implemented: NDCC ~~6-06-36~~, ~~6-06-37~~

13-03-05-03. Compatibility with other laws and rules. Nothing in this chapter shall be deemed to be in conflict with the applicable federal regulation or North Dakota law governing mergers of credit unions. Repealed effective August 1, 1993.

General Authority: NDCC 6-01-04, 6-06-36, 6-06-37

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-04. Considerations for approval. In considering the application for merger, the board shall examine and consider all relevant factors including:

1. Whether proper notification has been given to all members, unless the membership meeting has been waived by the board.
2. The comments of the members of each credit union to be merged.
3. If there is more than one potential merger partner, consideration may be given to the credit union with a more similar field of membership or in closer proximity to the merging credit union.
4. The financial condition of the continuing credit union.

History: Effective August 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-05. Prohibitions. Members of the board who are also directors, committee members, or staff of one of the merging credit unions, shall declare a conflict of interest and must abstain from voting on the merger application.

History: Effective August 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-06. Determination by board - Surrender of charter. When section 13-03-05-01 has been completed, the board, by order shall approve or disapprove the proposed merger, within thirty days after receipt of the application or within thirty days after the date of hearing if a hearing is conducted, and so advise the credit unions involved of its decision. If approved, the merging credit union shall surrender its charter to the commissioner, who shall forward it to the secretary of state for cancellation.

History: Effective August 1, 1993.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-36, 6-06-37

13-03-05-07. Compatibility with other laws and rules. Nothing in this chapter shall be deemed to be in conflict with the applicable federal regulation or North Dakota law governing mergers of credit unions.

History: Effective August 1, 1993.

General Authority: NDCC 6-01-04, 6-06-36, 6-06-37

Law Implemented: NDCC 6-06-36, 6-06-37

TITLE 20
Dental Examiners, Board of

OCTOBER 1993

CHAPTER 20-01-02

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

1. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.
2. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.
3. "Conscious sedation" means a drug-induced state in which the patient is calmed and relaxed, capable of making rational responses to commands and has all protective reflexes intact, including the ability to clear and maintain his own airway in a patent state, but does not include nitrous oxide sedation.
4. "Coronal polishing" is the mechanical polishing of clinical crowns using a ~~rotary instrument and a~~ rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.

- ~~3-~~ 5. "Dental assistant" means a person who functions in an auxiliary capacity under the direct supervision of a licensed dentist, except as expressly authorized by the board under subsection 2 of North Dakota Century Code section 43-20-12, to whom may be delegated certain procedures over which the dentist exercises full responsibility, except those procedures which require professional judgment and skill such as diagnosis and treatment planning, cutting of hard or soft tissue, or any intraoral procedure which would lead to the fabrication of any appliance which, when worn by a patient, would come in direct contact with hard or soft tissue and which could result in tissue irritation or injury under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.
- ~~4-~~ 6. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the council on education commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.
7. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.
- ~~5-~~ 8. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedure, and, procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, personally evaluates the performance of the auxiliary dental hygienist or dental assistant.
9. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.
10. "General anesthesia" means a controlled state of unconsciousness produced by pharmacologic or nonpharmacologic methods, or a combination thereof, accompanied by a partial or

complete loss of protective reflexes including an inability to independently maintain an airway and to respond purposefully to physical stimulation or verbal commands.

- 6- 11. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility.
- 7- 12. "~~Indirect supervision~~" means ~~the dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed by the auxiliary~~ that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.
13. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.
14. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.
15. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.
16. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has completed two years of full-time work experience as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota state board of dental examiners.
17. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on his annual registration certificate.

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

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-02, 43-20-12, 43-28-06

CHAPTER 20-02-01

20-02-01-01. Advertising.

1. Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which is false, deceptive, or misleading is prohibited.
2. All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.
3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's specialization provided that the dentist has successfully completed an educational program accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the ~~council~~ commission on dental education accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that his practice is limited to the special area of dental practice in which the dentist has or wishes to announce.
4. A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the North Dakota state board of dental examiners within thirty days following a request from the board for such copies.
5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.

6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.

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

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-02. Office emergency. Every dentist or dental hygienist licensed to practice practicing in North Dakota must have a current certificate of proficiency in cardiopulmonary resuscitation.

History: Effective February 1, 1992; amended effective October 1, 1993.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

20-02-01-04.1 Restricted license to practice dentistry. The board may grant a restricted license to practice dentistry at a single specific location in North Dakota, renewable annually by application to the board, when the following conditions are met:

1. The dentist is currently licensed in the state of Minnesota.
2. The dentist is actively engaged in dental practice in Moorhead, Minnesota.
3. The dentist wishes to participate in the Fargo-Moorhead community dental emergency treatment service and see emergency dental patients as a member of the emergency call rotation schedule.
4. The dentist agrees to treat only emergency dental patients who have been referred by the Fargo-Moorhead community dental emergency treatment service for care and only at the dental emergency treatment facility located at Dakota Hospital in Fargo, North Dakota.
5. The dentist has made application for a restricted dental license in the manner prescribed by the board.
6. The dentist has paid the nonrefundable application and license fee prescribed by the board.
7. If the Fargo-Moorhead community dental emergency treatment service ceases to function or if Dakota Hospital in Fargo, North Dakota, no longer provides a community dental emergency treatment facility, licenses issued under provisions of this rule are automatically revoked.

History: Effective October 1, 1993.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

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

1. On and after October 1, 1993, a dentist licensed under North Dakota Century Code chapter 43-28 may not use general anesthesia or conscious sedation on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable annually thereafter, authorizing the use of such general anesthesia or conscious sedation.
2. An applicant may not be issued a permit initially as required in subsection 1 unless:
 - a. The dental examiners approve the applicant's facility after an inspection conducted by the dental examiners or by an individual designated by the dental examiners;
 - b. The dental examiners are satisfied that the applicant is in compliance with guidelines in the American dental association guidelines for teaching and comprehensive control of pain and anxiety in dentistry; and
 - c. The initial application includes payment of a fee in the amount determined by the dental examiners.
3. The dental examiners may renew such permit annually, provided:
 - a. Application for renewal is received by the dental examiners before the date of expiration of such permit;
 - b. Payment of a renewal fee in the amount to be determined by the dental examiners is received with such application; and
 - c. An onsite evaluation of the dentist's facility is conducted by the dental examiners or by an individual designated by the dental examiners, provided such examination is conducted without cost to the state not less than once every five years after the initial evaluation of such facility and the dental examiners approve the results of each such evaluation.

History: Effective October 1, 1993.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-06. Continuing dental education for dentists, dental hygienists, and dental assistants. Each dentist, dental hygienist, or dental assistant licensed or registered in this state shall provide evidence on forms supplied by the board that the person has attended or participated in continuing dental education in accordance with the following conditions:

1. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in actual teaching sessions. Subject matter directly related to clinical dentistry will be accepted by the board without limit. Limits are established for nonclinical subjects.
2. The minimum number of hours required within a five-year cycle for dentists is eighty.
3. The minimum number of hours required within a five-year cycle for dental hygienists is forty.
4. The minimum number of hours for a registered dental assistant is eight hours annually.
5. Of these hours, a dentist may earn no more than fifteen hours, a dental hygienist may earn no more than eight hours, and a registered dental assistant may earn no more than four hours in nonclinical subjects relating to the dental profession.
6. Nonclinical subjects relating to the dental profession are those which cover skills relating to dental services in general which are not related to, but are nevertheless supportive of, the provision of clinical dental services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.
7. Examples of nonclinical subjects that will not be creditable to the continuing education requirement are those that deal with estate planning, financial planning, marketing, investments, and personal health.
8. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable towards the continuing dental education requirement.
9. The infection control continuing education requirement for dentists, dental hygienists, and registered dental assistants is two hours annually and is a requirement for renewal of the annual certificate of registration. This training may be accomplished in an office setting or at a sponsored course.

History: Effective October 1, 1993.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-20-12.1, 43-28-06, 43-28-12.2

20-02-01-07. Removable dental prostheses owner identification.

1. Every complete upper and lower denture or removable dental prosthesis fabricated by a dentist or fabricated pursuant to the dentist's work order must be marked with the name or social security number of the patient for whom the prosthesis is intended. The markings must be done during the fabrication process and must be permanent, and cosmetically acceptable. The exact location of the markings and methods used to apply or implant them shall be determined by the dentist or dental laboratory fabricating the prosthesis. If in the professional judgment of the dentist or dental laboratory this identification is not practical, identification must be provided as follows:
 - a. The initials of the patient may be used if the entire name or social security number is not practical.
 - b. The identification marks may be omitted in their entirety if no form of identification is practical or clinically safe.
2. Failure of any dentist to comply with this section shall be deemed to be a violation of the rules of the board and the dentist may be liable to penalty as permitted under statute.

History: Effective October 1, 1993.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-03-01

20-03-01-01. Duties. A dental assistant may perform the services listed in subsections 1 through 6 under direct supervision, ~~direction~~ ~~and responsibility~~ of a licensed dentist. A dental assistant may perform the duties set forth in subsections 7 through ~~23~~ 27 only if the dental assistant is a certified dental assistant, the dental assistant has a certificate of successful completion of a course in dental assisting from a school recognized by the American dental association, or the dental assistant has successfully completed a course approved by the North Dakota board of dental examiners.

1. Take and record pulse, blood pressure, and temperature.
2. Take and record preliminary dental and medical history for the interpretation by the dentist.
3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.
4. Receive removable dental prosthesis for cleaning or repair.
5. Take impressions for study casts.
6. Hold impression trays in the mouth (e.g. reversible hydrocolloids, rubber base).
7. Take dental radiographs.
8. Remove sutures.
9. Apply anticariogenic agents topically.
10. Place and remove rubber dams.
11. Remove excess supragingival cement from coronal surfaces of teeth with hand instruments only.
12. Place and remove orthodontic wires or appliances that have been activated by the dentist.
13. Tie ligature wires or elastic ties.
14. Preselect and prefit orthodontic bands.
15. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.

16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Place and remove periodontal dressings.
18. Place orthodontic elastic-type separators.
19. Remove ligature wires or elastic ties, or both.
20. Remove arch wires.
21. Perform nonsurgical clinical and laboratory oral diagnosis tests for interpretation by the dentist.
22. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.
23. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
24. Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards.
25. Apply desensitizing solutions to the external surfaces of the teeth.
26. Place and remove matrix bands.
27. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the teeth.

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

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-02. Prohibited services. A dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing or contouring of a final restoration.

6. Any intraoral procedure which would lead to the fabrication of any appliance, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards.
7. Activating any type of orthodontic appliance.
8. Cementing or removing orthodontic bands.
9. Direct bonding or removal of orthodontic brackets.
10. Apply pit and fissure sealants.
11. ~~Place or remove matrix bands.~~
- ~~12.~~ Placing bases or cavity liners.
- ~~13.~~ 12. Scaling, root planing, or gingival curettage.
- ~~14.~~ 13. Measuring the gingival sulcus with a periodontal probe.

History: Effective February 1, 1992; amended effective October 1, 1993.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-12

20-03-01-03. Annual registration of dental assistants performing expanded duties.

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through 27 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the administrative secretary of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.
2. A certificate of registration will be issued by the board to a dental assistant when:
 - a. The dental assistant has applied to the board and paid the registration fee determined by the board, and;

- b. The dental assistant possesses one of the following professional qualifications:
- (1) The dental assistant is currently dental assistant certified by dental assisting national board;
 - (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or
 - (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.
3. Every dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.
4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.
5. A dental assistant who is not registered may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.
6. The provisions requiring registration contained in this section do not apply to dental assistants who are employed on a part-time basis and who are qualified as required by section 20-03-01-03. Part-time employment is defined as working less than twenty-six hours per week or a period of employment of less than ninety days.
7. Current certification in cardiopulmonary resuscitation shall be required for registration.

History: Effective October 1, 1993.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-06

CHAPTER 20-04-01

20-04-01-01. Duties. A dental hygienist may perform the following services under the direct or modified general supervision, ~~direction~~ and responsibility of a ~~licensed~~ dentist.

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.
2. Polish and smooth existing restorations.
3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth.
4. Take impressions for study casts.
5. Take and record preliminary medical and dental histories for the interpretation by the dentist.
6. Take and record pulse, blood pressure, and temperature.
7. Take dental radiographs.
8. Hold impression trays in the mouth after placement by a dentist (e.g. reversible hydrocolloids, rubber base, etc.).
9. Receive removable dental prosthesis for cleaning and repair.
10. Remove sutures.
11. Apply anticariogenic agents topically.
12. Place and remove rubber dams.
13. Place and remove orthodontic wires or appliances, or both, that have been activated by the dentist.
14. Tie ligature wires or elastic ties, or both.
15. Preselect and prefit orthodontic bands.
16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.
17. Fabricate, place, and remove a temporary crown or onlay. This applies only to a tooth or teeth actively under treatment for which a permanent restoration is being fabricated.

18. Place and remove periodontal dressings.
19. Place orthodontic elastic-type separators.
20. Remove ligature wires or elastic ties, or both.
21. Remove arch wires.
22. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.
23. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.
24. Apply etching solutions to teeth and etch enamel and place pit and fissure sealants. When a dentist delegates this task to a dental hygienist, the application of the sealant must, without exception, be done as a four-handed procedure from the time the etchant is placed on the tooth until the sealant is cured.
25. A dentist or program manager, supervising federal-sponsored or state-sponsored public health dental hygiene programs, may petition the state board of dental examiners for a specific exemption to the requirement for four-handed application of pit and fissure sealants by dental hygienists.
26. A dental hygienist may practice under general supervision in a federal or state dental public health setting when a supervisory dentist has examined the patient and has evaluated the patient's dental health plan and has issued to a licensed dental hygienist specific written orders for the prescribed treatment. The dentist or program manager operating federal-sponsored or state-sponsored dental public health clinics shall obtain from the state board of dental examiners the specific written authority to utilize general supervision of dental hygienists.
27. Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for athletic mouth guards.
28. Apply desensitizing solutions to the external surfaces of the teeth.
29. Place and remove matrix bands.

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

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

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

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. Administering of local or general anesthetics.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing or contouring of a final restoration.
6. Any intraoral procedure which would lead to the fabrication of any appliance, with the exception of taking impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for athletic mouth guards.
7. Activating any type of orthodontic appliance.
8. Cementing or removing orthodontic bands.
9. Direct bonding or removal of orthodontic brackets.
10. ~~Place or remove matrix bands.~~
- ~~11.~~ Placing bases or cavity liners.

History: Effective February 1, 1992; amended effective October 1, 1993.

General Authority: NDCC 43-20-10

Law Implemented: NDCC 43-20-03

CHAPTER 20-05-01

20-05-01-01. Fees. The following fees apply to the services listed:

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred dollars for a dentist and fifty-five dollars for a dental hygienist.
2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.
3. The nonrefundable fee to process an application for a temporary license to practice dentistry is four hundred fifty dollars.
4. The certificate of registration annual renewal fee is ninety dollars for a dentist and forty-five dollars for a dental hygienist.
5. The penalty for late renewal of annual certificate of registration is one hundred dollars for dentists and dental hygienists and dental assistants in addition to the fee specified above for renewal.
6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is twenty-five dollars.
7. The fee to reactivate a retired dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars.
8. The fee for annual registration for registered dental assistants is twenty-five dollars.
9. The nonrefundable fee to process an application by a Moorhead, Minnesota dentist for a restricted dental license to treat emergency dental patients at Dakota Hospital in Fargo, North Dakota, is one hundred dollars.
10. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at Dakota Hospital in Fargo, North Dakota, is fifty dollars.
11. The fee for an onsite facility inspection to obtain permit for anesthesia use is two hundred dollars per hour for time spent

by the inspector to inspect premises plus travel and per diem expense for inspection at the rate charged by the state of North Dakota.

12. The fee for initial application and annual renewal of a permit to use general anesthesia or conscious sedation is one hundred dollars.

History: Effective May 1, 1992; amended effective October 1, 1993.

General Authority: NDCC 43-28-06

Law Implemented: NDCC 43-28-27

TITLE 20.5
Dietetic Practice, Board of

OCTOBER 1993

CHAPTER 20.5-02-01

20.5-02-01-04. Fees. The board has adopted the following fee payment schedule:

1. Initial license fee:

Licensed registered dietitian	\$ 60.00
Licensed nutritionist	60.00
<u>Limited permit</u>	<u>25.00</u>

2. License fees for renewal are:

Licensed registered dietitian	60.00 \$ 45.00
Licensed nutritionist	60.00 <u>45.00</u>
Limited permits	25.00

3. Late fees in the amount of five dollars per month must be charged for all applications received by the board which are postmarked after September thirtieth of the year prior to the year of renewal.
4. Dietetic practitioners who initially become licensed after August first of any year are exempt from licensure renewal for a period of one year.
5. Limited permits are issued for one year and are renewable for six additional months. On receipt of notification of change in status to registered dietitian, no additional fee is charged until renewal time, at which time the initial fee would be due.

History: Effective December 1, 1986; amended effective October 1, 1993.
General Authority: NDCC 43-44-03
Law Implemented: NDCC 43-44-03, 43-44-05, 43-44-12

TITLE 30
Game and Fish Department

SEPTEMBER 1993

CHAPTER 30-03-03

30-03-03-03. Dimensions. The structure shall not ~~be cover an~~ area of more than fourteen feet [4.25 meters] long nor more than ten feet [3 meters] wide one hundred forty-four square feet [13.38 square meters]. It shall be constructed of a floatable material. It shall be constructed in such a manner as to be readily removable from the ice at any time. It shall have painted upon the exterior in readily distinguishable characters at least six inches [152 millimeters] high, the license number and name and address of the owner. Holes not to exceed twelve inches [30.5 centimeters] in diameter or square may be made in the ice for the purpose of angling.

History: Amended effective September 1, 1993.

General Authority: NDCC 20.1-06-07

Law Implemented: NDCC 20.1-06-07

CHAPTER 30-04-06

30-04-06-02. Fees. Each petition shall be accompanied by a two dollar application fee. In addition to the application fee, the following fees are required for each license that is to be replaced:

Type of License	Fee
Resident fishing licenses	\$ 1.00
Husband-wife resident fishing license	1.00
Resident senior citizen fishing license	1.00
Resident totally or permanently disabled fishing license	1.00
Nonresident fishing license	4.00
Nonresident husband-wife fishing license	8.00
Trout and salmon license	1.00
Resident small game and habitat license (age 19 and over)	1.00
Resident youth small game and habitat license (under age 19)	1.00
Nonresident small game - including general game, habitat, and certificate	10.00 20.00
Nonresident small game/waterfowl - including general game, habitat, and certificate	10.00 20.00
Resident deer bow big game license	8.00
Youth resident big game license	4.00
Nonresident deer bow big game license	18.00 20.00
Resident fur-bearer license	1.00
Resident antelope bow license	8.00
Nonresident antelope bow license	18.00
Resident deer gun license	8.00
Nonresident deer gun license	18.00
Resident general game <u>and habitat</u> license	1.00
Nonresident general game <u>and habitat</u> license	1.00
Nonresident nongame license	2.00
Wild turkey license	2.00
Guide license	2.00
Combination license	4.00
<u>Resident swan license</u>	<u>1.00</u>
<u>Nonresident swan license</u>	<u>3.00</u>

History: Effective September 1, 1983; amended effective June 1, 1984; April 1, 1986; June 1, 1992; September 1, 1993.

General Authority: NDCC 20.1-02-05

Law Implemented: NDCC 20.1-02-05

CHAPTER 30-05-03

30-05-03-01. Brewer Lake. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of Brewer Lake (Erie Dam) in Cass County. Repealed effective September 1, 1993.

History: Amended effective August 1, 1980.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-02. Clausen Springs Lake. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of Clausen Springs Lake in Barnes County. Repealed effective September 1, 1993.

History: Amended effective October 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-03. Crown Butte. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of Crown Butte Reservoir in Morton County. Repealed effective September 1, 1993.

History: Amended effective June 1, 1985.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-04. North Golden Lake. Boats powered by motors of more than ten horsepower are prohibited on the waters of North Golden Lake in Steele County. Repealed effective September 1, 1993.

General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-06. Watershed Dam No. 4 (Fordville Dam). Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited Motorboat operators on the waters of Watershed Dam No. 4 (Fordville Dam) on the Forest River in Grand Forks County must operate their boats at idle speed only. "Idle speed" is defined as operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective November 1, 1978; amended effective August 1, 1980; September 1, 1993.

General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-08. Camels Hump Dam. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of Camels Hump Dam in Golden Valley County. Repealed effective September 1, 1993.

History: Effective August 1, 1980; amended effective June 1, 1985.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-09. Indian Creek Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of the Indian Creek Dam in Hettinger County. Repealed effective September 1, 1993.

History: Effective August 1, 1980.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-11. Fish Creek Dam. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of the Fish Creek Dam in Morton County. Repealed effective September 1, 1993.

History: Effective August 1, 1980.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-13. Hooker Lake. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of Hooker Lake in Rolette County. Repealed effective September 1, 1993.

History: Effective August 1, 1980; amended effective June 1, 1985.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-14. Arroda Lakes, East and West. Boats powered by gas, gasoline, diesel, or other internal combustion motors are prohibited on the waters of east and west Arroda Lakes in Oliver County. Repealed effective September 1, 1993.

History: Effective August 1, 1980; amended effective June 1, 1985.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-15. Kota-Ray Dam. Boats powered by motors of more than ten horsepower are prohibited. Motorboat operators on the waters of Kota-Ray Dam in Williams County must operate their boats at idle speed only. "Idle speed" is defined as operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective August 1, 1980; amended effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-19. Balta Dam. Boats powered by motors of more than ten horsepower are prohibited on the waters of the Balta Dam located in section fifteen of Balta Township (T154N, R73W) in Pierce County. Repealed effective September 1, 1993.

History: Effective November 1, 1983.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-27. Riverdale Spillway Pond. Motorboat operators on the waters of Riverdale Spillway Pond in McLean County must operate their boats at idle speed only. "Idle speed" is defined as operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-28. Jensen Lake. Motorboat operators on the waters of Jensen Lake in Rolette County must operate their boats at idle speed only. "Idle speed" is defined as operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-29. Carbury Dam. Motorboat operators on the waters of Carbury Dam in Bottineau County must operate their boats at idle speed only. "Idle speed" is defined as operating the motorboat at the slowest possible speed necessary to maintain steerage.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-30. Raleigh Reservoir. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Raleigh Reservoir in Grant County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-31. Dickinson Dike. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Dickinson Dike in Stark County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-32. Sather Dam. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Sather Dam in McKenzie County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-33. Lightning Lake. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Lightning Lake in McLean County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-34. Strawberry Lake. Boats powered by gas, gasohol, diesel, or other internal combustion motors are prohibited on the waters of Strawberry Lake in Bottineau County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

30-05-03-35. Spring Park Lakes (Williston Park Ponds). Boats powered by motors are prohibited on the waters of Spring Park Lakes (Williston Park Ponds) in Williams County.

History: Effective September 1, 1993.
General Authority: NDCC 20.1-13-12
Law Implemented: NDCC 20.1-13-12

TITLE 33

Health and Consolidated Laboratories, Department of

AUGUST 1993

CHAPTER 33-20-01.1

33-20-01.1-03. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 23-29, except:

1. "Agricultural waste" means solid waste derived from the production and processing of crops and livestock such as manure, spoiled grain, grain screenings, undigested rumen material, livestock carcasses, fertilizer, and fertilizer containers, but does not include pesticide waste or pesticide containers.
2. "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.
3. "Aquifer" means a geological formation, group of formations, or portion of formation capable of yielding significant quantities of ground water to wells or springs.
4. "Closed unit" means a landfill or surface impoundment or a portion thereof that has received solid waste for which closure is complete.
5. "Closure" means the taking of those actions to close and reclaim a solid waste management unit or facility. Closure actions may include, but are not limited to, sloping filled areas to provide adequate drainage, applying final cover, providing erosion control measures, grading and seeding, installing monitoring devices, constructing surface water

control structures, installing gas control systems, and measures necessary to secure the site.

6. "Commercial waste" means solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities exclusive of household waste, ~~inert waste~~, ~~infectious waste~~, industrial waste, and ~~hazardous~~ special waste.
7. "Compliance boundary" means the vertical planar surface that circumscribes the waste management units at which the ground water protection standards apply. The compliance boundary may be either the facility boundary or an alternative boundary within the facility.
8. "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.
9. "Detachable container" means a reusable container for the collection, storage, or transportation of solid waste that is mechanically loaded or handled (for example, "dumpsters" and "rolloffs").
10. "Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading, and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive solid waste from off-site.
11. "Energy conversion facility" has the same meaning as in North Dakota Century Code subsection 5 of section 49-22-03, except that refining of liquid hydrocarbon products is excluded.
12. "Existing unit" means a landfill or surface impoundment or a portion thereof that is receiving or has received solid waste for which closure has not been completed.
- ~~12.~~ 13. "Facility" means all contiguous land and structures, other appurtenances, and improvements on land which include one or more solid waste management units, such as a transfer station, solid waste storage building, a solid waste processing system, a resource recovery system, an incinerator, a surface impoundment, a surface waste pile, a land treatment area, or a landfill. A facility may or may not be used solely for solid waste management.
- ~~13.~~ 14. "Final cover" means any combination of compacted or uncompact earth material, synthetic material, and suitable plant growth material which, after closure, will be permanently exposed to the weather and which is spread on the top and side slopes of a landfill or facility.

- ~~14.~~ 15. "Free liquid" means the liquid which separates from the solid portion of a solid waste under ambient pressure and normal, above freezing temperature. The environmental protection agency paint filter liquids test method or visual evidence must be used to determine if a waste contains free liquid.
- ~~15.~~ 16. "Garbage" means putrescible solid waste such as animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, and processing plants.
- ~~16.~~ 17. "Ground water" means water below the land surface in a geologic unit in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.
- ~~17.~~ 18. "Hazardous waste" has the meaning given by North Dakota Century Code section 23-20.3-02 and further defined in chapter 33-24-02.
- ~~18.~~ 19. "Household waste" means solid waste, such as trash and garbage, normally derived from households, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.
- ~~19.~~ 20. "Incinerator" has the meaning given by section 33-15-01-04.
- ~~20.~~ 21. "Industrial waste" has the same meaning as ~~special waste given by~~ in North Dakota Century Code section 23-29-03. Such waste may include, but is not limited to, residues or spills of any industrial or manufacturing process and waste resulting from the following: fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; textile manufacturing; transportation equipment; petroleum refining; and the combustion of municipal waste or regulated infectious waste.
- ~~21.~~ 22. "Inert waste" means nonputrescible solid waste which will not generally contaminate water or form a contaminated leachate. Inert waste does not serve as food for vectors. Inert waste includes, but is not limited to: construction and demolition material such as metal, wood, bricks, masonry and cement concrete; asphalt concrete; tires; metal; tree branches; bottom ash from coal fired boilers; and waste coal fines from air pollution control equipment.
- ~~22.~~ 23. "Land treatment" means the controlled application of solid waste, excluding application of animal manure, into the

surface soil to alter the physical, chemical, and biological properties of the waste.

- ~~23.~~ 24. "Landfill" has the meaning given by North Dakota Century Code section 23-29-03 and that is not a land treatment unit, surface impoundment, injection well, or waste pile.
- ~~24.~~ 25. "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.
- ~~25.~~ 26. "Leachate collection system" means any combination of landfill base slopes, liners, permeable zones, pipes, detection systems, sumps, pumps, holding areas or retention structures, treatment systems, or other features that are designed, constructed, and maintained to contain, collect, detect, remove, and treat leachate.
- ~~26.~~ 27. "Municipal waste incinerator ash" means the residue produced by the incineration or gasification of municipal waste.
- ~~27.~~ 28. "Plan of operation" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.
- ~~28.~~ 29. "Postclosure period" means the period of time following closure of a solid waste management unit during which the owner or operator must perform postclosure activities.
- ~~29.~~ 30. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.
- ~~30.~~ 31. "Recover or recycle" means any method, technique, or process utilized to separate, process, modify, convert, treat, shred, compress, or otherwise prepare solid waste so that component materials or substances may be beneficially used or reused.
- ~~31.~~ 32. "Recyclable materials" means all solid waste material that has been converted into a raw material or a substitute for a raw material or a commodity.
- ~~32.~~ 33. "Scavenging" means uncontrolled removal of solid waste materials from any solid waste management facility.
- ~~33.~~ 34. "Sequential partial closure" means bringing discrete, usually adjacent, portions of a disposal facility to elevation and grade in an orderly, continually progressing process as part of the operations of the facility for facilitating closure.
- ~~34.~~ 35. "Sludge" means solid waste in a semisolid form consisting of a mixture of solids and water, oils, or other liquids.

- ~~35.~~ 36. "Solid waste processing" means an operation for the purpose of modifying the characteristics or properties of solid waste to facilitate transportation, resource recovery, or disposal of solid waste including any process designed to recover or recycle waste.
- ~~36.~~ 37. "Suitable plant growth material" means that soil material (normally the A and the upper portion of B horizons which are dark colored due to organic staining) which, based upon a soil survey, is acceptable as a medium for plant growth when respread on the surface of regraded areas.
- ~~37.~~ 38. "Surface impoundment" means a human-made excavation, diked area, or natural topographic depression designed to hold an accumulation of solid waste which is liquid, liquid bearing, or sludge for containment, treatment, or disposal.
- ~~38.~~ 39. "Transfer station" means a site or building used to transfer solid waste from a vehicle or a container, such as a rolloff box, into another vehicle or container for transport to another facility.
40. "Treatment" means a method or process designed to change the physical, chemical, or biological character or composition of a solid waste or leachate so as to neutralize the waste or leachate or so as to render the waste or leachate safer for public health or environmental resources during transport, storage, or disposal. The term does not include resource recovery.
- ~~39.~~ 41. "Waste pile or pile" means any noncontainerized accumulation of nonflowing solid waste.

History: Effective December 1, 1992; amended effective August 1, 1993.
 General Authority: NDCC 23-29-04
 Law Implemented: NDCC 23-29-04

33-20-01.1-05. Collection and transportation vehicles.

1. Vehicles used for the commercial collection and transportation of any residue, sludge, agricultural, inert, ~~or~~ industrial solid waste, or special waste must be loaded and moved in such a manner that the contents will not fall, leak, or spill therefrom. Where spillage does occur, the collector or transporter shall immediately return spilled waste to the vehicle or container and, if necessary, clean and decontaminate the area.
2. Vehicles used for the commercial collection and transportation of regulated infectious waste, household waste, or municipal waste incinerator ash must be fully leakproof and fully enclosed or covered to prevent scattering of material.

Regulated infectious waste may not be subject to mechanical stress or compaction during loading, unloading, and transit. Any spilled material must be immediately returned to the transport vehicle or container and, if necessary, the area must be cleaned and decontaminated.

3. The cargo-carrying body of a vehicle used for commercial collection or transportation of solid waste must be maintained in good repair and in sanitary condition.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-05.2

~~33-20-01.1-10. Variances. Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe. Repealed effective August 1, 1993.~~

~~History: Effective December 1, 1992.~~

~~General Authority: NDCC 23-29-04~~

~~Law Implemented: NDCC 23-29-04~~

33-20-01.1-11. Industrial waste and special waste. Every person who generates industrial waste or special waste or who operates a landfill for disposal of municipal waste, industrial waste, or special waste shall comply with this article and this section.

1. Industrial waste, except as provided by subsection 3:

- a. May be codisposed with municipal waste in a municipal waste landfill in amounts less than or equal to ten percent by month of the weight of the municipal waste, except that the accumulated amount of industrial waste must not exceed twenty thousand tons [18,143.69 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month; or
- b. May be disposed in a landfill which complies with chapter 33-20-07.1, except that the accumulated amount must not exceed twenty-five thousand tons [22,679.62 metric tons] per year or three thousand tons [2,721.55 metric tons] in any one month unless larger amounts in one month resulting from remediation of spills or cleanup projects are approved by the department; or

- c. Otherwise must be disposed in a landfill which complies with chapter 33-20-10 when the amount exceeds twenty-five thousand tons [22,679.62 metric tons] per year.
2. The disposal of special waste must comply with chapter 33-20-07.1
3. The disposal of municipal waste (MSW) incinerator ash in an accumulated amount greater than three thousand tons [2,721.55 metric tons] per year must comply with chapter 33-20-10.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-12. Waste treatment. The department may require the treatment of a solid waste which may have incompatible characteristics with another solid waste prior to or during codisposal or which may produce a constituent in the waste's laboratory extract or leachate that exceeds twenty percent of a toxicity standard provided by section 33-24-02-14 or ten parts per million polychlorinated byphenols. The department must consider factors such as the site hydrogeological characteristics, toxicity of the waste, anticipated leachate quality, mobility of waste constituents, fate of leachate constituents during migration, potential site capacity, or local uses of waters of the state.

1. Treatment, when performed, must reduce:
 - a. Toxicity of the waste; or
 - b. The mobility of constituents contained in or derived from the waste into leachate; or
 - c. Both the toxicity and mobility.
2. When treatment is required, the generator of the solid waste or the owner or operator of the facility at which the waste would be treated must provide a demonstration of the treatment technology for approval by the department.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-13. Certified laboratory. All waste, leachate, and water analysis required by article 33-20 must be conducted by a laboratory approved by the department's certification procedures.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-01.1-14. Variances. Whereupon written application the department finds that by reason of exceptional circumstances strict conformity with any provisions of this article would cause undue hardship or would be unreasonable, impractical, or not feasible under the circumstances, the department may permit a variance from this article upon such conditions and within such time limitations as it may prescribe.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-03.1

33-20-03.1-02. Permit application procedures.

1. An application for a permit must be submitted on forms **provided by** available from the department by any person desiring to transport solid waste or to establish, construct, or operate a solid waste management unit or facility.
2. The application for a permit must be prepared by the applicant or the applicant's authorized agent and signed by the applicant.
3. Four copies of the application and supporting documents are required to be submitted to the department with the fee specified in chapter 33-20-15.
4. Upon the submission of an application for a permit for a new solid waste management unit or facility, the applicant shall publish a public notice indicating that an application has been submitted to the department. The public notice must indicate the type and location of the unit or facility and must be made by two separate publications in the official county newspaper in the county in which the site or operation is located. The applicant shall provide proof of publication by submitting to the department, within thirty days after the second publication of the notice, and affidavit from the publisher accompanied by a copy of the published notice, which shows the date of publication. The department may require public notice for major modifications of permitted units or facilities.
5. Applicants proposing a solid waste management facility in a mining permit area for disposal of coal processing waste must also file a copy of the application with the public service commission in accordance with subdivision a of subsection 1 of section 69-05.2-19-02.
6. Applications for a solid waste management unit or facility permit must include the following information where applicable:
 - a. A description of the categories of solid waste to be accepted;
 - b. Detailed geologic and hydrogeologic evaluation;
 - c. Soil survey and segregation of suitable plant growth material;
 - d. Site engineering plans and facility specifications;

- e. Plan of operation;
- f. Surface water and ground water protection provisions;
- g. Odors, dust, and open burning control provisions;
- h. Accident prevention and safety provisions;
- i. Fire protection provisions;
- j. Inspection, recordkeeping, and reporting procedures;
- k. Access control and facility sign descriptions;
- l. Operator training procedures;
- m. Construction quality assurance and quality control procedures;
- n. Closure and postclosure period procedures;
- o. Financial assurance provisions; and
- p. Documentation of conformance with the district solid waste management plan.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

33-20-03.1-04. ~~Amendment of existing~~ Existing permits. A permittee of an existing permit on December 1, 1992, that is subject to this article shall ~~apply to notify~~ the department ~~for such permit amendments~~ of all requirements, including a proposed schedule, as are necessary to bring the ~~permit~~ permittee into compliance with this article. The ~~application notification~~ must be submitted to the department before October 9, 1993, ~~or prior to the expiration of the permit, whichever is later.~~ The department ~~may~~ must establish a permit compliance schedule to achieve compliance with this article. ~~Any permittee that makes timely application for a permit amendment under this section may not be deemed in violation of this article solely because the permit does not meet the requirements of this article.~~

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04, 23-29-07

CHAPTER 33-20-04.1

33-20-04.1-01. General location standards.

1. No solid waste management facility may be located in areas which result in impacts to human health or environmental resources or in an area which is unsuitable because of reasons of topography, geology, hydrology, or soils.
2. Sites for new, or for lateral expansions of, land treatment units, surface impoundments closed with solid waste in place, municipal waste landfills, ~~and~~ industrial waste landfills, and special waste landfills must **emphasize favorable** minimize, control, or prevent the movement of waste or waste constituents with geologic conditions and engineered improvements. Sites should be underlain by **thick sequences of** materials with low permeability to provide a barrier to contaminant migration.
 - a. The following geographic areas or conditions must be excluded in the consideration of a site:
 - (1) Where the waste is disposed within an aquifer;
 - (2) Within a public water supply designated wellhead protection area;
 - (3) Within a one-hundred-year floodplain;
 - (4) Where geologic or manmade features, including underground mines, may result in differential settlement or failure of the structural integrity of the facility;
 - (5) On the edge of or within channels, ravines, or steep topography whose slope is unstable due to erosion or mass movement;
 - (6) Within woody draws; or
 - (7) In areas designated as critical habitats for endangered or threatened species of plant, fish, or wildlife.
 - b. The following geographic areas or conditions may not be approved by the department as a site unless the applicant demonstrates there are no reasonable alternatives:
 - (1) Over or immediately adjacent to principal glacial drift aquifers identified by the state engineer;

- (2) Closer than one thousand feet [304.8 meters] to a down gradient drinking water supply well;
 - (3) Closer than two hundred feet [60.96 meters] horizontally from the ordinary high water elevation of any surface water or wetland;
 - (4) Within final cuts of surface mines; or
 - (5) Closer than one thousand feet [304.8 meters] to any state or national park.
- c. The department may establish alternative criteria based on specific site conditions.
3. No municipal waste landfill or lateral expansion may be located within ten thousand feet [3048 meters] of any airport runway currently used by turbojet aircraft or five thousand feet [1524 meters] of any runway currently used by only piston-type aircraft.
 4. A minimum horizontal separation of twenty-five feet [7.62 meters] must be maintained between new or lateral expansions of solid waste management units and any aboveground or underground pipeline or transmission line. The owner shall designate the location of all such lines and easements.

History: Effective December 1, 1992; amended effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

33-20-04.1-03. Plan of operation. All solid waste management facilities, except those permitted by rule, shall meet the requirements of this section.

1. The owner or operator of a solid waste management unit or facility shall prepare and implement a plan of operation approved by the department as part of the permit. The plan must describe the facility's operation to operating personnel and the facility must be operated in accordance with the plan. The plan of operation must be available for inspection at the request of the department. Each plan of operation must include, where applicable:
 - a. A waste acceptance plan detailing categories of solid waste to be accepted at the facility, waste acceptance and rejection procedures, and other information deemed necessary by the owner or operator;
 - b. A description of waste handling procedures;

- c. A description of inspection and monitoring activities including frequency;
- d. A contingency plan describing what actions will be taken for the following:
 - (1) Fire or explosion;
 - (2) Leaks;
 - (3) Ground water contamination;
 - (4) Other releases (for example, dust, debris, failure of run-on diversion or runoff containment systems); and
 - (5) Any other issues pertinent to the facility.
- e. Equipment, operation, and maintenance procedures;
- f. Safety and health plans or procedures;
- g. For landfills, implementation of sequential partial closure;
- h. An industrial waste or special waste management plan that describes how industrial waste or special waste delivered to a solid waste management facility will be managed. The owner or operator must specify:
 - (1) A procedure for notifying solid waste generators and haulers of the facility operating requirements and restrictions;
 - (2) A procedure for evaluating waste characteristics, liquid content, the specific analyses that may be required for specific wastes, and the criteria used to determine when analyses are necessary, the frequency of testing, and the analytical methods to be used;
 - (3) A procedure for inspecting and managing the waste and for identifying any special management requirements, and the rationale for accepting or rejecting a waste based on its volume and characteristics;
 - (4) The plan must address how the following solid waste will be managed:
 - (a) Bulk chemical containers which contain free product or residue;
 - (b) Asbestos;

- (c) Waste containing polychlorinated biphenyls at a concentration less than fifty parts per million;
 - (d) Radioactive waste;
 - (e) Rendering and slaughterhouse waste;
 - (f) Wastes that could spontaneously combust or that could ignite other waste because of high temperatures;
 - (g) Foundry waste;
 - (h) Ash from incinerators, resource recovery facilities, and power plants;
 - (i) Paint residues, paint filters, and paint dust;
 - (j) Sludges, including ink sludges, lime sludge, wood sludge, and paper sludge;
 - (k) Fiberglass, urethane, polyurethane, and epoxy resin waste;
 - (l) Spent activated carbon filters;
 - (m) Oil and gas exploration and production waste;
 - (n) Wastes containing free liquids;
 - (o) Contaminated soil waste from cleanup of spilled products or wastes; and
 - (p) Any other solid waste that the owner or operator plans to handle.
- (5) The owner or operator must indicate in the plan any solid waste that will not be accepted at the facility; and
- (6) The owner or operator must amend the plan whenever the management practices or wastes have changed. The owner or operator shall submit the amended plan to the department for approval or disapproval.
2. The owner or operator shall inspect the facility to ensure compliance with the approved plans and specifications and this article. The owner or operator shall keep an inspection log including at least the date of inspection, the name of the inspector, a notation of observations made, and the date and nature of any repairs or corrective action taken. The log must be kept at the facility or other permanent office from

the date of inspection. Inspection records must be made available to the department upon request.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-04.1-09. General disposal standards.

1. In addition to sections 33-20-04.1-02, 33-20-04.1-03, 33-20-04.1-04, and 33-20-04.1-05, the standards of this section apply to all landfills, surface impoundments closed with solid waste in place, and land treatment units, unless otherwise indicated.
2. Construction and operation standards for solid waste management facilities regulated by this section:
 - a. Every solid waste landfill or facility shall have and maintain, or have access to, equipment adequate for the excavation, compaction, covering, surface water management, and monitoring procedures required by approval plans and this article.
 - b. Roads must be constructed and maintained to provide access to the facility. Access roads must be cleaned and decontaminated as necessary.
 - c. There must be available an adequate supply of suitable cover material, which, if necessary, must be stockpiled and protected for winter operation.
 - d. The final cover of all disposal facilities must be designed and constructed in a manner that ensures the quality and integrity of the hydraulic barrier and the protective vegetative cover.
 - e. The working face or open area of a landfill must be limited in size to as small an area as practicable. Sequential partial closure must be implemented as necessary to keep the disposal area as small as practicable and to close filled areas in a timely manner.
 - f. The disposal of liquids, sludges, and wastes containing free liquids in excess of household quantities is prohibited unless authorized by the department.
 - g. All disposal facilities shall identify, quantify, remove, stockpile, and maintain suitable plant growth material for later use in closure.

- h. Any recycling or salvage activity must be authorized by the owner or operator and must be in a separate area in a manner to avoid injury and interference with the landfill operation.
 - i. Vehicles, farm machinery, metal appliances, or other similar items brought to the facility for recycling may be stored temporarily in a separate area.
 - j. Vector control measures, in addition to the application of cover material, must be instituted whenever necessary to prevent the transmission of disease, prevent bird hazards to aircraft, and otherwise prevent and reduce hazards created by rats, flies, snakes, insects, birds, cats, dogs, and skunks.
 - k. All domestic animals must be excluded from the facility. Feeding of garbage to animals is prohibited.
 - l. All earthen material must be maintained onsite unless removal from the site is authorized by the department.
3. Construction and operation standards, excluding inert waste landfills.
- a. The landfill must be designed and operated to prevent the run-on and runoff of surface waters resulting from a maximum flow of a twenty-five-year, twenty-four-hour storm.
 - b. Facilities receiving on average over twenty tons [18.2 metric tons] per day of solid waste shall make provisions for measuring all waste delivered to and disposed in the facility. Weight measurements are preferable; volume measurements (cubic yards) are acceptable.
 - c. Active areas of the landfill must be surveyed periodically to ensure that filling is proceeding in a manner consistent with the landfill design and that closure grades are not exceeded.
 - d. All surface water resulting from run-on, runoff, snowmelt, infiltration, direct precipitation, or leachate must be properly controlled to avoid any concentration of water on or in the waste and to minimize infiltration of water into the waste material. Waste disposal shall avoid any areas within the facility where surface water is concentrated.
4. Closure standards, excluding land treatment units.
- a. Closed solid waste management units may not be used for cultivated crops, heavy grazing, buildings, or any other

use which might disturb the protective vegetative and soil cover.

- b. All solid waste management units must be closed with a final cover designed to:
 - (1) Have a permeability less than or equal to the permeability of any bottom liner or natural subsoils present;
 - (2) Minimize precipitation run-on from adjacent areas;
 - (3) Minimize erosion and optimize drainage of precipitation falling on the landfill. The grade of slopes may not be less than three percent, nor more than fifteen percent, unless the permit applicant or permittee provides justification to show steeper slopes are stable and will not result in excessive erosion. In no instance may slopes exceed twenty-five percent; and
 - (4) Provide a surface drainage system which does not adversely affect drainage from adjacent lands.
 - c. The final cover must include six inches [15.2 centimeters] or more of suitable plant growth material which must be seeded with shallow rooted grass or native vegetation.
5. Postclosure standards for solid waste management facilities regulated by this section.
- a. The owner or operator of a landfill or a surface impoundment closed with solid waste in place shall meet the following during the postclosure period:
 - (1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cover to correct effects of settlement, subsidence, and other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;
 - (2) Maintain and operate the leachate collection system, if applicable;
 - (3) Monitor the ground water and maintain the ground water monitoring system, if applicable; and
 - (4) Operate and maintain the gas control system, if applicable.
 - b. The owner or operator of a municipal waste landfill, an industrial waste landfill, a special waste landfill, a surface impoundment closed with solid waste remaining in

place, or a land treatment facility shall prepare and implement a written postclosure plan approved by the department as a part of the permitting process. The postclosure plan must address facility maintenance and monitoring activities for a postclosure period of thirty years.

- (1) Postclosure includes appropriate: ground water monitoring; surface water monitoring; gas monitoring; and maintenance of the facility, facility structures, and ground water monitoring systems.
- (2) The postclosure plan must project time intervals at which postclosure activities are to be implemented, identify postclosure cost estimates, and projected fund withdrawals from the financial assurance instrument.
- (3) The department may require an owner or operator to amend the postclosure plan, including an extension of the postclosure period, and implement the changes. If the permittee demonstrates that the facility is stabilized, the department may authorize the owner or operator to discontinue postclosure activities.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-05.1

33-20-05.1-02. Performance and design criteria. The owner or operator of an inert waste landfill shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers.
2. Disposal of the following solid waste into inert waste landfills is prohibited: agricultural waste, asbestos waste, ~~hazardous waste~~, municipal waste, commercial waste, industrial waste, special waste, regulated infectious waste, liquid solid waste, hazardous waste, and radioactive waste, ~~and municipal waste incinerator ash~~.
3. All wastes deposited at the site must be spread and periodically compacted to promote drainage of surface water.
4. All wastes must be covered at least two times per year with a minimum of six inches [15.2 centimeters] of suitable earthen material.
 - a. The department may exempt the owner or operator of the landfill from this requirement based on the type and amount of waste received at the landfill and the site location.
 - b. This requirement does not apply to monofills used solely for bottom ash from coal fired boilers.

History: Effective December 1, 1992; amended effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-06.1

33-20-06.1-02. Performance and design criteria. The owner or operator of a municipal waste landfill facility shall comply with these design, construction, and operating standards.

1. Access to the facility must be controlled by lockable gates and a combination of fencing, natural barriers, or artificial barriers. The gates must be locked when an attendant is on duty.
2. Any new or lateral expansion of a municipal waste landfill must be underlain with a hydraulic barrier and leachate removal system capable of collecting and removing leachate and contaminated surface water within the landfill.
 - a. The liner and leachate removal system must be compatible with the waste and leachate.
 - b. The liner and leachate removal system must maintain its integrity for the life of the facility and the postclosure period.
 - c. The leachate removal system must have a collection efficiency of ninety percent or better and be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
 - d. The liner must consist of one of the following:
 - (1) A natural soil liner constructed of at least four feet [1.2 meters] of natural soil having a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second; or
 - (2) A composite liner consisting of two components; the upper component must consist of a minimum thirty mil flexible membrane liner, and the lower component must consist of at least a two-foot [61.0-centimeter] layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second. Flexible membrane liner components consisting of high density polyethylene must be at least sixty mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component.
 - e. The drainage layer of the leachate removal system must have a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout. The drainage layer must

have sufficient thickness to provide a transmissivity of 3.0×10^{-2} centimeters squared per second or greater.

- f. Appropriate measures must be provided as necessary for preparation of the liner subgrade, quality assurance, and quality control testing of the construction of the liner and leachate removal system, and protection and maintenance of the liner and leachate removal system to ensure the integrity of the system.
 - g. An alternative liner and leachate removal system may be approved by the department based on the proposed system's ability to control leachate migration.
3. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of ninety-five percent or better for rejection or collection of the precipitation that falls on the site.
 4. Methane and other gases from waste decomposition may not be allowed to migrate laterally from the landfill so as to endanger structures, environmental resources, or adjacent properties.
 5. A certified operator must be on duty while the facility is receiving solid waste. Facilities receiving on average over twenty tons [18.2 metric tons] of municipal waste per day shall have an attendant at or near the entrance to the facility to monitor, accept or reject, measure, and record wastes arriving at the facility.
 6. Solid waste must be unloaded at the bottom of the working face of the fill. The waste must then be spread in layers and compacted as densely as practicable. Each layer may not exceed a thickness of two feet [61.0 centimeters] of material after compaction is completed.
 7. Household pet animal carcasses may be buried along with other municipal household waste. Larger animal carcasses must be disposed of immediately and must be placed at least four feet [1.2 meters] below grade with at least twelve inches [30.5 centimeters] of cover material directly covering the carcass.
 8. The following wastes may not be accepted for disposal in municipal waste landfills unless approved by the department:
 - a. Liquids, except in amounts normally in household waste, unless the liquid is leachate or gas condensate derived from the municipal solid waste landfill and the municipal solid waste landfill, whether it is a new or existing landfill or a lateral expansion, is designed with a composite liner and leachate collection system as described in this section.

- b. Regulated infectious waste, except in amounts normally in household waste;
- c. Municipal waste incinerator ash;
- d. Hazardous waste, except in amounts normally in municipal waste;
- e. Pesticide containers which are not empty and have not been triple-rinsed, except those normally in municipal waste;
- f. Waste oil;
- g. Lead acid batteries;
- h. Major appliances;
- i. Industrial waste, if not addressed in the industrial waste management plan and the permit;
- j. Raw or digested sewage sludges, lime sludges, grit chamber cleanings, animal manure, septic tank pumpings, bar screenings, and other sludges, if not included in the permit; and
- k. Other waste, if the department determines that such waste has toxic or adverse characteristics which can impact public health or environmental resources.
 - a. Hazardous waste, except in amounts normally in municipal waste;
 - b. Industrial waste, if not addressed in the industrial waste management plan and the permit;
 - c. Lead acid batteries;
 - d. Liquids, except in amounts normally in household waste, unless the liquid is leachate or gas condensate derived from the municipal solid waste landfill and the municipal solid waste landfill, whether it is a new or existing landfill or a lateral expansion, is designed with a composite liner and leachate collection system as described in this section;
 - e. Major appliances;
 - f. Municipal waste incinerator ash;
 - g. Other waste, if the department determines that such waste has toxic or adverse characteristics which can impact public health or environmental resources;

- h. Pesticide containers which are not empty and have not been triple-rinsed, except those normally in municipal waste;
 - i. Raw or digested sewage sludges, lime sludges, grit chamber cleanings, animal manure, septic tank pumpings, bar screenings, and other sludges, if not included in the permit;
 - j. Regulated infectious waste, except in amounts normally in household waste;
 - k. Special waste; and
 - l. Waste oil.
9. A uniform compacted layer of six inches [15.2 centimeters] or more of suitable earthen material or other departmentally approved material must be placed on all solid waste by the end of each working day. All cover must be free of trash, garbage, or other similar waste.
10. On all areas where final cover or additional solid waste will not be placed within one month, an additional six inches [15.2 centimeters] or more of compacted, clay-rich earthen material must be placed. This intermediate cover may be removed when disposal operations resume.

History: Effective December 1, 1992; amended effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-07.1

33-20-07.1-01. Performance and design criteria. In addition to the requirements of ~~sections 33-20-01.1-02,~~ section 33-20-01.1-08, ~~33-20-04.1-03,~~ ~~33-20-04.1-04,~~ ~~33-20-04.1-05,~~ ~~and 33-20-04.1-09~~ and chapter 33-20-04.1, the owner or operator of an industrial waste landfill or a special waste landfill shall comply with the design, construction, and operating standards as follows:

1. On all areas of the landfill where final cover or additional solid waste will not be placed within six months, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
2. ~~Waste~~ Solid waste disposal in industrial waste landfills and special waste landfills must be limited to those wastes identified in the permit application or permit. Regulated infectious waste, waste oil as a free liquid, hazardous waste, and radioactive waste may not be accepted for disposal at the landfill.
3. All ~~wastes~~ solid waste deposited at the ~~site~~ landfill must be spread and compacted as densely as practicable to minimize waste volume and promote drainage of surface water.
4. Any new or lateral expansion of an industrial waste landfill must be designed with an appropriate hydraulic barrier and leachate management system capable of collecting and removing leachate and contaminated surface water within the disposal unit.
 - a. The liner and leachate removal system must be compatible with the waste and leachate.
 - b. The liner and leachate removal system must maintain its integrity during the operating period and through the postclosure ~~care~~ period.
 - c. The system must have a collection efficiency of ninety-five percent or better and must be capable of maintaining a hydraulic head of twelve inches [30.5 centimeters] or less above the liner.
 - d. For landfills that receive wastes containing water soluble constituents, the liner must consist of at least four feet [1.2 meters] of compacted natural soil having a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second. This requirement does not apply to landfills

receiving only oil field drilling cuttings and drilling mud.

- e. A composite liner is required for landfills receiving wastes which may contain leachable organic constituents. The liner must consist of at least three feet [91.4 centimeters] of recompacted clay with a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second overlain with at least a sixty mil flexible membrane liner.
- f. The drainage layer must have a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout. The drainage layer must have a sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater.
- g. An alternative liner may be approved by the department based on the proposed system's ability to control leachate migration.
- h. The liner and leachate removal system in combination with the final cover must achieve a site efficiency of at least ninety-eight and one-half percent or better for collection or rejection of the precipitation that falls on the site.
- i. The requirements of this subsection for a liner and leachate collection system may be waived by the department if the permit applicant can demonstrate that, based on geology and hydrology of the site, characteristics of the waste, and engineering design, the liner and leachate collection system is not necessary.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-07.1-02. Closure criteria. In addition to sections 33-20-04.1-05 and 33-20-04.1-09, at closure, an owner or operator shall cover an existing unit with two feet [61.0 centimeters] or more of clay-rich soil material having a hydraulic conductivity of 1×10^{-7} centimeters per second or less placed as a clay cap on the landfill. An additional layer of clay-rich soil material must be placed over the compacted clay cap; the upper twelve inches [30.5 centimeters] of this layer must be suitable for serving as a plant root zone. The department may allow the use of a synthetic material to replace part or all of the compacted clay cap. At least six inches [15.2 centimeters] of suitable plant growth material must be placed over the covered landfill and planted with adapted grasses. The total depth of the final cover must be five feet [1.5 meters] or more, or as required by necessary to meet the requirement of subdivision h of subsection 4 of section 33-20-07.1-01.

History: Effective December 1, 1992; amended effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

STAFF COMMENT: Chapter 33-20-10 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-20-10
LARGE VOLUME INDUSTRIAL WASTE AND MSW ASH LANDFILLS

Section	
33-20-10-01	Applicability
33-20-10-02	MSW Ash Treatment
33-20-10-03	Waste Disposal
33-20-10-04	Landfill Cover and Closure

33-20-10-01. Applicability. The requirements of this chapter apply to the treatment and disposal of solid wastes which meet the criteria of subsections 1 and 3 of section 33-20-01.1-11.

History: Effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

33-20-10-02. MSW ash treatment. The owner or operator must propose treatment of municipal waste (MSW) incinerator ash for department approval.

History: Effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

33-20-10-03. Waste disposal. In addition to the requirements of section 33-20-01.1-08 and chapter 33-20-04.1, the owner or operator of a landfill shall comply with the performance and design criteria as follows:

1. Any new or lateral expansion of a landfill must be designed with a hydraulic barrier and leachate management system.
 - a. Synthetic liners, leachate detection systems, and leachate removal systems must be compatible with solid waste disposed and the waste's leachate.
 - b. Leachate removal and management systems must be capable of collecting and removing leachate and contaminated surface water.
 - c. Synthetic liners and leachate removal systems must withstand all physical and chemical stresses during the operating period and through the postclosure period.

- d. The synthetic liners and leachate collection systems must have a collection efficiency of ninety-seven percent or better of precipitation falling on the fill area before closure and must be capable of removing leachate to limit the hydraulic head above the upper liner, exclusive of collection sumps, to twelve inches [30.5 centimeters] or less within thirty-six hours of a precipitation event.
 - e. A composite liner is required which includes at a minimum from bottom to top:
 - (1) At least three feet [91.4 centimeters] of recompacted clay with a hydraulic conductivity not to exceed 1×10^{-7} centimeters per second;
 - (2) A synthetic flexible membrane liner at least sixty mil thick;
 - (3) A secondary drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or greater throughout and with sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater;
 - (4) A synthetic flexible membrane liner at least eighty mil thick; and
 - (5) A drainage layer with a hydraulic conductivity of 1×10^{-3} centimeters per second or greater and with sufficient thickness to provide a transmissivity of 3×10^{-2} centimeters squared per second or greater.
 - f. No composite liner may be exposed to freezing more than one winter season. At least three feet of solid waste or other material approved by the department must be placed above the upper drainage layer on all lined areas by December first. No disposal may take place after December first in areas which have not met this requirement without first testing the composite liner's integrity and receiving approval from the department.
2. The facility must include a leachate detection and collection system and an onsite leachate management system or offsite leachate management.
- a. The amount of leachate collected for onsite or offsite management must be measured and recorded.
 - b. The quality of the leachate must be periodically evaluated on a schedule proposed by the facility owner and approved by the department.

- c. The department may require the construction of onsite surface impoundments to achieve the equivalent or better design standards of onsite landfills, based on site specific factors such as hydrogeological characteristics, anticipated leachate quality, anticipated static head or expected duration of use.
 - d. The department may require an owner or operator to control wildlife access to onsite surface impoundments based upon leachate quality and site circumstances.
3. Runoff must be contained, collected, and transferred to an onsite surface impoundment, unless another management method is approved by the department.
4. Solid waste disposal in landfills must be limited to those wastes identified in the permit application, waste acceptance plan, or permit. Regulated infectious waste, waste oil as a free liquid which can be recovered or recycled, hazardous waste, and radioactive waste may not be accepted for disposal at the landfill.
5. All solid wastes deposited at the landfill must be placed, spread, or compacted to minimize or prevent settlement and to promote drainage of surface water. The sequence and direction of below-grade operations must be conducted to prevent surface water from entering the active fill area.
6. On all areas of the landfill where final cover or additional solid waste will not be placed within one month, eight inches [20.3 centimeters] or more of compacted clay-rich soil material, similar material, or a synthetic cover must be placed to prevent ponding of surface water, to minimize infiltration of surface water, and to control windblown dust.
7. The composite liner in combination with the final cover after closure must achieve an efficiency of at least ninety-nine and nine-tenths percent or better for collection or rejection of the precipitation that falls on the landfill.

History: Effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

33-20-10-04. Landfill cover and closure.

1. The owner or operator must place intermittent cover on all exposed solid waste according to the approved operation plan.
 - a. Unless specified otherwise in the operation plan, the solid waste must not be left uncovered for more than forty-eight hours. Cover must be provided by additional

waste or with a suitable material proposed by the landfill owner and approved by the department.

- b. The cover materials used and cover depth must be sufficient to cover the solid waste completely.
2. The final cover at closure must be eight feet [2.74 meters] or more, and meet the requirement of subsection 7 of section 33-20-10-03. In addition, the final cover must include, at a minimum from bottom to top:
 - a. A barrier layer consisting of at least twenty-four inches [61.0 centimeters] of compacted earthen materials with a hydraulic conductivity no greater than 1×10^{-7} centimeters per second;
 - b. A synthetic flexible membrane liner which is at least sixty mil thick;
 - c. A drainage layer consisting of at least six inches [15.2 centimeters] with a transmissivity of 3×10^{-2} centimeters squared per second or greater;
 - d. A layer which is at least thirty-six inches [91.4 centimeters] thick to protect the synthetic liner and barrier layer from freezing, the upper twelve inches [30.5 centimeters] of this layer must be suitable as a plant root zone; and
 - e. A top layer at least six inches [15.2 centimeters] thick consisting of suitable plant growth material.

History: Effective August 1, 1993.
General Authority: NDCC 23-29-04
Law Implemented: NDCC 23-29-04

CHAPTER 33-20-14

33-20-14-04. ~~Closure and postclosure~~ Implementation of financial assurance account establishment and reporting for closure and postclosure.

1. The closure plan and postclosure plan required by this article must specify the financial assurance mechanisms required by this chapter and, if a reserve account, trust fund, surety bond, or insurance policy, the methods and schedules for funding the mechanisms.
2. Publicly owned solid waste disposal facilities shall comply with the following:
 - a. Closure and postclosure financial assurance funds must be generated for each facility as indicated in the closure and postclosure plans;
 - b. Each facility owner or operator must establish a procedure with the financial assurance instruments trustee for notification of nonpayment of funds to be sent to the department; and
 - c. Each owner or operator shall file with the department an annual report of the financial assurance accounts established for closure and postclosure activities.
3. Privately owned solid waste disposal facilities shall comply with the following:
 - a. Each owner or operator shall file with the department an annual audit of the financial assurance ~~accounts~~ mechanisms established for closure and postclosure activities; and
 - b. Annual audits must be conducted by a certified public accountant licensed in the state and must be filed with the department no later than March thirty-first of each year for the previous calendar year, including each ~~of the~~ postclosure care years year of the postclosure period.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04

Law Implemented: NDCC 23-29-04

CHAPTER 33-20-15

33-20-15-01. Application processing fee.

1. Applicants for permits for transporting solid waste and for solid waste management facilities shall pay, at the time the permit application is filed, an application processing fee as follows:
 - a. Seventy-five dollars for a solid waste transporter.
 - b. Five thousand dollars for any solid waste processing and resource recovery system or facility.
 - c. One thousand dollars for any municipal waste landfill facility that receives on average less than twenty tons [18.2 metric tons] per day.
 - d. Three thousand dollars for any municipal waste landfill facility that receives on average from twenty tons [18.2 metric tons] per day to fifty tons [45.4 metric tons] per day.
 - e. Five thousand dollars for any municipal waste landfill facility that receives on average more than fifty tons [45.4 metric tons] per day to five hundred tons [453.5 metric tons] per day.
 - f. Twenty thousand dollars for any municipal waste landfill facility that receives on average more than five hundred tons [453.5 metric tons] per day.
 - g. Five thousand dollars for any surface impoundment facility.
 - h. One thousand dollars for any industrial waste or special waste landfill facility that receives on average ten tons [9.1 metric tons] per day or less.
 - i. Ten thousand dollars for any industrial waste or special waste facility that receives on average more than ten tons [9.1 metric tons] but less than one hundred tons [90.7 metric tons] per day.
 - j. Twenty thousand dollars for any industrial waste or special waste facility that receives on average one hundred tons [90.7 metric tons] or more per day.
 - k. Two thousand dollars for any inert waste landfill that receives on average more than forty tons [18.1 metric tons] per day.

2. Modifications of existing unexpired permits which are initiated by the department may not require an application processing fee. Modifications of existing unexpired permits not initiated by the department that require major review may be required to submit a processing fee with the modification request.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04, 23-29-07.1

Law Implemented: NDCC 23-29-04, 23-29-07.1

33-20-15-02. Annual permit fee. Beginning July 1, 1993, the owners or operators of an activity or facility required to have a permit under these rules are subject to an annual permit fee for each permit. The fee period must begin each July first and the fee must be paid by July thirty-first. All fees must be made payable to the North Dakota state department of health and consolidated laboratories. The annual permit fee is as follows:

1. For a solid waste processing or facility system five hundred dollars.
2. For ~~a~~ industrial waste or special waste facility five hundred dollars.
3. For a municipal waste landfill facility receiving on average more than twenty tons [18.2 metric tons] per day but less than fifty tons [45.4 metric tons] per day five hundred dollars.
4. For a municipal waste landfill facility receiving on average more than fifty tons [45.4 metric tons] per day and less than five hundred tons [453.5 metric tons] per day one thousand dollars.
5. For a municipal waste landfill facility receiving on average more than five hundred tons [453.5 metric tons] per day five thousand dollars.
6. For a surface impoundment facility five hundred dollars.

History: Effective December 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 23-29-04, 23-29-07.1

Law Implemented: NDCC 23-29-04, 23-29-07.1

OCTOBER 1993

STAFF COMMENT: Chapter 33-03-31 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-03-31
CERTIFICATE OF PUBLIC ADVANTAGE

Section
33-03-31-01 Application - Filing Fee

33-03-31-01. Application - Filing Fee. Parties to a cooperative agreement seeking a certificate of public advantage must file an application with the state department of health and consolidated laboratories. The application must be accompanied by a fee totaling forty thousand dollars paid in equal shares by each party to the cooperative agreement. The application and fee must be sent to the accounting division of the department and will be deemed to be filed on the date the application and all fee payments are received by the accounting division. A complete copy of the application must be filed simultaneously with the office of the attorney general.

History: Effective October 1, 1993.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-17.5-03

CHAPTER 33-07-03.1

33-07-03.1-24.1. Nurse aide training, competency evaluation, and registry - General provision - Definitions.

1. "Certified nurse aide" means an individual who has successfully completed the requirements for the department-approved nurse aide training program and competency evaluation, or department-approved competency evaluation and is entered on the registry.
2. "Facility" means skilled nursing facility or nursing facility licensed by the department and does not include any institution that is for the care and treatment of mental diseases or for the mentally retarded or persons with related conditions.
3. "Home health agency" means a public or private agency, organization, facility, or subdivision thereof, engaged in providing home health services to individuals and families where they are presently residing for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability, licensed to operate by the state department of health and consolidated laboratories.
4. "Nurse aide" means any individual providing nursing or nursing-related services to individuals in nursing facilities through home health agencies or other health care facilities.
5. "Nurse aide competency evaluation" means a department-approved testing mechanism consistent with federal regulations and consisting of both a written or oral and a manual skills component, testing the necessary knowledge needed by a nurse aid in order to provide safe care in a nursing facility or home health agency or other health care facility.
6. "Nurse aide registry" means a listing of all persons who have completed a department-approved nurse aide training program and satisfactorily completed a department-approved competency evaluation or a department-approved competency evaluation, and submitted the required initial or renewal information for inclusion on the registry.
7. "Nurse aide training program" means a program to train nurse aides offered by a public or private organization that has been approved by the department.
8. "Qualified instructor" for nursing facility nurse aides means a registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the

provision of long-term care facility services. For nurse aides employed by home health agencies, the instructor must be a registered nurse who possesses a minimum of two years of nursing experience, at least one of which must be in the provision of home health care and who has supervised home health aid services for at least six months or a licensed nurse under the supervision of a qualified instructor. Other professionals such as dietitians or physical therapists may assist with portions of the program other than supervised practical training.

9. "Significant requirements" means federal certification or state licensure requirements which have a large impact on the health and safety of the resident, and have been determined to be out of compliance. Significant licensure requirements will be determined based on the following considerations: seriousness of the noncompliance issue, extent of the noncompliance issue, and history of prior noncompliance issues.
10. "Supervised practical skills training" means manual skills instruction provided through a department-approved program by a qualified instructor or a licensed nurse under the general supervision of a qualified instructor. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-03.1-25. General authority for nurse aide training, competency evaluation, and registry. For purposes of this chapter, department refers to the state department of health and consolidated laboratories or an entity contracted by the department to carry out the responsibilities of the department. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01

33-07-03.1-26. Nurse aide training.

1. Any nurse aide employed by a nursing facility or pursuing nurse aide certification and entry on the nurse aide registry must complete a department-approved training program consisting of a minimum of seventy-five hours, including both manual skills and theory components and a department-approved competency evaluation or a department-approved competency evaluation.

2. Noncertified nurse aides employed by nursing facilities or pursuing nurse aide certification must complete a minimum of sixteen hours of supervised practical skills training from an approved program prior to any hands-on contact with residents or patients. The remainder of the seventy-five hour approved training course and competency evaluation must be completed within four months of the date of first employment.
3. Noncertified nurse aides pursuing certification and employed by home health agencies must complete a minimum of seventy-five hours of training and competency evaluation from a department-approved program prior to hands-on contact with patients. At least sixteen hours of training must be devoted to supervised practical training under the direct supervision of a licensed nurse. Sixteen hours of classroom training must be completed before beginning the supervised practical training if they are pursuing certification and entry on the nurse aide registry.
4. Nurse aides must not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse. Repealed effective October 1, 1993.

History: Effective August 1, 1991.

General Authority: ~~NDCC 23-01-03, 28-32-02~~

Law Implemented: ~~NDCC 23-16-01, 23-17.3-08~~

33-07-03.1-27. Competency evaluation.

1. The competency evaluation must allow a nurse aide, at the nurse aide's option, to establish competency through written or oral and manual skills examination.
2. The examination must address all areas required in the department-approved training program.
3. The examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.
4. The competency evaluation process must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations. Repealed effective October 1, 1993.

History: Effective August 1, 1991.

General Authority: ~~NDCC 23-01-03, 28-32-02~~

Law Implemented: ~~NDCC 23-16-01, 23-17.3-08~~

33-07-03.1-28. Demonstration of skills. The competency evaluation must include a demonstration of the tasks the individual will

be expected to perform as part of the individual's function as a nurse aide. Repealed effective October 1, 1993.

History: Effective August 1, 1991.

General Authority: ~~NDCC 23-01-03, 28-32-02~~

Law Implemented: ~~NDCC 23-16-01, 23-17.3-08~~

33-07-03.1-29. Administration of competency evaluation.

1. The competency evaluation must be administered by the department or a department-approved entity which is neither a licensed nursing facility or a home health agency.
2. The skills demonstration portion of the test must be administered in the facility, patient's home, or laboratory setting comparable to the setting in which the nurse aide will function.
3. The skills demonstration portion of the test must be administered and evaluated by a registered nurse with at least one year of experience in providing care for the elderly or chronically ill resident or patient of any age.
4. The department may permit the written examination to be proctored by facility or agency personnel if the department determines that the procedure adopted assures the competency evaluation is:
 - a. Secure from tampering.
 - b. Standardized and scored by a testing, educational, or other organization approved by the department.
 - c. Exempt from any scoring by facility or agency personnel.
5. Facility or agency personnel may not proctor the skills demonstration portion of the examination.
6. The department shall retract the right to proctor nurse aide competency evaluations from facilities or agencies in which the department finds any evidence of impropriety, including tampering by facility or agency staff. Repealed effective October 1, 1993.

History: Effective August 1, 1991.

General Authority: ~~NDCC 23-01-03, 28-32-02~~

Law Implemented: ~~NDCC 23-16-01, 23-17.3-08~~

33-07-03.1-30. Facility requirements related to nurse aide training, competency evaluation, and registry.

1. Nursing facilities shall not employ only a nurse aides who are currently enrolled in a department-approved training and competency evaluation program or who have aide for more than four months unless the nurse aide has successfully completed a department-approved competency evaluation.
2. No nurse aide employed by a nursing facility may be charged for any portion of a nurse aide training or competency evaluation program, including any fees for textbooks or other required course materials.
3. Cases of alleged abuse, neglect, or misappropriation of resident funds residents' property by nurse aides employed in nursing facilities or home health agencies must be investigated by the facility and the results reported to the department and other officials in accordance with state law within five days of the incident.

History: Effective August 1, 1991; amended effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-03.1-31. Withdrawal and approval of training program status.

- 1- The department shall withdraw approval of a facility or agency based program when a determination has been made that the facility or agency has been found to be out of compliance with significant federal certification or state licensure requirements. The approval, once withdrawn, cannot be reinstated for a period of twenty-four months provided the facility or agency remains in compliance with significant requirements.
- 2- The department shall withdraw approval of a nurse aide training and competency evaluation program if the entity providing the program refuses to permit unannounced visits by the department to ascertain compliance with program requirements.
- 3- Approval of a nurse aide training and competency evaluation program must be granted by the department for a period not to exceed two years.
- 4- The department may approve only nurse aide training and competency evaluations meeting at least the following criteria:
 - a. Consists of no less than seventy-five hours of training.
 - b. Includes training in at least the following subject areas:

- (1) Infection control.
- (2) Safety and emergency procedures.
- (3) Promoting resident and patient independence.
- (4) Respecting resident rights.
- (5) Basic nursing skills.
- (6) Personal care skills.
- (7) Mental health and social service needs.
- (8) Care of cognitively impaired residents or patients.
- (9) Basic restorative services.
- (10) Resident or patient rights. Repealed effective October 1, 1993.

History: Effective August 1, 1991.

General Authority: ~~NBCE 23-01-03, 28-32-02~~

Law Implemented: ~~NBCE 23-16-01, 23-17.3-08~~

33-07-03.1-32. Completion of the competency evaluation program.

- 1. To complete the competency evaluation successfully the individual must, at a minimum, successfully demonstrate competence in the areas listed under subdivision b of subsection 4 of section ~~33-07-03.1-31~~, personal care skills, and any others the nurse aide would be permitted to perform in the facility or through the agency.
- 2. A record of successful completion of the competency evaluation for nurse aides seeking certification must be included in the nurse aide registry within thirty days of the date the individual was found to be competent.
- 3. If the individual fails to complete the evaluation satisfactorily, the facility or agency must advise the individual of the areas in which the individual was inadequate, and that the individual has not more than three opportunities to take the examination.
- 4. If the individual seeking certification fails the examination on the third attempt, the individual must be enrolled in a department approved training program to be completed within four months of the third failure date or cease hands-on provision of resident or patient care. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-03.1-33. Registry information.

1. The department is responsible for the entering of individual names on the nurse aide registry upon receipt of information verifying completion of a department-approved training and competency evaluation program or a department-approved competency evaluation.
2. Information included on the registry must include name, address, social security number, birth date, program provider for the training program, if applicable, and the sponsor for the competency evaluation, as well as the place of employment.
3. The registry must include documentation of abuse, neglect, or misappropriation of resident funds by the nurse aide when validated by the department.
4. Applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be granted reciprocity and entered on the nurse aide registry and may use the title "certified nurse aide". The individual must meet North Dakota requirements for active registry status.
5. Nurse aides meeting the waiver provisions of twenty-four months of continuous employment as a nurse aide prior to December 19, 1989, granted by the department will be listed on the registry with a special designation. This designation will signify the nurse aide has been waived from training and testing requirements but is not certified. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCC 23-01-03, 28-32-02
Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-03.1-34. Disclosure of information.

1. Information contained in the registry will be disclosable to any medicare or medicaid participating facility, nursing facility, home health agency, hospital, ombudsman, or other representative of an official agency, upon request.
2. Specific detailed investigative information regarding validated cases of abuse, neglect, or misappropriation of resident funds is disclosable only upon written request. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCE 23-01-03, 28-32-02
Law Implemented: NDCE 23-16-01

33-07-03.1-35. Registry renewal.

1. Registry status is limited to twenty-four months. Within four months prior to the expiration date of the registry status, the department shall send notice to the nurse aide at the address listed on the registry for the nurse aide regarding application for renewal. Upon receipt of a completed renewal application, and verification of employment within that past twenty-four months, the certified nurse aide will be issued a renewal certificate indicating current status.
2. An individual who has not performed at least one hundred sixty hours of nursing or nursing related services for pay within a continuous twenty-four month period shall complete a department-approved training and competency evaluation program or a department-approved competency evaluation to obtain current registry status. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDCE 23-01-03, 28-32-02
Law Implemented: NDCE 23-16-01, 23-17.3-08

33-07-03.1-36. Complaint appeals process for nurse aides on the state registry.

1. Nurse aides against whom allegations of abuse, neglect, or theft of resident funds or property are made must be:
 - a. Informed by the department of the allegations;
 - b. Informed of the investigation results; and
 - c. Provided the opportunity to request a hearing to rebut the charges.
2. If a hearing is requested, the department will apply to the North Dakota attorney general's office for appointment of a hearing officer. The department will notify the complainant and the accused of the date set for the hearing. If no hearing is requested, the department will submit information specific to validated allegations to the registry.
3. The hearing officer will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If, through the department's investigation process, there is evidence abuse, neglect, or

theft of resident funds or property has occurred, the department shall notify appropriate law enforcement officials.

4. Allegations validated by the department or through the hearing process of abuse, neglect, or theft of resident funds or property by a nurse aide, must:
 - a. Be identified in the nurse aide registry within thirty days of the finding, and
 - b. Remain in the registry for a minimum of five years.
5. The department shall provide the nurse aid against whom an allegation has been validated, with a copy of all information which will be maintained in the registry within thirty days following the addition of the information to the registry.
6. Within thirty days of mailing the notification of a finding adverse to a nurse aide, the nurse aide may contact the department and correct any misstatements or inaccuracies in the information being maintained by the registry on that individual.
7. Any medicare or medicaid participating nursing facility, home health agency, hospital, ombudsman, or any other representative of an official agency with a need to know may receive information contained in the registry by making a written request. Repealed effective October 1, 1993.

History: Effective August 1, 1991.
General Authority: NDGG 28-32-02(1)
Law Implemented: NDGG 23-01-03

STAFF COMMENT: Chapter 33-07-06 contains all new material but is not underscored so as to improve readability.

CHAPTER 33-07-06
NURSE AIDE TRAINING, COMPETENCY EVALUATION, AND REGISTRY

Section	
33-07-06-01	Definitions
33-07-06-02	Nurse Aide Training
33-07-06-03	Nurse Aide Competency Evaluation Programs
33-07-06-04	Administration of Competency Evaluation
33-07-06-05	Withdrawal and Approval of Training Program Status
33-07-06-06	Completion of the Competency Evaluation Program
33-07-06-07	Registry Information
33-07-06-08	Disclosure of Information
33-07-06-09	Registry Renewal
33-07-06-10	Complaint Appeals Process for Nurse Aides on the State Registry

33-07-06-01. Definitions.

1. "Abuse" includes mental, physical, sexual, and verbal abuse. "Mental abuse" includes humiliation, harassment, threats of punishment, or deprivation. "Physical abuse" includes hitting, slapping, pinching, and kicking and controlling behavior through corporal punishment. "Sexual abuse" includes sexual harassment, sexual coercion, sexual contact, or sexual assault. "Verbal abuse" includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.
2. "Certified nurse aide" means an individual who has successfully completed the requirements for the department-approved nurse aide training and competency evaluation program, or department-approved competency evaluation program and is entered on the department's nurse aid registry.
3. "Department" means the state department of health and consolidated laboratories.
4. "Facility" means skilled nursing facility or nursing facility licensed by the department, and does not include any institution that is for the care and treatment of mental diseases or for the mentally retarded or persons with related conditions.

5. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both, without the resident's consent.
6. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel, failure to give proper attention to residents, or failure to carry out resident services through careless oversight.
7. "Nurse aide" means any individual providing nursing or nursing-related services to individuals in a nursing facility or other health care facility, who is not a licensed health professional or someone who volunteers to provide such services without pay.
8. "Nurse aide competency evaluation" means a department-approved testing mechanism consisting of both a written or oral and a manual skills component, testing the necessary knowledge needed by a nurse aide to provide safe care in a nursing facility or other health care facility.
9. "Nurse aide registry" means a listing of all individuals who have satisfactorily completed a department-approved competency evaluation program who have submitted the required initial or renewal information for inclusion on the department's registry and individuals with documented findings of abuse, neglect, or misappropriation of resident property.
10. "Nurse aide training program" means a program to train nurse aides offered by a public or private organization that has been approved by the department.
11. "Qualified instructor" for a nursing facility nurse aides means a registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services. Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a facility based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program. Other health-related professions who have a minimum of one year experience in their field may supplement the instructor.
12. "Significant requirements" means federal certification or state licensure requirements that have a serious or measurable impact on the health and safety of the resident in the facility. This includes a nursing waiver. Significant requirements shall be determined to be out of compliance based

on the following considerations: severity of the noncompliance issue, frequency of the noncompliance issue, and history of prior noncompliance issues.

13. "Supervised practical skills training" means manual skills training provided through a department-approved nurse aide training program in a laboratory or other setting in which the nurse aide demonstrates knowledge while performing tasks on an individual under the direct supervision of a qualified instructor or a licensed nurse under the general supervision of a qualified instructor.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-02. Nurse aide training.

1. Any nurse aide employed by a nursing facility or pursuing nurse aide certification and entry on the nurse aid registry must successfully complete a department-approved training program consisting of a minimum of seventy-five hours and a department-approved competency evaluation or a department-approved competency evaluation.
2. Nurse aides employed by nursing facilities pursuing nurse aid certification must complete a minimum of sixteen hours of classroom training in the following areas from a department-approved nurse aide training program prior to any hands-on contact with residents or patients. The areas are:
 - a. Communication and interpersonal skills;
 - b. Infection control;
 - c. Safety and emergency procedures, including the Heimlich maneuver;
 - d. Promoting residents' independence; and
 - e. Respecting residents' rights.
3. The remainder of the seventy-five hour approved training and competency evaluation program must be completed within four months of the date of first employment in the facility as a nurse aide and must include at least sixteen hours of supervised practical training.
4. Nurse aides may not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse.

5. Nurses aides trained and determined proficient by the instructor to provide specific services to residents who have not completed the competency evaluation program shall provide these services under the general supervision of a licensed or registered nurse.
6. The nurse aide training program must ensure that nurse aides employed by or having an offer of employment from a nursing facility are not charged for any portion of the nurse aide training program including fees for textbooks or other required course materials.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-03. Nurse aide competency evaluation programs.

1. The department-approved competency evaluation program must allow a nurse aide the option of establishing competency through written or oral and manual skills examination.
2. The written or oral examination must address all areas required in the department-approved training program.
3. The written or oral examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.
4. The competency evaluation program must include a demonstration of the randomly selected tasks the individual will be expected to perform as part of the individual's function as a nurse aide.
5. The competency evaluation program must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations.
6. The competency evaluation program must ensure that nurse aides employed by or having an offer of employment from a facility are not charged for any portion of the competency evaluation program.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-04. Administration of competency evaluation.

1. The competency evaluation must be administered and evaluated by the department or a department-approved entity that is

- neither a skilled nursing facility or a nursing facility licensed by the department.
2. The entity that administers the competency evaluation must advise the nurse aide in advance that a record of the successful completion of the evaluation will be included on the department's nurse aide registry.
 3. The skills demonstration portion of the test must be administered in the facility or laboratory setting comparable to the setting in which the nurse aide will function.
 4. The skills demonstration portion of the test must be administered and evaluated by a registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age.
 5. The department may permit the written or oral examination to be proctored by facility personnel if the department determines that the procedure adopted assures the competency evaluation is:
 - a. Secure from tampering.
 - b. Standardized and scored by a testing, educational, or other organization approved by the department.
 - c. Exempt from any scoring by facility personnel.
 6. The department shall retract the right to proctor nurse aide competency evaluations from facilities in which the department finds any evidence of impropriety, including tampering by facility personnel.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-05. Withdrawal and approval of training program status.

1. The department shall withdraw approval of a facility based program when a determination has been made that the facility has been found to be out of compliance with significant federal certification or state licensure requirements. The facility may apply for reinstatement after providing evidence of remaining in compliance with significant requirements for a period of twenty-four consecutive months.
2. The department shall withdraw approval of a nurse aide training and competency evaluation program if the entity providing the program refuses to permit unannounced visits by

the department to ascertain compliance with program requirements.

3. Approval of a nurse aide training and competency evaluation program shall be granted by the department for a period not to exceed two years.
4. The department may approve only nurse aide training and competency evaluation programs meeting at least the following criteria:
 - a. Consists of no less than seventy-five hours of training.
 - b. Includes training in at least the following subject areas:
 - (1) Infection control.
 - (2) Safety and emergency procedures.
 - (3) Promoting resident or patient independence.
 - (4) Respecting resident rights.
 - (5) Basic nursing skills.
 - (6) Personal care skills.
 - (7) Mental health and social service needs.
 - (8) Care of cognitively impaired residents or patients.
 - (9) Basic restorative services.
 - (10) Resident or patient rights.
 - (11) Communication and interpersonal skills.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-06. Completion of the competency evaluation program.

1. To complete the competency evaluation successfully the individual shall, at a minimum, successfully demonstrate written or oral competence in the areas listed under subdivision b of subsection 4 of section 33-07-06-05 and successfully demonstrate competence in performing a random selection of personal care skills.
2. A record of successful completion of the competency evaluation for nurse aides seeking certification must be included in the

- nurse aide registry within thirty days of the date the individual was found to be competent.
3. If the individual fails to complete the evaluation satisfactorily, the competency evaluation program must advise the individual of the areas in which the individual was adequate, and that the individual has not more than three opportunities to take the examination.
 4. If the individual seeking certification fails the examination on the third attempt, the individual must enroll in and complete a department approved training program prior to taking the competency evaluation again.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-07. Registry information.

1. The department is responsible for the entering of individual names on the nurse aide registry upon receipt of information verifying completion of a department-approved training and competency evaluation program or a department-approved competency evaluation.
2. Information included on the registry must include name, address, social security number, birth date, the date the nurse aide became eligible for entry on the registry, and the place of employment.
3. The department shall include documentation of findings of abuse, neglect, or misappropriation of resident property by the nurse aide on the registry when validated by the department.
4. Applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be granted reciprocity and entered on the nurse aide registry and may use the title "certified nurse aide". The individual must meet North Dakota requirements for active registry status.
5. Nurse aides meeting the waiver provisions of twenty-four months of continuous employment as a nurse aide prior to December 19, 1989, granted by the department will be listed on the registry with a special designation. This designation will signify the nurse aide has been waived from training and testing requirements but is not certified.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-08. Disclosure of information.

1. Information contained in the registry will be disclosable to any medicare or medicaid participating facility, nursing facility, home health agency, hospital, ombudsman, other representative of an official agency or other individuals requesting information, upon request.
2. Upon request, the department shall provide the requester with the following information regarding individuals on the registry:
 - a. The date the individual's name was eligible for entry on the registry.
 - b. Any documented findings of abuse, neglect, or misappropriation, including the nature of the allegation and evidence supporting the allegation, the date and outcome of the hearing if one occurred, and any statement by the individual disputing the allegation.
 - c. Any additional information that the department deems necessary.
3. All information contained on the registry regarding a nurse aide will be provided to the nurse aide upon written request of the department.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01

33-07-06-09. Registry renewal.

1. Registry status is limited to twenty-four months. Upon receipt of a completed renewal application, and verification of employment within the immediate past twenty-four months, the certified nurse aide will be issued a renewal certificate indicating current status.
2. An individual who has not performed at least eight hours of nursing or nursing-related services for pay within a continuous twenty-four month period, shall complete a department-approved training and competency evaluation program or a department-approved competency evaluation to obtain current registry status.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-10. Complaint appeals process for nurse aides on the state registry.

1. Nurse aides against whom allegations of abuse, neglect, or theft of resident funds or property are made shall be:
 - a. Informed by the department of the allegations;
 - b. Informed of the investigation results; and
 - c. Provided the opportunity to request a hearing to rebut the charges.
2. If a hearing is requested, the department will apply to the attorney general's office for appointment of a hearing officer. The department will notify the complainant and the accused of the date set for the hearing. If no hearing is requested, the department will submit information specific to validated allegations to the registry.
3. The hearing officer will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If, through the department's investigation process, there is evidence abuse, neglect, or misappropriation of resident property has occurred, the department shall notify law enforcement officials as determined appropriate.
4. Allegations validated by the department or through the hearing process of abuse, neglect, or misappropriation of resident property by a nurse aide, shall:
 - a. Be identified in the nurse aide registry within ten days of the finding; and
 - b. Remain on the registry permanently, unless the finding was made in error, the individual was not found guilty in a court of law, or the department is notified of the nurse aide's death.
5. The department shall provide the nurse aide, against whom an allegation has been validated, with a copy of all information which will be maintained in the registry within thirty days following the addition of the information to the registry.
6. Within thirty days of mailing the notification of a finding adverse to a nurse aide, the nurse aide may contact the department and correct any misstatements or inaccuracies in the information being maintained by the registry on that individual.
7. Any medicare or medicaid participating nursing facility, home health agency, hospital, ombudsman, other representative of an

official agency, or other individual with a need to know may receive information contained in the registry by making a written request.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 23-01-03

TITLE 38
Highway Patrol

AUGUST 1993

CHAPTER 38-06-02

38-06-02-07. Travel restrictions.

1. Single trip permits may not be issued for overdimensional movements between sunset and sunrise unless otherwise authorized by the superintendent.
2. Single trip permits for overwidth exceeding ~~twelve~~ sixteen feet [~~3.66~~ 4.88 meters], or overlength exceeding one hundred ten feet [33.53 meters], may not be issued authorizing movements on Saturday after twelve noon, all day Sunday, and on holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
 - a. When any above-named holiday is on a Sunday, the following Monday is the holiday.
 - b. When any above-named holiday is on a Saturday, the preceding Friday is the holiday.
 - c. No overwidth permit exceeding ~~twelve~~ sixteen feet [~~3.66~~ 4.88 meters], or overlength permit exceeding one hundred ten feet [33.53 meters], will be valid from twelve noon the day before the holiday until sunrise the day after the holiday.
3. Single trip permits may not authorize movements when inclement weather prevails, highways are slippery, or when visibility is poor.

4. Single trip permits do not authorize travel on shoulders of road.
5. A single trip permit is required for each movement that is overdimensional or overweight.
6. A minimum distance of one thousand feet [304.80 meters] is required between vehicles in a convoy of two or more vehicles.

History: Effective January 1, 1988; amended effective August 1, 1993.

General Authority: NDCC 39-12-02

Law Implemented: NDCC 39-12-02

CHAPTER 38-06-03

38-06-03-01. Permit fees. The following fees are to be effective January 1, 1988, ~~however, fees may be paid prior to January 1, 1988, for those permitted movements to be made after January 1, 1988.~~

1. The fee for registered motor vehicles hauling or towing overdimensional or overweight, or both, loads is ten dollars per each single trip permit.
2. The fee for registered motor vehicles that exceed legal size or legal weight, or both, limitations is ten dollars per each single trip permit.
3. The fee for nonregistered self-propelled special mobile equipment that exceeds legal weight limitations is fifteen dollars per each single trip permit.
4. The fee for nonregistered self-propelled special mobile equipment that exceeds legal size limitations only is ten dollars per each single trip permit.
5. The fee for each identification supplement, identifying a motor vehicle and axle configuration so that self-issuing single trip permits can be used, is ten dollars each.
6. The fee for exceeding the federal gross vehicle weight limitation of eighty thousand pounds [36,287 kilograms] on the interstate highway system is five dollars per each "interstate only" single trip permit.
7. The fee for vehicles hauling overwidth loads of hay bales or haystacks, overwidth self-propelled fertilizer spreaders, and overwidth hay grinders is fifty dollars per year.
8. The fee when movement requires department of transportation engineer approval is fifteen dollars in addition to permit fee.
9. There is an additional heavyweight fee of seventy dollars per ton for all weight in excess of one hundred five thousand five hundred pounds [47,910 kilograms] gross vehicle weight but not to exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The fee may be prorated on a monthly basis and does not apply on those motor vehicles which are North Dakota titled and registered.
10. There is an additional ton/mile fee on all those movements that exceed two hundred thousand pounds [90,718 kilograms] gross vehicle weight. The following ton/mile fee is assessed upon that portion of gross vehicle weight exceeding the

maximum legal gross weight of one hundred five thousand five hundred pounds [47,910 kilograms].

Gross Vehicle Weight	Ton/Mile Fee	Minimum
200,001 to 210,000	\$.05	\$ 50.00
210,001 to 220,000	.10	50.00
220,001 to 230,000	.15	50.00
230,001 to 240,000	.20	50.00
240,001 to 250,000	.25	50.00
250,001 to 275,000	.50	100.00
275,001 to 300,000	2.00	200.00
300,001 to 325,000	3.00	350.00
325,001 to 350,000	4.00	500.00
350,001 to 400,000	7.00	1,000.00
400,001 to 450,000	10.00	2,000.00
450,001 to 500,000	15.00	3,000.00
500,001 to 550,000	20.00	5,000.00
550,001 to 600,000	30.00	7,500.00
600,001 to 650,000	40.00	10,000.00
650,001 to 700,000	50.00	15,000.00
700,001 to 750,000	75.00	25,000.00
750,001 or more	100.00	Minimum one mile

11. On those movements of extraordinary size or weight that require highway patrol escort there is an escort service fee of thirty cents per mile [kilometer] and thirty dollars per hour.

History: Effective January 1, 1988; amended effective May 1, 1988; January 1, 1992; August 1, 1993.

General Authority: NDCC 39-12-02, 39-12-04

Law Implemented: NDCC 39-12-02

TITLE 50
Medical Examiners, Board of

NOVEMBER 1993

50-01-01-01. Organization of board of medical examiners.

1. History and function. The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medical examiners. The board, generally speaking, stands between the medical school graduate and the public. It is the responsibility of the board to protect the public against poorly trained physicians.
2. Board membership. The board consists of ten members appointed by the governor. Nine members are medical physicians and one member is an osteopathic physician. Members of the board serve three year terms, and not more than four terms expire each year. No member may serve on the board more than two successive terms.
- ~~3.~~ Executive secretary and treasurer. The executive secretary and treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
- ~~4.~~ 3. Credentials committee. A credentials committee is appointed by the chairman of the board and is responsible for issuing provisional temporary licenses authorizing the practice of medicine in the intervals between board meetings. The credentials committee will consist of at least three active members of the board appointed by the president and will act only pursuant to specific authority granted and under periodic directives of the board.
- ~~5.~~ 4. Inquiries. Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. Rolf P. Sletten

Executive Secretary and Treasurer
State Board of Medical Examiners
City Center Plaza
418 E. Broadway, Suite C-10
Bismarck, North Dakota 58501

History: Amended effective December 1, 1980; September 1, 1983; July 1, 1988; November 1, 1993.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 50-02-05

50-02-05-07. Passing requirements for FLEX examination. The minimum passing score for each component of the federal licensing examination is seventy-five percent as scored by the federation of state medical boards.

No candidate may write component I unless the candidate also writes component II during that administration of the examination. Any candidate who fails to obtain a passing score on both components of the examination within three years of the date on which that candidate first wrote the examination, or a portion thereof in any state, must complete one year of residency training in an American medical association or Canadian medical association approved hospital in the United States or Canada. That residency program must be completed between the expiration of that three-year period and any retaking of the federal licensing examination.

History: Effective February 1, 1985; amended effective December 1, 1988; November 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18(4)

50-02-05-09. Exception to statutory qualifications for license -
When available. Any applicant for licensure under the exception set out
in subsection 3 of North Dakota Century Code section 43-17-18 will be
considered if the applicant is American board certified or recertified
within the last ten years, or the applicant has passed the SPEX (special
purpose examination) promulgated by the federation of state medical
boards.

History: Effective November 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

STAFF COMMENT: Chapter 50-02-11 contains all new material but is not underscored so as to improve readability.

CHAPTER 50-02-11
EXAMINATIONS

Section	
50-02-11-01	Eligibility for Examination
50-02-11-02	Successful Completion of Examination - Time Limitation
50-02-11-03	Limitation on Attempts at Examination Passage
50-02-11-04	Examination Combinations Acceptable

50-02-11-01. Eligibility for examination. To be eligible for parts I and II of NBME (national board of medical examiners licensing examination) or for steps 1 and 2 of USMLE (United States medical licensing examination), the applicant must be in one of the following categories:

1. A medical student officially enrolled in, or a graduate of, a United States or Canadian medical school accredited by the liaison committee on medical education (LCME).
2. A medical student officially enrolled in, or a graduate of, a United States osteopathic medical school accredited by the American osteopathic association (AOA).
3. A medical student officially enrolled in, or a graduate of, a foreign medical school and eligible for examination by the educational commission for foreign medical graduates (ECFMG) for its certificate.

To be eligible for NBME part III or USMLE step 3, the applicant must (a) have obtained the MD degree or the DO degree; (b) have completed successfully both parts I and II or steps 1 and 2 or part I and step 2 or step 1 and part II; (c) if a graduate of a foreign medical school, be certified by the ECFMG or have successfully completed a fifth pathway program; and (d) have completed, or be near completion of, at least one postgraduate training year in a program of graduate medical education accredited by the accreditation council for graduate medical education or the American osteopathic association.

History: Effective November 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-18

50-02-11-02. Successful completion of examination - Time limitation. The examination requirements for licensure must be successfully completed within a seven-year period.

History: Effective November 1, 1993.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-17-18

50-02-11-03. Limitation on attempts at examination passage. An applicant must be allowed four attempts to pass each part or step or component of a licensing examination approved by the board without being required to obtain additional educational experience. Parts, steps, and components of examinations may not be combined so as to enlarge the number of attempts permitted under this rule.

History: Effective November 1, 1993.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-17-18

50-02-11-04. Examination combinations acceptable. Any applicant who has successfully completed part I (NBME) or step 1 (USMLE) plus part II or step 2 plus part III or step 3; or FLEX component 1 plus step 3; or part I or step 1, plus part II or step 2, plus FLEX component 2 shall be deemed to have successfully completed a medical licensure examination as required by subsection 4 of North Dakota Century Code section 43-17-18.

History: Effective November 1, 1993.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-17-18

CHAPTER 50-03-01

50-03-01-01. Description and authority of physician's physician assistant. The physician's physician assistant is a skilled person, qualified by academic and clinical training to provide patient services under the supervision and responsibility of a licensed doctor of medicine or osteopathy who is responsible for the performance of that assistant. The assistant may be involved with the patients of the physician in any medical setting for which the physician is responsible.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-02. Examination requirements. No physician's physician assistant may be employed in the state until the assistant has passed the certifying examination of the national commission on certification of physicians' physician assistants or other certifying examinations approved by the North Dakota state board of medical examiners.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-04. Supervising physician's responsibility. It is the responsibility of the supervising physician to direct and review the work, records, and practice of the physician's physician assistant on a daily, continuous basis to ensure that appropriate and safe treatment is rendered. The supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least eight hours per week of onsite, personal supervision.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-05. Designation of substitute supervising physician. Under no circumstances shall the supervising physician designate the physician's physician assistant to take over the physician's duties or cover the physician's practice. During any absence or temporary disability of the supervising physician, it is mandatory that the supervising physician designate a substitute physician to cover the supervising physician's practice and perform the supervising physician's duties. The physician's physician assistant, during this period, will be responsible to the substitute physician.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-06. Assistant's functions limited. The physician's physician assistant shall function only in those areas where the supervising physician provides care for the physician's patients.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-07. Drug therapy. A physician's physician assistant may dispense prepackaged medications prepared by a registered pharmacist acting on a physician's written order and labeled to show the name of the physician's physician assistant and the physician. The dispensation authorized shall be limited to controlled drugs of schedules four and five and nonscheduled drugs. The dispensation by the physician's physician assistant must be authorized by, and within, the preestablished guidelines of the supervising physician.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-09. Number of assistants under physician's supervision limited. No physician may have under the physician's supervision more than two physician's physician assistants currently qualified under section 50-03-01-02, unless compelling reasons are presented to and approved by the board.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-11. Revocation of registration. The board may deny, suspend, or revoke registration of a physician's physician assistant upon any of the following grounds:

1. Failing to demonstrate the qualifications for registration under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the assistant's registered employer for services performed as a physician's trained physician assistant.
3. Willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician.

4. The habitual or excessive use of intoxicants or drugs.
5. Aiding or abetting the practice of medicine by a person not licensed by the board.
6. Gross negligence in performing the duties, tasks, or functions assigned to the assistant by the employer-physician.
7. Manifest incapacity or incompetence to perform as a physician's trained physician assistant.
8. Conduct unbecoming in a person registered as a physician's physician assistant or detrimental to the best interests of the public or the profession.
9. Repeated or willful violation of the contract of employment on file with the board.
10. Representing himself or herself to be a physician.
11. Fraud or deceit in obtaining initial registration as a physician's physician assistant, the renewal of registration as a physician's physician assistant, or in the practice of the physician's physician assistant profession.

History: Amended effective July 1, 1988; November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-13. Fees. The fee for initial registration of a physician's physician assistant is fifty dollars. The annual renewal fee and fee for approval of employment contract changes is twenty-five dollars.

History: Effective July 1, 1988; amended effective November 1, 1993.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-14. Registration renewal requirements. Every second year after the initial registration of a physician's physician assistant, the assistant's registration renewal application must be accompanied with evidence of the successful completion of one hundred hours of continued education for physician's physician assistants. Every sixth year, the applicant must demonstrate that the applicant has successfully passed reexamination by the national commission on certification of physicians' physician assistants or other certifying reexamination approved by the board.

History: Effective August 1, 1989; amended effective November 1, 1993.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 43-17-02(10)

TITLE 51
Milk Stabilization Board

NOVEMBER 1993

CHAPTER 51-03-02

51-03-02-14. Authorized discounts for prompt payment. Processors and distributors may grant a two percent discount to retailers who make timely payment for milk products, shake, soft serve mix, and frozen dairy products within ~~seven~~ fourteen days of the statement date. All statements shall be on a weekly basis, and the weekly cutoff date shall remain the same. Said discount may not be allowed if a retailer is participating in a central billing service plan as permitted by section 51-02-02-12.

History: Amended effective August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-02-15. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-02-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on ~~\$.100~~ \$.071, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)

Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit; wholesale to the nearest \$.001 per unit. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

CHAPTER 50-03-03

51-03-03-15. Authorized discounts for prompt payment. Processors and distributors may grant a two percent discount to retailers who make timely payment for milk products, shake, soft serve mix, and frozen dairy products within ~~seven~~ fourteen days of the statement date. All statements shall be on a weekly basis, and the weekly cutoff date shall remain the same. Said discount shall not be allowed if a retailer is participating in a central billing service plan as permitted by section 51-02-02-12.

History: Amended effective August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-03-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-03-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on ~~\$.100~~ \$.071, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

Item	Hundredweight Factor	B.F. Factor
Whole Milk 1/2 Gallon	\$.0098900	\$(.0001075)
2 % Milk	.0099130	(.0006465)
1 % Milk	.0099130	(.0010775)
Skim Milk	.0099245	(.0012945)
Buttermilk	.0099245	(.0012945)
Whole Chocolate	.0094645	(.0001029)
2 % Chocolate	.0094875	(.0006188)
1 % Chocolate	.0094875	(.0010313)
Skim Chocolate	.0094990	(.0012390)

All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

CHAPTER 51-03-04

51-03-04-15. Authorized discounts for prompt payment. Processors and distributors may grant a two percent discount to retailers who make timely payment for milk products, shake, soft serve mix, and frozen dairy products, within ~~seven~~ fourteen days of the statement date. All statements shall be on a weekly basis, and the weekly cutoff date shall remain the same. Said discount shall not be allowed if a retailer is participating in a central billing service plan as permitted by section 51-02-02-12.

History: Amended effective June 26, 1989; August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

51-03-04-16. Formula to determine changes in the class I wholesale and retail prices. Based upon the class I formula as ordered in section 51-03-04-06, for each hundredweight price change to dairy farmers for raw milk or an increase or decrease of \$.001 in the federal market order number 68 butterfat differential based on ~~\$.100~~ \$.071, the following factors will be used in determining adjustments in the class I wholesale and retail prices. If the first of the month falls on a Monday, Tuesday, or Wednesday, minimum wholesale and retail prices go in effect that Monday. If the first of the month falls on a Thursday, Friday, Saturday, or Sunday, minimum wholesale and retail prices go in effect the following Monday.

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All price adjustments at the retail level should be made to the nearest one cent per unit: wholesale to the nearest \$.001 per unit. The foregoing class I formula price changes shall be automatically adjusted without further amendment to this stabilization plan.

History: Amended effective November 1, 1983; June 26, 1989; June 1, 1990; February 1, 1992; August 1, 1993.

General Authority: NDCC 4-18.1-03, 4-18.1-07, 4-18.1-20, 28-32-03.1(3)

Law Implemented: NDCC 4-18.1-07

TITLE 61
Pharmacy, Board of

OCTOBER 1993

CHAPTER 61-02-07

CLERICAL PERSONNEL

[Repealed effective October 1, 1993]

STAFF COMMENT: Chapter 61-02-07.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 61-02-07.1
PHARMACY TECHNICIAN

Section

61-02-07.1-01	Purpose and Scope
61-02-07.1-02	Definitions
61-02-07.1-03	Educational Preparation
61-02-07.1-04	Ratio of Pharmacists to Pharmacy Technicians
61-02-07.1-05	Tasks Pharmacy Technicians May Perform
61-02-07.1-06	Tasks Pharmacy Technicians May Not Perform
61-02-07.1-07	Pharmacy Technician Registration Requirements
61-02-07.1-08	Supportive Personnel
61-02-07.1-09	Penalties for Violation of Rule Regulating Pharmacy Technicians

61-02-07.1-01. Purpose and scope.

1. The board of pharmacy is responsible for maintaining, continuing, and enhancing the development of the educational and professional role of the pharmacists for the protection of the health, welfare, and safety of the citizens of the state.
2. Current practice requires an expanding knowledge base for pharmacists to serve patients with appropriate counseling, advising, evaluating, and cost-effective pharmaceuticals.
3. To assist a pharmacist in technical services related to pharmaceutical product preparation and distribution, the need for a pharmacy technician is appropriate.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-02. Definitions.

1. "Pharmacy technician" means a person registered by the board of pharmacy who is employed by a pharmacy under the responsibility of the pharmacist-in-charge or a staff pharmacist so designated by the pharmacist-in-charge, to assist in the technical services of preparing pharmaceuticals for final dispensing by a licensed pharmacist in compliance with subsection 4 of North Dakota Century Code section 43-15-01 and subsection 16 of North Dakota Century Code section 43-15-01.

2. "Supportive personnel" means a person other than a licensed pharmacist, pharmacy intern, or pharmacy technician who may be performing duties assigned by the pharmacist under direct supervision.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-03. Educational preparation.

1. To be eligible to be registered by the board of pharmacy as a pharmacy technician the person must have completed one of the following requirements:
 - a. Successful completion of an academic program approved by the board of pharmacy;
 - b. An on-the-job training program that is directed by the pharmacist-in-charge and approved by the board of pharmacy; or
 - c. Employment in a pharmacy as clerical personnel or pharmacy technician for at least one year. This provision will expire one year after the approval of this rule and will require a request in writing by a pharmacist-in-charge of a North Dakota pharmacy.
2. A record of pharmacy technician education must be maintained by the pharmacist-in-charge or designated staff pharmacist which contains:
 - a. The name of the pharmacy technician receiving the education;
 - b. The date of the educational program;
 - c. A general description of the topic covered; and
 - d. The name of the presenter if not conducted by the pharmacist-in-charge.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-04. Ratio of pharmacists to pharmacy technicians. The ratio of pharmacists to pharmacy technicians may not be greater than one

to two (one pharmacist to two pharmacy technicians). This ratio does not include other supportive personnel.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-05. Tasks pharmacy technicians may perform.

1. Under the responsibility of the pharmacist-in-charge or designated staff pharmacist the pharmacy technician may perform any service assigned by the pharmacist-in-charge in the preparation of pharmaceuticals to be dispensed by the pharmacist to a patient except as specified in section 61-02-07.1-06.
2. The pharmacist is legally responsible for all the pharmacy technician's activities and services performed.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-06. Tasks pharmacy technicians may not perform. The pharmacy technician may not:

1. Evaluate the patient's profile relative to the pharmaceuticals that have or will be dispensed.
2. Consult with the patient concerning the utilization of their pharmaceuticals.
3. Initially select a generic pharmaceutical, if substitution is permissible or legal.
4. Make decisions that require a pharmacist's professional education, such as interpreting and applying pharmacokinetic data and other pertinent laboratory data or therapeutic values to design safe and effective drug dosage regimens.
5. Engage in the practice of pharmacy.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-07. Pharmacy technician registration requirements.

1. A pharmacy technician must register with the board of pharmacy on an annual basis.

2. The pharmacy technician will be assigned a registration number.
3. The board of pharmacy must provide the pharmacy technician with an annual registration card and pocket identification card.
4. The annual registration card must be displayed in the pharmacy on public view where the pharmacy technician is employed.
5. The pharmacy technician must wear a name badge while in the pharmacy which clearly identifies the person as a "pharmacy technician."
6. Pharmacy technicians shall identify themselves as pharmacy technicians on all telephone conversations while on duty in the pharmacy.
7. The northland association of pharmacy technicians shall appoint annually three of their members as an advisory committee to the board of pharmacy.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-08. Supportive personnel. Any duty that is not required to be performed by a registered pharmacist, registered pharmacy intern, or by a pharmacy technician may be performed by other employees of the pharmacy.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

61-02-07.1-09. Penalties for violation of rule regulating pharmacy technicians. The registration of any pharmacy technician violating drug laws or rules may be revoked by the board of pharmacy. Pharmacists or pharmacies violating drug laws or rules may be subject to the penalties of North Dakota Century Code section 43-15-42.1.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(12)(14)

STAFF COMMENT: Chapters 61-04-05 and 61-04-06 contain all new material but are not underscored so as to improve readability.

CHAPTER 61-04-05
FACSIMILE TRANSMISSION OF PRESCRIPTIONS

Section
61-04-05-01 Facsimile Transmission of Prescriptions

61-04-05-01. Facsimile transmission of prescriptions. A prescription order may be transmitted from an authorized prescribing practitioner to a pharmacy under the following provisions:

1. Actual transmittal is done by or under the direct supervision of the authorized prescribing practitioner or the practitioner's authorized agent.
2. Practitioners or their authorized agents transmitting medication orders using facsimile equipment are obligated to provide voice verification when requested by the pharmacist receiving the medication order. If requested voice verification is refused, the facsimile transmitted prescription may not be filled.
3. Pharmacists are precluded from supplying or leasing facsimile equipment to prescribing practitioners, hospitals, nursing homes, or any medical care provider or facility.
4. Using facsimile equipment to transmit schedule II controlled substance prescriptions is not allowed.
5. Schedule III-IV-V controlled substances prescriptions received by facsimile equipment must be signed within seventy-two hours by the authorized prescriber as required by subsection 3 of North Dakota Century Code section 19-03.1-22.
6. A facsimile copy prescription must be reduced to writing either manually or by other process (computer, photocopying, etc.) which produces a nonfading document; proper notation on the file copy must indicate that the prescription order was initially received by facsimile equipment.
7. The receiving facsimile machine must be in the prescription department of the pharmacy to protect patient-pharmacist authorized prescribing practitioner confidentiality and security.
8. Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy practice or drug diversion will be considered unprofessional conduct under chapter 61-04-04.

9. The board of pharmacy recognizes that the facsimile transmission of prescriptions will depend on the type of pharmaceutical services offered, and therefor, variations of the requirements for facsimile transmission of prescriptions may be granted by the board of pharmacy.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(9)(12)(14)

CHAPTER 61-04-06
PRESCRIPTION LABEL REQUIREMENTS

Section	
61-04-06-01	The Prescription Label
61-04-06-02	Requirements of a Prescription Order for Noncontrolled Drugs
61-04-06-03	Requirements of Prescription Order for Controlled Drugs

61-04-06-01. The prescription label. Controlled drugs and noncontrolled drugs dispensed pursuant to a prescription must bear a label, permanently affixed to the immediate container in which the drug is dispensed or delivered and which is received by the purchaser or patient, which must include the following:

1. The name and address of the dispenser or pharmacy;
2. The serial number of the prescription;
3. The current date of its filling or refilling;
4. The name of the prescriber;
5. The name of the patient;
6. The directions for use, including precautions, if any, as indicated on the prescription;
7. The initials or name of the dispensing pharmacist;
8. The telephone number of the pharmacy; and
9. The drug name and strength and quantity.

The prescription label for controlled drugs, in addition to the above, must comply with the label requirements of the Federal and State Uniform Controlled Substances Act, including the transfer warning auxiliary label.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(9)(12)(14)

61-04-06-02. Requirements of a prescription order for noncontrolled drugs. The patient hard copy prescription form for noncontrolled drugs must contain the following:

1. The name and address of the patient;

2. The date of issuance;
3. The name of the drug;
4. The quantity;
5. The strength;
6. Adequate directions for use;
7. The prescriber's name, either printed or stamped;
8. The prescriber's indication of refill authorization;
9. A reminder legend in at least six-point uppercase print stating, "In order to require that a brand name product be dispensed, the practitioner must hand write the words 'brand necessary'"; and
10. The signature of the prescriber, unless an oral or telephoned prescription.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(9)(12)(14)

61-04-06-03. Requirements of prescription order for controlled drugs. The patient hard copy prescription form for controlled drugs must contain the following:

1. The name address of the patient;
2. The date of issuance;
3. The name of the drug;
4. The quantity;
5. The strength;
6. Adequate directions for use;
7. The prescriber's name, either printed or stamped;
8. The prescriber's indication of refill authorization;
9. A reminder legend in at least six-point uppercase print stating, "In order to require that a brand name product be dispensed, the practitioner must hand write the words 'brand necessary'";
10. The DEA number of the prescriber; and

11. The signature of the prescriber.

History: Effective October 1, 1993.

General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)

Law Implemented: NDCC 28-32-03, 43-15-10(9)(12)(14)

TITLE 69
Public Service Commission

AUGUST 1993

CHAPTER 69-09-02

69-09-02-35. Installation and maintenance - Conformance to National Electrical Safety Code. The installation and maintenance of electric supply and communication lines shall conform to rules and regulations established in the ~~1990~~ 1993 edition of the National Electrical Safety Code, issued ~~August 1, 1989~~ August 3, 1992, which is adopted by reference. Copies of these regulations may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective September 1, 1984; January 1, 1988; December 1, 1990; August 1, 1993.

General Authority: NDCC 49-02-04

Law Implemented: NDCC 49-02-04, 49-20-02

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations. The following parts of title 49, Code of Federal Regulations in effect as of July 15, ~~1991~~ 1992, are adopted by reference:

1. Part 190 - Department of Transportation Pipeline Safety Enforcement Procedures.
2. Part 191 - Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
4. Part 199 - Control of Drug Use in Natural Gas, Liquefied Natural Gas and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

Public Service Commission
State Capitol
Bismarck, North Dakota 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 49-02-01.2

CHAPTER 69-10-01

69-10-01-01. Definitions. As used in this chapter:

1. "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
2. "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale, hire, or reward.
3. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
4. "Registered service person" means a person authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.
- ~~4-~~ 5. "Seal" means marking a weighing or measuring device to show certification or rejection.
- ~~5-~~ 6. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- ~~6-~~ 7. "Standard" means test equipment used for certifying weighing or measuring devices.
- ~~7-~~ 8. "Weights and measures inspector" means a commission employee in the weights and measures testing and safety division performing duties set by the commission.

History: Amended effective April 1, 1992; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-03

69-10-01-02. Calibration by other than a registered service person. A person, other than a registered service person, who installs, repairs, or calibrates a weighing or measuring device used in commerce, must report the installation, repair, or calibration to the commission within five working days from the day the installation, repair, or calibration was completed. The device must then be certified by a weights and measures inspector or a registered service person, as

restricted by section 69-10-04-02.1, before the device can be used in commerce.

History: Amended effective April 1, 1992; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-02.1. Certification. Weighing and measuring devices may only be certified by the commission or a registered service person. The commission may certify a weighing or measuring device by actual testing of the device, or by witnessing the test.

History: Effective April 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-03. Sealing. All weighing or measuring devices used in commerce must be certified and sealed. A wire seal must be installed internally, or where applicable, to prevent adjustments to the calibration of the device. An adhesive sticker must be installed externally to show visual proof of certification. An adhesive seal must contain the following information: name, address, and telephone number of the commission or registered service person certifying the device, the words "tested and approved", and the seal must show the month and year that the device was tested and approved.

History: Amended effective April 1, 1992; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-04.1. Variance requests. The operator of any commercial weighing or measuring device may make written request for a variance from the commission under North Dakota Century Code section 64-02-02. The request for a variance must contain:

1. The reason for the request;
2. A plan for compliance over a period not to exceed one hundred eighty days (if the variance request results from a rejection);
3. The name, type, location, and capacity of the device;
4. The maximum amount that will be weighed on the device, along with a certified letter from an engineer that operating the device at that weight will not constitute a safety hazard (if applying for a variance to use a scale beyond its rated capacity);

5. Detailed information showing that compliance with specific regulations will cause economic hardship (if applicable to the variance request); and
6. Any other information the operator feels may expedite the variance request.

Any variance approved by the commission must be posted on the device in a space conspicuous to the public until the device has been recertified or replaced.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-08. Assisting inspector. When requested, the scale owner or operator shall supply assistance to the division inspector in movement of the test weights to and from and on and off the scale for testing purposes, or for returning liquids to aboveground or belowground storage tanks.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-09. Bulk liquid fuel meters. A meter placed into service on or after January 1, 1999, for use in the sale of bulk liquid fuels must be equipped with a ticket printing device meeting the requirements of NIST Handbook No. 44. A meter placed into service prior to January 1, 1999, that is not equipped with a ticket printing device may be used after that date until it is rejected for repair.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

69-10-01-10. Examination of records. The commission may obtain copies of, and examine any weigh ticket, weigh receipt, meter printer ticket, or any other record of sale resulting from the operation of any commercial weighing or measuring device.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 60-10-02

69-10-02-02. Livestock scales - Installation. All livestock scales must be installed so as to permit ready access for large capacity testing equipment. At the one end of a livestock scale there ~~shall~~ must be a straight concrete approach the full width of the scale platform, in the same plane as the scale platform and equal in length to the width of the scale platform in order to provide a clean and level area for the purpose of unloading test weights used in testing the scale. Provision Provisions must be made to allow the test truck to back up to the approach by providing an entrance of adequate height and width to enable the test truck to be reasonably level when weights are unloaded. All livestock scales newly constructed after July 1, 1993, must have a minimum entrance and approach width and height of twelve feet [3.66 meters].

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-02.1. Livestock scales - Certification. All livestock scales under the jurisdiction of the federal packers and stockyards administration must be certified once every six months. The scales may be certified by either a weights and measures inspector or a registered service person.

History: Effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-03. ~~Pipe lever~~ Twister head extensions. The ~~pipe lever~~ ←twister head→ extensions cannot be used under any conditions in the installation of motor truck, motor truck dump, or livestock scales. ~~Shelf~~ Extension levers used on motor truck, livestock, or motor dump truck scales must be securely anchored to or suspended from concrete of the neck or walls of the scale pit.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05. ~~Pitless~~ Temporary pitless scales. Self-contained, portable, pitless scales may be used only for the commercial weighing of gravel, sand, rock, fill, or for check weighing of materials associated with highway construction, or as approved as a variance and only after a variance has been approved under North Dakota Century Code section 64-02-02 of the North Dakota Century Code. The variance request must list the date the scale was installed and the project number. A variance must be requested each time the scale is moved. Testing and

certification of this type of scale must be done in compliance with state laws and commission rules.

History: Amended effective April 1, 1984; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-05.1 Fixed pitless scales. A variance under North Dakota Century Code section 64-02-02 for the construction and operation of all fixed pitless scales to be used in commerce must be approved by the commission before construction may begin. The variance request must be filed with the commission at least thirty days prior to construction and must include a copy of the construction plans. All pitless scales, except self-contained pitless scales, must have at least twelve inches [304.80 millimeters] of clearance between the "I" beam and the slab; and the piers must extend down below the frostline and be tied together.

History: Effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-06. Clearances - Drainage - Pit entrances. Motor truck, motor truck dump, and livestock scales, regardless of capacity, shall have a clearance of not less than four feet [12.19 decimeters] from the finished floorline of the scale pit to the bottom of the "I" beam of the scale bridge. A five-eighths-inch [15.88-millimeter] clearance shall be provided between the live deck and the pit coping. A ~~"Z bar"~~ "crushing strip" or "rock guard" shall be installed in the event a concrete deck is installed on scale; wood decks shall be undercut around deck to prevent foreign material from lodging between deck and coping. Scale pits shall be kept dry at all times, and adequate drainage shall be provided. ~~A convenient entrance~~ Convenient entrances to the scale pit must be provided for the purpose of inspecting and cleaning.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-07. Foundation and supports. The foundation and supports of any scale installed in a fixed position shall consist of reinforced concrete of sufficient strength to ensure rigidity and permanence. The fulcrum stands for the levers or the load cells of large capacity scales must be installed on level piers with a minimum of grouting. All footings must be of adequate depth to extend below the frostline.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-08. Deviations from manufacturer's design. Neither the length nor the width of the load receiving element, nor the indicating element of a scale shall be increased beyond the manufacturer's design dimension, except when the proposed modification has been approved by competent scale engineering authority, (preferably that of the engineering department of the scale manufacturer), and **approved by the division** a variance granted by the commission. The weighbridge of a scale shall be of steel (of sufficient strength), and shall include steel members providing adequate support for the platform.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-10. Indicating elements. ~~The~~ A beam-type or dial-type indicating element shall be installed in a level and plumb position, mounted on concrete piers, or on a concrete slab, and fastened securely to the concrete walls or neck of the scale pit. ~~This weighbeam foundation and indicating elements~~ These mechanical indicating element foundations must be independent of the scalehouse floor, weighing room, or other similar structure. In case of a dial installation there should be adequate clearance for service between the cabinet of the dial and the wall. Motor truck, motor truck dump, railroad track, and livestock scales installed after July 1, 1973, and used in commerce, must be equipped with a ticket printing device. A shoulder or stop shall be provided on each weighbeam bar to prevent the poise from traveling and remaining back of the zero graduation. Indicating and printing elements shall be adequately protected from all elements detrimental to their efficient operation.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-11. Limits established by factory rated scale capacity. No person shall use a scale for weighing commodities, the gross weight of which is greater than the factory rated scale capacity, as stamped by the manufacturer on each weighbeam or dial. Single draft weighing only will be approved in commercial trade in North Dakota indicating or load receiving element (whichever is less), without a variance from the commission.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-02-12. Observation windows or video cameras. Windows must be provided and must be located in such a position and manner so that the weighman has full view of the scale platform and weighing operation from the weighman's working position, and that the weighman and

indicating elements are clearly visible to interested parties. Video camaras may be substituted for windows if the substitution does not diminish the view for either the weighman or other interested parties.

History: Amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

~~69-10-02-14. Assisting inspector. When requested, the scale owner or operator shall supply assistance to the division inspector in movement of the test weights to and from and on and off the scale for testing purposes.~~ Repealed effective August 1, 1993.

General Authority: ~~NDCC 64-02-03~~

Law Implemented: ~~NDCC 64-02-02, 64-02-13~~

69-10-02-15. Dockage scales. A dockage scale manufactured before January 1, 1986, with less than one hundred one scale divisions, may be used in commerce until it is rejected as nonrepairable.

History: Effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-03

69-10-03-01. National Institute of Standards and Technology Handbook 44. Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota shall conform to the requirements of the ~~1991~~ 1993 edition of the United States department of commerce, National Institute of Standards and Technology Handbook 44, issued October 1990, which is adopted by reference. Copies of the handbook may be obtained from the public service commission, state capitol, Bismarck, North Dakota 58505-0480.

History: Amended effective October 1, 1988; December 1, 1990; February 1, 1992; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

69-10-03-04. Enforcement. Operators using commercial weighing and measuring devices in this state shall ensure that those devices are designed, constructed, and operated to meet the standards in regulations in Handbook No. 44 of the national institute of standards and technology as adopted or modified in this section. The commission may require proof of compliance. The commission may issue a complaint for noncompliance, and assess civil penalties under North Dakota Century Code chapter 49-07.

History: Effective August 1, 1993.

General Authority: NDCC 49-07, 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

CHAPTER 69-10-04

69-10-04-02.1. Self-certification not allowed - Exception. A registered service person may not certify the person's own standards or weighing and measuring devices without written permission from the commission, except that petroleum industry loading rack meters used in commerce may be self-certified only as follows:

1. The person doing the self-certification must be registered with the commission under section 69-10-04-02.
2. Upon testing, the device must be within the permitted tolerance.
3. An independent A registered service person or weights and measures inspector doing recertification must, within ~~ten~~ seven days, report the recertification to the commission. The report must clearly identify each meter, the initial test results on the day of recertification recorded during self-certification, and the test results upon recertification.
4. Weights and measures inspectors may randomly test and recertify loading-rack meters.

History: Effective April 1, 1992; amended effective August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-04. Report Reports. A registered service person must, within ~~ten~~ seven working days, send a placing in service and a test report on all rejected or newly installed weighing and measuring devices certified or recertified by the person to the commission, and shall furnish a copy of the report copies of those reports to the owner or operator of the device. Report A registered service person must, within seven working days, send a test report on all weighing or measuring devices recertified by the person to the commission, and shall furnish a copy of the test report to the owner or operator of the device. Placing in service report forms will be furnished to registered service persons by the commission.

History: Amended effective April 1, 1992; August 1, 1993.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

69-10-04-05. Standardized report forms. All test report forms filed with the commission after July 1, 1994, must be in a standardized format. The commission will issue copies of the standardized prototype to all registered service persons at least thirty days prior to that date.

History: Effective August 1, 1993.
General Authority: NDCC 64-02-03
Law Implemented: NDCC 64-02-02, 64-02-13

TITLE 70
Real Estate Commission

OCTOBER 1993

70-02-04-02. Hours required. To qualify for the renewal of a real estate license, each broker or salesperson must complete twenty-four hours of continuing education in approved courses before January 1, 1984, and every three years thereafter. The commission may require that up to six hours of the total completed each three-year period must be in one or more specific areas. Such areas may include the following:

1. Fair housing and antitrust.
2. Environmental issues.
3. License law and ethics.
4. Agency law and principles.
5. Contracts.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993.

General Authority: NDCC 43-23-08.2

Law Implemented: NDCC 43-23-08.2

70-02-04-05. Nonqualifying courses. The following course offerings will not be considered as qualifying for continuing education purposes:

1. "Cram courses" for examinations.
2. Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, language, and report writing.

3. Sales promotion or other meetings held in conjunction with the general business of the attendee or the attendee's employer.
4. Time devoted to breakfast, luncheons, or dinners.
5. Any course certified by the use of a challenge examination. All students must complete the required number of classroom hours in order to receive certification.
6. Any course hours in excess of ~~twelve~~ eight obtained by correspondence within the three-year certification period.

The listing of the above offerings does not limit the commission's authority to disapprove any application which fails to meet the standards for course approval.

History: Effective August 1, 1981; amended effective January 1, 1992; October 1, 1993.

General Authority: NDCC 43-23-08.2

Law Implemented: NDCC 43-23-08.2

70-02-04-06. Criteria for course approval. The commission may approve any course, seminar, conference, correspondence course, or equivalent that is provided by the commission, a public or private school, organization, association, person, corporation, society, or similar organization. The commission, when acting on an application for approval of a course offering, will consider, but not be limited to, the following criteria:

1. Course offerings will be eligible for approval only if the total instruction time of the offering is ~~three~~ two hours or more.
2. A school shall certify to the best of its knowledge the attendance of each student at the offering. The school's criteria for measuring attendance shall be submitted in the application for course approval on a form prescribed by the commission.
3. The school shall maintain, for a minimum of three years, records of students successfully completing any course offering.
4. Credit will be earned on the basis of attendance, or in the case of correspondence courses, completion of the course.
5. Each course of study shall have a coordinator or administrator supervising the program. The coordinator shall be qualified, either through previous education or experience, to administer a real estate course of study, to evaluate course content and instructors, and to analyze examinations.

6. All instructors in a real estate course of study shall file with the commission credentials showing the necessary specialized preparation, training, and experience to ensure competent instruction. Approval of each instructor will be on an individual basis, and approval must be obtained from the commission prior to the instructor's lecture in an approved course of study. Instructors, lecturers, seminar leaders, and others who present a continuing education requirement course offering must meet at least one of the following qualifications:
 - a. A bachelor's degree in the field in which the person is to teach.
 - b. A valid teaching credential or certificate from North Dakota or another state authorizing the holder to teach in the field of instruction being offered.
 - c. Five years' full-time experience in a profession, trade, or technical occupation in the applicable field.
 - d. Any combination of at least five years of full-time applicable field and college level education.

History: Effective August 1, 1981; amended effective October 1, 1993.

General Authority: NDCC 43-23-08.2

Law Implemented: NDCC 43-23-08.2

