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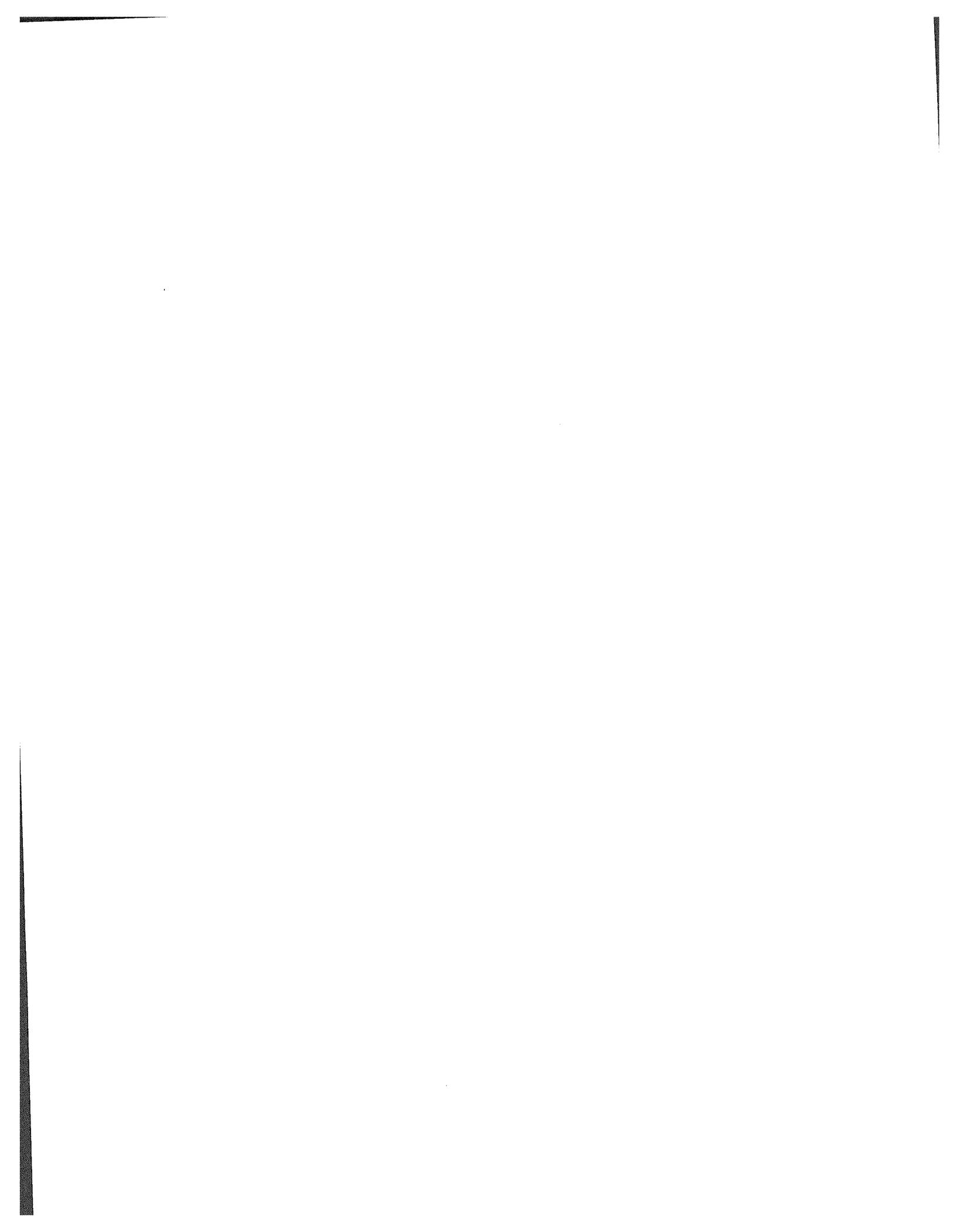
July 2010

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



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TITLE 74

STATE SEED DEPARTMENT

TITLE 74
STATE SEED DEPARTMENT

JULY 2010

CHAPTER 74-01-01

74-01-01-01. Organization of seed commission.

1. History. The state seed department was established by the 1931 legislative assembly. The main office was designated to be at North Dakota state university. Branch offices are maintained in Grafton to more efficiently serve the potato industry with official grade inspection services. The department is governed by the state seed commission.
2. Commission. The state seed commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the northern plains potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant, selected by the board of directors of the North Dakota grain dealers association, and the agriculture commissioner or the commissioner's designee, who shall serve as chairman. ~~The dean and~~ director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.
3. Functions. The seed department is designated as the official seed certification agency of the state. The seed department enforces state seed laws, inspects and analyzes seed offered for sale, provides a public laboratory service for examining and analyzing seed and commercially produced crops for planting and consumption purposes, maintains a seed certification system for field seeds and potatoes, inspects and grades potatoes and other produce, regulates wholesale potato dealers, and establishes grade standards and grades commodities not in the federal grain standards. Lists of field-inspected

seeds published by the seed department, specifically bulletin nos. 94-92 and 95, are produced for the express purpose of informing producers of the availability of certified seed grown in North Dakota, and are not intended to induce reliance on the part of producers on the department's inspection, certifications, or any other act or undertaking relating to quantity or quality of the seed or crop produced, fitness, presence or absence of disease, or identity of variety or selection.

4. For the purposes of this section, North Dakota Century Code chapter 4-09 and North Dakota Administrative Code article 74-03 generally apply to the certification and conditioning of field seeds; North Dakota Century Code chapter 4-25 and North Dakota Administrative Code article 74-02 to the regulation of field crops and seeds; North Dakota Century Code chapter 4-10 and North Dakota Administrative Code article 74-04 to the certification and inspection of potatoes; North Dakota Century Code chapter 4-11 and North Dakota Administrative Code article 74-05 to the regulation of wholesale potato dealers; and North Dakota Century Code chapter 4-09.1 and North Dakota Administrative Code article 74-06 to the inspection and grading of crops not in federal grain standards.
5. Seed commissioner. The commission appoints the seed department manager, who is the state seed commissioner.
6. Inquiries. Inquiries regarding the seed department may be addressed to the commissioner:

State Seed Commissioner
State Seed Department
~~State University Station~~ 1313 18th Street North
Fargo, ND 58105

History: Amended effective December 1, 1981; November 1, 1985; October 1, 1989; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

CHAPTER 74-03-00.1

74-03-00.1-01. Definitions. As used in this article, unless the context or subject matter otherwise requires:

1. "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.
2. "Brand" means a word, name, or symbol, number, or design used to identify seed of one person to distinguish that seed from seed of another person.
3. "Bulk seed" means seed stored in bins and may mean seed stored in containers larger than one hundred sixty pounds [72.72 kilograms].
4. "Conditioning" includes all activities performed on seed between harvest and marketing. Other terms associated with conditioning could include cleaning, processing, sizing, grading, storing, seed treating, drying, scarifying, and other operations that may change the purity or germination of the seed.
5. "Field inspection" means physical examination or observation of a field by an authorized state seed employee. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed crop was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.
6. "Genetic purity" means the application of the appropriate standards for certain phenotypic traits relative to the developer's description of the variety/germplasm. In the context of this publication, "genetic purity" should not be interpreted to imply verification of the genotype or verification of all described traits.
7. "Grower" means any person that is complying with all the certification rules and regulations in the production of field-inspected seed.
7. 8. "Hybrid" definitions include:
 - a. "Double cross" means the first generation hybrid between two single crosses.
 - b. "Foundation single cross" means a single cross used in the production of a double cross, a three-way cross, or a top cross.

- c. "Inbred line" means a relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of backcrossing to a recurrent parent with selection, or its equivalent, for specific characteristics.
 - d. "Open pollination" means pollination that occurs naturally as opposed to controlled pollination, such as by detasseling, cytoplasmic male sterility, self-incompatability, or similar processes.
 - e. "Single cross" means the first generation hybrid between two inbred lines.
 - f. "Three-way cross" means a first generation hybrid between a single cross and an inbred line.
- 8- 9. "Inseparable other crops" means only other crops of similar size, shape, or density which are difficult to remove in the usual methods of cleaning.
10. "Kind" means a group of varieties so nearly similar that individual varieties cannot be clearly differentiated except under special conditions.
- 9- 11. "Mixture" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
- 10- 12. "None" means none found during the normal inspection process (both field and seed standards). None is not a guarantee to mean the lot inspected or analyzed is free of the factor.
- 11- 13. "Other varieties and off-types" means plants or seeds which do not conform to the characteristics of a variety as described by the breeder. They do not include variations which are characteristic of the variety.
- ~~12- "Type" means a group of variety so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.~~
- 13- 14. "Variant" means any seed or plant that:
- a. Is distinct but occurs naturally within a variety;
 - b. Is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and
 - c. Was originally a part of the variety as released.

A variant is not an off-type.

15. "Varietal identity" means the verification of the identity of a variety, cultivar, or germplasm entity through documentation of the pedigree, i.e., tracing the particular cycle of reproduction back to its origins with the developer, and the application of the developer's variety/germplasm description for certain visible, phenotypic traits in field inspections and laboratory analysis.
- ~~14.~~ 16. "Variety" means a subdivision of a kind which is distinct, uniform, and stable; "distinct" in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all varieties of public knowledge, "uniform" in the sense that the variations in essential and distinctive characteristics are describable, and "stable" in the sense that the variety will remain unchanged to a reasonable degree of reliability in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories or varieties.

History: Effective May 1, 1986; amended effective September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-01

74-03-01-03. Eligibility requirement for certification of crop varieties.

As used in this chapter, "variety" includes hybrids and breeding lines, and selections, clones, or strains of true varieties.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by one or more of the following:
 - a. A national variety review board.
 - b. The plant variety protection office, including additional information itemized in subdivisions e through i of subsection 2 of section 74-03-01-03, which is required.
 - c. An official seed certifying agency.
 - d. The organization for economic cooperation and development (OECD).

~~Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.~~ In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.

2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant.
 - a. The name of the variety. This name must be the established name if the variety has previously been marketed.
 - b. A statement concerning the variety's origin and the breeding procedure used in its development.
 - c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.
 - d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

- e. A statement delineating the geographic area or areas of adaption of the variety.
 - f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.
 - g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.
 - h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.
 - i. A sample of seed representative of the variety that will be planted for certified seed production.
3. This rule does not create a mandatory duty or a cause of action on account of the department's recognizing or refusing to recognize a variety as meriting certification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-04. Classes (generation) and sources of certified seed.

1. Four classes (generations) of seed shall be recognized in seed certification: breeder, foundation, registered, and certified.
 - a. Breeder seed is directly controlled by the originating plant breeder, sponsoring institution or firm, which supplies the source for the initial and recurring increase of foundation seed.
 - b. Foundation seed is the progeny of breeder or foundation seed produced under control of the originator or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, foundation seed is a class of certified seed produced under procedures established by the certifying agency for the purpose of maintaining genetic purity and identity.
 - c. Registered seed is the progeny of foundation or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. This class of seed shall be of a quality suitable for the production of certified seed.

- d. Certified seed is the progeny of foundation, registered, ~~certified,~~ or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved by the state seed department.
2. The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of a variety, but shall not exceed two generations beyond foundation seed. The following exceptions to the limitation of generations are ~~permitted~~ allowed with permission from the variety owner and authorization from the state seed department:
 - a. Unlimited recertification of the certified class may be permitted for ~~older~~ crop varieties when foundation seed is not being maintained.
 - b. The production of an additional generation of the certified class may be permitted on a one-year basis when:
 - (1) An emergency is declared prior to the planting season by the certifying agency stating that foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety; and
 - (2) ~~Permission of the originating breeder or owner of the variety is obtained (if applicable); and~~
 - (3) The additional generation of certified seed produced to meet the emergency seed is declared ~~to be~~ ineligible for recertification.
 3. Seed that fails to meet the certification standards for reasons other than those affecting genetic purity may be certified in emergency situations and will be labeled with a "substandard grade" ~~tag label~~.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-06. Seed eligibility.

1. The seed department shall be supplied with satisfactory evidence of the source and class of seed used to plant each crop considered for certification.
2. Eligible seed stocks ~~have met the requirements for~~ include breeder's, foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must be accompanied by the official tag or bulk certificate from an approved

certifying agency, which will be the documentation of acceptance required for field inspection.

- 2- 3. Certified seed growers may plant seed from their own fields ~~which passed field inspection in previous years~~ if the field passed inspection and if the class of seed (generation) is eligible to be certified. ~~Garryover reports must be filed annually on unconditioned seed produced prior to the previous crop year.~~ The grower must provide sufficient evidence to the department to verify eligibility.
- 3- 4. Certified seed growers may ~~not~~ plant seed from their own fields that failed field inspection previously only if the field did not fail due to genetic purity factors in previous years, and the grower is the applicant for field inspection. If the field fails inspection a second time for any reason, that seed shall no longer be eligible for the production of certified.
5. Contract growers may not replant any of the seed produced unless final certification has been completed.
- 4- 6. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-07. Field eligibility and requirements.

1. A crop will not be eligible for the production of foundation, registered, or certified class seed if planted on land on which the same kind of crop was grown previously for the number of years as stated in the specific crop standards ~~contained in other chapters of this article.~~ Exceptions ~~will~~ may be made if the previous crop was the same variety and ~~passed field inspection~~ was inspected for certification.
2. A grower may establish field eligibility history for the ~~upcoming~~ next production year by planting certified seed on the field in the current year, ~~requesting~~ applying for field inspection, and having the field declared eligible ~~in the ensuing year~~ for production of seed of the same variety the next year.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-08. Field management and isolation. The production unit for certification shall be a field. No field or part of a field will be accepted unless field boundaries are clearly defined and properly isolated ~~as provided in~~ according to

the specific crop standards ~~contained in other chapters of this article~~. Isolation distances may be extended at the request of the seed commissioner or the commissioner's agents for reasons including the production of transgenic crops or other kinds in proximity to fields being grown for the purpose of seed certification.

When it is necessary to remove a strip to obtain proper isolation, the part of the strip to be removed must be cut into the field to be inspected.

If two classes of the same variety are planted adjacent to one another in the same field, and field inspection has been applied for both, isolation may be accomplished by placing a flag at each end of the field ten feet [3.05 meters] into the higher class of seed, prior to inspection. The flags must be plainly visible at the time of inspection. The grower may harvest that isolated ten-foot [3.05-meter] section of crop with the lower class of seed.

History: Amended effective September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. Applications for ~~soybeans~~, millet, and buckwheat will be accepted until July fifteenth without late penalty. Applications for soybeans requiring only a single inspection (preharvest) will be accepted until August first without late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.
2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application ~~or be made available to the seed department prior to field inspection.~~
3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields

~~that are intended for seed certification.~~ Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

Roguing is usually done by pulling out off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection. ~~Roguing is essential to maintain the purity of varieties and high standards of certified seed.~~

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label for the to control of pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

- a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, hemp having more than three-tenths of one percent tetrahydrocannabinol, musk thistle, spotted knapweed, and yellow starthistle.
- b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.
- c. A field may be rejected if it is the field inspector's opinion of the ~~field inspector~~ that the amount and kind of weeds present make it difficult to ~~provide for~~ conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.
- d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.
- e. Diseases not governed by specific crop standards may be cause for rejection if it is the ~~opinion of the inspector~~ field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the grower applicant before the field inspection is ~~made and the~~ completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made ~~after fields are~~ the field is inspected or because ~~fields have~~ the field has been rejected.
6. Appeal inspection. Reinspection of rejected fields ~~will~~ may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.
7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid ~~and the variety description characteristics are met within each specific crop standard and class.~~
8. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-11. Seed sampling, conditioning, and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, class, and lot number displayed on the bin or storage container.
2. **Preconditioned sample testing.** To ~~speed up~~ hasten tagging and determine the quality of seed prior to conditioning, a representative sample of seed from each field which has passed field inspection may be submitted to the state seed department ~~soon after the crop is harvested~~ for the purpose of germination and disease testing. This sample should be cleaned on a small mill or hand sieve to correspond

as nearly as possible to the condition of the entire lot after cleaning or conditioning.

Disease Results of germination and disease tests required conducted on preconditioned samples may be used for final certification purposes. A grower may request new tests after conditioning to be used for labeling purposes. Fragile crops such as soybeans, field beans, lentils, chickpeas, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information provided or stated on seed labels.

3. Sampling procedures.

- a. All seed lots eligible for final certification ~~should~~ shall be sampled during conditioning by taking representative samples at periodic intervals throughout the process of conditioning the seed lot.
- b. Specific instructions to samplers are found on the reverse side of the samplers report.

4. Maximum lot size and numbering.

- a. The maximum lot size for bagged seed is ~~two~~ five thousand bushels [~~704.78~~ 17619.54 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000 kilograms]. ~~For all crops, one sample for each lot is required, except small seeded legumes and grasses. For small seeded legumes and grasses, one sample for twenty-two thousand five hundred pounds [10000 kilograms] is required. Bulk certified and registered class seed lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot. Bulk seed requires one sample per lot. For all crops, one sample for each lot is required. The entire lot must be certified at the time final certification is completed.~~
- b. The lot number shall be designated by the labeler. The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.

5. Commingling (mixing) of inspected seed fields. Seed of the same kind and variety from different fields ~~of the same kind and variety, which have passed that pass~~ field inspection; may be commingled if the seed is of the same class, generation, and general quality. If the seed of different classes ~~or generations~~ is commingled, the seed becomes eligible for the lowest class only.

6. Commingling carryover certified seed lots. Carryover seed from certified lots may be commingled if the seed is of the same variety.

class, and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot prior to commingling to ensure none of the lots have gone out of condition.

7. Conditioning.

- a. All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class.
- b. Field-inspected seed may be conditioned either by the grower or at by an approved seed conditioning plant conditioner.

7: 8. Conditioning by farmer or seed grower -Procedure.

- a. ~~Condition the seed. A farmer or seed grower does not need an approved conditioning plant facility permit if the farmer or grower conditions the farmer's or grower's own seed on the farmer's or grower's premises with the farmer's or grower's equipment.~~
- b. The ~~farmer or seed~~ grower must complete a ~~sampler's~~ sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department in Fargo for analysis.

8: 9. Conditioning at by an approved plant facility.

- a. To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.
- b. Growers If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration if ownership of the seed lot has been transferred to a different individual or entity. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner or the commissioner's agent.
- b. ~~The grower's declaration shall be completed and signed when ownership of the seed lot has changed and the seed is delivered for conditioning.~~
- c. While conditioning, ~~at~~ the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.

9. **Regulatory sampling.** The state seed department may resample any lot of seed before final certification or after the seed is labeled.
10. **Laboratory analysis.**
 - a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from ~~another AOSA-approved~~ an approved laboratory, through the certification agency of the state of origin of the seed.
 - b. If more than one sample of seed from the same lot is tested for purity without additional conditioning, an average shall be taken of all tests conducted. Results from the most recent germination or disease test shall be used as the final result.
 - c. The test results from official samples drawn by state seed department personnel shall supersede all other test results from submitted samples.
 - d. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-12. Labeling.

1. **Bagged seed.**
 - a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.
 - b. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.
 - c. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional. When two tags are used, the certification tag, will not carry the

seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.

- d. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.
 - e. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.
2. Bulk certification. All rules and standards for production, conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.
- a. ~~All field and seed standards applying to bagged seed shall also apply to bulk certified seed. Foundation and registered class seed may be sold in bulk by the applicant producer, or by an approved conditioner only.~~
 - b. ~~Certified seed may be sold in bulk by an approved retail seed facility or by the applicant producer. A maximum of two physical transfers are permitted after final certification: an approved conditioner, or an approved bulk retail facility.~~
 - (1) ~~From the applicant labeler to an approved retailer or consumer.~~
 - (2) ~~From an approved retailer to consumer.~~
 - c. ~~The foundation and registered class may be sold in bulk. To be eligible for recertification, bulk foundation or registered seed must be sold by the applicant producer or by an approved conditioner directly to the consumer. Approved bulk handlers retail facilities may be allowed to handle bulk registered seed on a case-by-case basis as only when authorized by the state seed department personnel. If authorized by the seed department, the bulk retailer must designate which bins will be used for registered seed.~~
 - d. A maximum of two physical transfers are permitted after final certification:
 - (1) From the applicant labeler to an approved retailer or consumer.
 - (2) From an approved retailer to consumer.
 - e. It is the seller's responsibility to:

- (1) Handle seed in a manner to prevent mixtures and contamination.
- (2) Supply seed that is representative of the seed tested and approved for certification.
- (3) Ensure all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed.
- (4) Determine that the vehicle receiving bulk certified seed has been cleaned prior to receiving the seed. If it is not clean, this is to be noted on the bill of sale or transfer certificate.
- (5) Provide to the purchaser a bulk certificate for each load of bulk certified seed at the time of delivery.
- (6) ~~The~~ Ensure that the conditioned lot ~~shall is~~ not be moved from the premises of the approved conditioning ~~plant~~ facility or labeler's facility until the sample has been tested by the state seed department laboratory and shows that the lot is eligible for certification.

e- f. It is the buyer's responsibility to:

- (1) Obtain a bulk certificate from the seller for each load of bulk certified seed at the time of delivery.
- (2) Provide a clean vehicle or container in which to load seed.
- (3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.

f- g. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.

g- h. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning ~~plant~~ facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.

h- i. For all bulk certified seed:

- (1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.

- (2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.
- (3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.
- (4) All augers used to convey seed must be reversible.
- (5) All bins must be clearly and prominently marked to show ~~crop~~ kind, variety, ~~seed~~ seed class, and lot number.
- (6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.
- (7) Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.

i. ~~j.~~ The following records must be maintained. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:

- (1) Amount of seed grown and conditioned or purchased for bulk sale.
- (2) Amount of bulk certified seed sold by variety and lot number.
- (3) A current inventory of each variety of seed available for sale ~~for each variety~~.
- (4) It is the ~~seller's~~ initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, ~~kind~~ class, and lot number of each lot of certified seed sold, whether bagged or in bulk, ~~sold~~ for a period of two years after the final disposition of the seed lot.

3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-14(4)(e), 4-09-16

Law Implemented: NDCC 4-09-14(4)(e), 4-09-16, 4-09-17, 4-09-18

74-03-01-13. Preissued certification tags. ~~Registered or certified~~ Certified tags may be issued before conditioning if prior approval has been granted by the state seed department. Tags will be preissued only under the following conditions:

1. Tags will be issued only to approved conditioning ~~plants~~ facilities.
2. Final samples, along with the grower's declaration, if required, sampler's report, and printed analysis tag must be submitted immediately after each lot is conditioned.
3. The conditioned lot shall not be moved from the premises of the approved conditioning ~~plant~~ facility or labeler's facility until the sample has been tested by the state seed department laboratory and ~~shows that the lot is eligible for final certification has been completed.~~ If the seed lot is rejected, the approved ~~plant~~ facility or labeler must assume responsibility for removing certification tags and returning them to the state seed department.
4. The use of a certification label preprinted on bags will be permitted if prior approval by the state seed department is granted. Analysis information may also be printed on the bag. The approved conditioning ~~plant~~ facility must submit a preprinted analysis tag from the bags used with the sample for final certification.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-14. Carryover seed.

1. All unconditioned carryover seed eligible for certification must be reported to the state seed department by October first of each year. Growers must report all field-inspected seed that was not submitted for final certification. Failure to report will disqualify the seed for certification.
2. Carryover bagged seed. ~~New certification tags will be furnished for carryover bagged seed.~~ All carryover seed must be retested for germination before new certified tags will be issued. New certification tags will be furnished for carryover bagged seed.

3. Carryover bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued. Carryover bulk seed cannot be recertified in bags unless new samples are submitted for analysis.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-14.1. Applicant's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification including seeding, harvesting, and storing. The applicant or grower ~~and the~~ approved conditioner, and bulk retailer are responsible for maintaining genetic purity and identity during conditioning and handling. Evidence that any lot of seed has not been protected from contamination that might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.

History: Effective May 1, 1986; amended effective January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-15. Misuse of certification privileges. Any seed grower, conditioner, or ~~seedsman~~ retailer found guilty of misusing certification tags, misrepresenting seed, or violating any of the rules governing the growing, conditioning, and marketing of foundation, registered, or certified seed, or guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, conditioner, or ~~seedsman~~ retailer sells, may at the discretion of the state seed commissioner or the commissioner's agents be denied the right to produce, condition, or market seed under certification. Violators may be subject to fines by administrative action of the state seed department.

History: Amended effective May 1, 1986; May 1, 1988; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-01-16. Approved conditioners. Any seed conditioner may be designated as an "approved conditioner" to condition field-inspected seed for final certification if, after inspection, it is the state seed department inspector's opinion ~~of the inspector for the state seed department~~ that the plant facility is properly managed and equipped, ~~and facilities are such that seed will, with usual care, not become mixed during conditioning to maintain genetic purity and varietal identity of each seed lot.~~ The managers and the designated samplers in these plants facilities are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations.

1. Approved conditioners of small grains are required to have the following operational equipment capable of: (1) length grading machine - either a disc separator or indent cylinder or combination machine which removes long and short fractions; and (2) width grading - either an air screen machine or precision graders with aspiration in line.
2. Permission to operate as an approved conditioner is granted on ~~a yearly~~ an annual basis. All approved conditioners must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A fee will be charged for each reinspection. An approved conditioner is required to have a separate inspection and permit for each fixed facility or mobile conditioning unit.
3. The commissioner may approve specialized equipment and facilities utilized for the purpose or repackaging, treating, or inoculating certified seed.

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-02

74-03-02-01. Land requirements. A crop of small grain or flax will not be eligible for certification if planted on land on which the same kind of crop was grown the year previous unless the previous crop was the same variety and passed field inspection was inspected for certification. A crop of winter wheat may be planted on a field that previously produced spring wheat. Foundation or registered class fields of durum will not be eligible for certification if planted on land on which spring wheat was planted either of the two previous years.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-03. Field standards.

1. Isolation.

- a. ~~At the time of~~ Prior to inspection, the field must be ~~separated~~ isolated from other fields ~~inseparable crops~~ by a fence row, natural ~~boundaries~~ boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, ~~uncropped, or planted to some other~~ separable crop ~~sprayed, or uncropped.~~
- b. ~~When it is necessary to remove a strip to obtain proper isolation,~~ a part of the strip to be removed must be cut into the field to be inspected:
- c. ~~If two classes of the same variety are planted adjacent to one another in the same field, isolation may be accomplished by placing a flag at each end of the field ten feet [3.05 meters] into the higher class of seed, prior to inspection. The flags must be plainly visible at the time of inspection. The grower may harvest that isolated ten-foot [3.05-meter] section of crop with the lower class of seed.~~
- d. All rye fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from rye fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing to remove undesirable plants must be done before field inspection is made. Rogued plants must be removed from the field to be harvested.
- b. Patches of inseparable prohibited or objectionable weeds, or both, must be either removed by cutting or must be controlled by other means so that no seed is produced or harvested.

3. Specific field standards(wheat - barley - oats - rye - triticale).

| Factor | Maximum Tolerance | | |
|-----------------------------|-------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Inseparable other crops | 1:30,000 | 1:10,000 | 1:5,000 |
| Prohibited noxious weeds ** | none | none | none |

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants which are characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

4. Specific field standards (flax).

| Factor | Maximum Tolerance | | |
|-----------------------------|-------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Prohibited noxious weeds ** | none | none | none |

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable noxious weeds, or both, in the field will be determined by the inspector.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Seed count required on wheat, oats, barley, and durum.

| Factor | Standards for Each Class | | |
|---------------------------------------|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) * | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Other varieties ** | 1 per 2 pounds | 1 per pound | 3 per pound |
| Other crop seeds (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Inert matter (maximum) *** | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited noxious weed seeds + | none | none | none |
| Objectionable weed seeds (maximum) ++ | 1 per 4 pounds | 1 per 2 pounds | 1 per pound |
| Germination +++ | 85.0 percent | 85.0 percent | 85.0 percent |

* The standard for durum and rye shall be 98.0 percent minimum.

** Other varieties shall not include variants characteristic of the variety. White wheat must be tested for red wheat contaminants.

*** For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum, triticale, and rye may contain 2.0 percent maximum inert matter.

+ Including the seeds of quackgrass.

++ Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

+++ Winter wheat, durum, and rye minimum 80.0 percent.

Note: A barley grower labeler is responsible for having a loose smut test, by an official laboratory, on the harvested seed of each field of barley. If seed from more than one field is blended without having a test for each field, a loose smut test must be made on each seed lot or subplot. The percentage of loose smut will be printed on the certification certificate or label. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-07

74-03-07-01. Land requirements. The following field requirements may be modified when the reproduction of a strain or strains, entering into a specific variety, are under the supervision of an experiment station or seed certification agency.

1. A field, to be eligible for the production of foundation seed, must not have grown or been seeded to the same species during the previous five years.
2. A field, to be eligible for the production of registered or certified seed, must not have been in the production of the same species during the previous year unless the crop was of the same variety or strain and passed field inspection was inspected for certification.

History: Amended effective May 1, 1986; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-02. Field inspection. Field inspection will be made each year a seed crop is harvested; Two field inspections shall be performed. The first inspection shall be performed in the spring at a time when prohibited weeds can be observed. The second shall be performed after the crop is fully headed; and before harvest.

History: Amended effective July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-03. Field standards.

1. A portion of the field may be accepted for certification if the boundary is well defined.
2. Fields should be rogued before blooming and before inspection is made to remove other species, off-type plants, and weeds, the seeds of which are difficult to separate in cleaning.
3. A seed field to be eligible for the production of foundation, registered, or certified seed must be isolated from any other strain or strains of the same species in bloom at the same time in accordance with the requirements given in the following table:

| Minimum Isolation Distance Required (Feet) | | | | |
|---|--------|------------|------------|-----------|
| | Symbol | Foundation | Registered | Certified |
| All cross-pollination <u>cross-pollinated</u> species | C | 1,320 | 660 | 330 |
| Strains entirely <u>Entirely</u> apomictic strains | A | 165 | 165 | 82.5 |
| Highly self-fertile species | S | 165 | 165 | 82.5 |

4. Specific requirements. The maximum field tolerance for other varieties and off-type plants of the same species, when recognized, shall be as follows:

| | |
|------------|-------------|
| Foundation | 0.1 percent |
| Registered | 0.5 percent |
| Certified | 1.0 percent |

History: Amended effective May 1, 1986; May 1, 1988; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07-04. Specific seed standards (non-chaffy seeded species).

| Other Varieties (Maximum) | | | | Foundation 0.1% | | Registered 1.0% | | Certified 1.0% | | | | | | | |
|---------------------------|----------------------|--------------------------|----|-------------------------|----|------------------------|-----|-------------------------|-----|-------------------|------|------------------------------------|-----|---|----|
| Species | Minimum | | | Maximum | | | | | | | | | | | |
| | Type of Reproduction | Percent of Pure Seed F&R | | Percent Germination F&R | | Percent Other Crop F&R | | Percent Other Grass F&R | | Percent Inert F&R | | Percent Weed Seed ¹ F&R | | Objectionable Weed Seeds ² Per Pound F&R | |
| | | F&R | C | F&R | C | F&R | C | F&R | C | F&R | C | F&R | C | F&R | C |
| Smooth Bromegrass | C | 90 | 85 | 80 | 80 | 0.2 | 0.5 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Timothy | C | 99 | 99 | 80 | 80 | 0.2 | 0.5 | 0.1 | 0.2 | 1.0 | 1.0 | 0.20 | 0.5 | 9 | 13 |
| Crested Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Intermediate Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Pubescent Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Slender Wheatgrass | S | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Tall Wheatgrass | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Western Wheatgrass | C | 85 | 85 | 60 | 60 | 0.2 | 1.0 | 0.2 | 0.5 | 15.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Canada Wildrye | S | 90 | 85 | 70 | 70 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 15.0 | 0.25 | 0.5 | 9 | 13 |
| Russian Wildrye | C | 90 | 90 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 10.0 | 0.25 | 0.5 | 9 | 13 |
| Green Needlegrass | S | 90 | 80 | 65 | 65 | 0.2 | 1.0 | 0.1 | 0.5 | 10.0 | 20.0 | 0.25 | 0.5 | 9 | 13 |
| Creeping Foxtail | C | 80 | 80 | 80 | 80 | 0.2 | 1.0 | 0.1 | 0.5 | 20.0 | 20.0 | 0.25 | 0.5 | 9 | 13 |
| Switchgrass | C | 95 | 90 | 60 | 60 | 0.2 | 1.0 | 0.2 | 0.5 | 5.0 | 10.0 | 0.50 | 1.0 | 9 | 13 |

Specific seed standards (chaffy seeded species).

| Other Varieties (Maximum) | | | | Foundation 0.1% | | Registered 1.0% | | Certified 1.0% | | | | | | | |
|---------------------------|----------------------|--------------------------|-----|-------------------------|---|------------------------|-----|-------------------------|-----|-------------------|---|------------------------------------|-----|---|----|
| Species | Minimum | | | Maximum | | | | | | | | | | | |
| | Type of Reproduction | Percent of Pure Seed F&R | C | Percent Germination F&R | C | Percent Other Crop F&R | C | Percent Other Grass F&R | C | Percent Inert F&R | C | Percent Weed Seed ¹ F&R | C | Objectionable Weed Seeds ² Per Pound F&R | C |
| Sideoats Grama | C & A | 50* | 30* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Big Bluestem | C | 50* | 25* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Sand Bluestem | C | 40* | 20* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Little Bluestem | C | 12* | 12* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |
| Indiangrass | C | 50* | 25* | - | - | 0.2 | 1.0 | 0.1 | 0.5 | - | - | 0.5 | 1.0 | 9 | 13 |

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* Pure Live Seed Index

¹ Prohibited noxious weed seeds, including seeds of quackgrass, horsenettle, Johnsongrass, wild garlic, and dodder, are not allowed.

² Objectionable weed seeds shall ~~contain~~ include the following: wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), dragonhead, and buckhorn plantain.

| | | |
|-----------|-------------------------------------|-------------------|
| wild oats | hedge bindweed (wild morning glory) | dragonhead |
| | giant ragweed (kinghead) | buckhorn plantain |

Percent germination or pure live seed includes percent germination plus percent dormant for North Dakota certification purposes on those kinds of grasses for which the association of official seed analysts (AOSA) rules specifically prescribe that dormancy be determined.

History: Amended effective December 18, 1989; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-07.1

74-03-07.1-01. Land requirements. A crop of buckwheat will not be eligible for certification if planted on land on which the same kind of crop was grown the year previous unless the previous crop was grown from certified seed of the same variety and passed field inspection was inspected for certification.

History: Effective May 1, 1986; amended effective July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-03. Field standards.

1. Isolation.

- a. ~~At the time of~~ Prior to inspection, the field must be separated isolated from other fields ~~inseparable crops~~ by a fence row, natural boundaries boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, ~~uncropped, or planted to some other~~ separable crop ~~sprayed, or uncropped.~~
- b. ~~When it is necessary to remove a strip to obtain proper isolation, a part of the strip to be removed must be cut into the field to be inspected.~~
- c. All buckwheat fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from buckwheat fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

2. Roguing.

- a. All roguing must be done before field inspection. Rogued plants must be removed from the field to be harvested.
- b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.

3. Specific field standards.

| Factor | Maximum Tolerance | | |
|--------------------------|-------------------|------------|-----------|
| | Foundation | Registered | Certified |
| Other varieties * | 1:10,000 | 1:5,000 | 1:2,000 |
| Inseparable other crops | 1:10,000 | 1:10,000 | 1:5,000 |
| Prohibited weed seeds ** | none | none | none |

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective May 1, 1986; amended effective May 1, 1988; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-07.1-04. Seed standards.

| Factor | Standards for Each Class | | |
|---|--------------------------|----------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 99.0 percent |
| Total weed seeds (maximum) | 2 per pound | 5 per pound | 10 per pound |
| Other varieties * | 1 per 2 pounds | 1 per pound | 3 per pound |
| Other crop seeds (maximum) | 1 per 2 pounds | 1 per pound | 3 per pound |
| Inert matter (maximum) noxious ** | 1.0 percent | 1.0 percent | 1.0 percent |
| Prohibited weed seeds *** | none | none | none |
| Objectionable weed seeds (maximum) **** | 1 per 4 pounds | 1 per 2 pounds | 2 per pound |
| Germination | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variants characteristic of the variety.

** For all crops foreign matter other than broken seed may not exceed 0.2 percent.

*** Including the seeds of quackgrass.

**** Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

History: Effective May 1, 1986; amended effective September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-08

74-03-08-01. Land requirements. A millet crop shall be planted on land on which the last crop grown was of another kind or was planted with certified seed of the same variety and ~~passed field inspection~~ was inspected for certification.

History: Amended effective May 1, 1986; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-03. Field standards.

1. ~~General~~ **Isolation.** ~~A~~ Prior to inspection, a field shall must be separated isolated from inseparable crops by a five-foot [1.52-meter] strip of ground to prevent mechanical mixtures. The strip may be fence row, natural boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped, or planted to a separable crop.
2. **Specific field standards.**

| Factor | Foundation | Registered | Certified |
|-----------------------------------|------------|------------|-----------|
| Other varieties (maximum) * | 1:3,000 | 1:2,000 | 1:1,000 |
| Inseparable other crops (maximum) | 1:10,000 | 1:10,000 | 1:2,000 |
| Prohibited weeds** | None | None | None |

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-08-04. Seed standards (millet).

| Factor | Standards for Each Class | | |
|----------------------------------|--------------------------|--------------------|--------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 99.0 percent | 99.0 percent | 98.0 percent |
| Total weed seeds (maximum) | .01 percent | .01 percent | .04 percent |
| Total other crop seeds (maximum) | .01 <u>percent</u> | .01 <u>percent</u> | .04 percent |
| Other varieties (maximum) | .01 <u>percent</u> | .01 <u>percent</u> | .02 percent |
| Other kinds (maximum) | .01 <u>percent</u> | .01 <u>percent</u> | .02 percent |
| Inert matter | 1.0 percent | 1.0 percent | 2.0 percent |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds * | none | 1 per pound | 3 per pound |
| Germination | 70.0 percent | 70.0 percent | 70.0 percent |

* Objectionable weed seeds are dodder, wild oats, quackgrass, hedge bindweed (wild morning glory), nightflowering catchfly, giant foxtail, hoary alyssum, wild radish, wild vetch species, buckhorn plantain, and horsenettle.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-12

74-03-12-01. Land requirements. In soybeans, chickpeas, and lentils, a crop will not be considered for certification if planted on land which produced the same kind of crop the previous year unless the previous crop was the same variety and passed field inspection was inspected for certification. In peas, lentils, soybeans and chickpeas, a crop will not be considered eligible for certification if planted on land which produced any class of dry field bean, green bean, soybean, or pulse crop field peas the preceding year. Soybeans may not follow chickpeas. Chickpeas may not follow soybeans.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-02. Field inspection. Field inspection shall be made on soybeans prior to harvest when the crop is approaching maturity preferably after the leaves have dropped or at a time when varietal purity can be determined. Field inspection on ~~field peas~~, chickpeas, or lentils shall be made prior to harvest when the crop is in bloom or at such a time as the varietal purity of the crop can be determined.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-03. Field standards.

1. **Isolation.** A Prior to inspection, a field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped, or planted to some other separable crop shall constitute a field boundary for the purpose of isolation.
2. **Specific requirements ~~(soybeans, chickpeas, lentils)~~ field standards.**

| Factor | Maximum Tolerance | | |
|--|-------------------|-------------|-------------|
| | Foundation | Registered | Certified |
| Other varieties * | 0.1 percent | 0.2 percent | 0.2 percent |
| Corn and sunflower plants bearing seed | none | none | none |
| Prohibited noxious weeds ** | none | none | none |
| Objectionable weeds *** | none | none | none |

- * Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or ~~noxious~~ objectionable weeds, or both, in the field will be determined by the inspector.

*** Objectionable weeds include nightshade species and cocklebur.

3. ~~Specific requirements (field peas):~~

| Factor | Maximum Tolerance | | |
|-----------------------------|-------------------|--------------|--------------|
| | Foundation | Registered | Certified |
| Other varieties * | 0.01 percent | 0.01 percent | 0.01 percent |
| Other crops (inseparable) | none | none | none |
| Prohibited noxious weeds ** | none | none | none |

* ~~Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety inspected.~~

** ~~The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.~~

History: Amended effective May 1, 1986; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12-04. Seed standards (~~soybeans, chickpeas, lentils, and field peas~~).

Seed count required on soybeans, chickpeas, and lentils.

| Factor | Standard for Each Class | | |
|-------------------------------|-------------------------|---------------------------|------------------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 98.0 percent | 98.0 percent | 98.0 percent |
| Total weed seeds (maximum) | none | 1 per pound | 2 per pound |
| Other varieties (maximum) * | 0.1 percent | 0.2 percent | 0.2 percent |
| Other crop seeds (maximum) | none | 1 per 2 pounds | 1 per pound |
| <u>Soybeans and chickpeas</u> | none | <u>1 per 2 pounds</u> | <u>1 per pound</u> |
| <u>Lentils</u> | <u>1 per 2 pounds</u> | <u>1 per pound</u> | <u>3 per pound</u> |
| Inert matter | 2.0 percent | 2.0 percent | 2.0 percent |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds ** | none | none | none |
| Germination and hard seeds | 85.0 percent | 85.0 percent | 85.0 percent |

* Other varieties shall not include variants characteristic of the variety.

** Objectionable weed seeds are dodder, hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

Chickpea and lentil seed labelers shall have an aschochyta test performed on the harvested seed of each field or lot. The test results shall appear on the label for each seed lot.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-12.1
SPECIFIC CROP REQUIREMENTS - FIELD PEAS

| | |
|----------------------|--------------------------|
| <u>Section</u> | |
| <u>74-03-12.1-01</u> | <u>Land Requirements</u> |
| <u>74-03-12.1-02</u> | <u>Field Inspection</u> |
| <u>74-03-12.1-03</u> | <u>Field Standards</u> |
| <u>74-03-12.1-04</u> | <u>Seed Standards</u> |

74-03-12.1-01. Land requirements. A crop of field peas will not be considered for certification if planted on land which produced the same kind the previous year unless the previous crop was the same variety and was inspected for certification. A crop will not be considered eligible for certification if planted on land which produced dry field bean, green bean, soybean, or chickpeas the preceding year.

History: Effective July 1, 2010.
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12.1-02. Field inspection. Field inspection shall be made prior to harvest when the crop is in bloom or at such a time as the varietal purity of the crop can be determined.

History: Effective July 1, 2010.
General Authority: NDCC 4-09-03, 4-09-05, 4-09-16
Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12.1-03. Field standards.

1. **Isolation.** Prior to inspection, a field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped.
2. **Specific field standards.**

| <u>Factor</u> | <u>Maximum Tolerance</u> | | |
|------------------------------------|--------------------------|---------------------|---------------------|
| | <u>Foundation</u> | <u>Registered</u> | <u>Certified</u> |
| <u>Other varieties *</u> | <u>0.01 percent</u> | <u>0.01 percent</u> | <u>0.01 percent</u> |
| <u>Other crops (inseparable)</u> | <u>none</u> | <u>none</u> | <u>none</u> |
| <u>Prohibited noxious weeds **</u> | <u>none</u> | <u>none</u> | <u>none</u> |

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety inspected.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-12.1-04. Seed standards.

Seed count required on field peas.

| <u>Factor</u> | <u>Standard for Each Class</u> | | |
|--------------------------------------|--------------------------------|-----------------------|---------------------|
| | <u>Foundation</u> | <u>Registered</u> | <u>Certified</u> |
| <u>Pure seed (minimum)</u> | <u>98.0 percent</u> | <u>98.0 percent</u> | <u>98.0 percent</u> |
| <u>Total weed seeds (maximum)</u> | <u>none</u> | <u>1 per pound</u> | <u>2 per pound</u> |
| <u>Other varieties (maximum) *</u> | <u>0.1 percent</u> | <u>0.2 percent</u> | <u>0.2 percent</u> |
| <u>Other crop seeds (maximum)</u> | <u>none</u> | <u>1 per 2 pounds</u> | <u>1 per pound</u> |
| <u>Inert matter</u> | <u>2.0 percent</u> | <u>2.0 percent</u> | <u>2.0 percent</u> |
| <u>Prohibited noxious weed seeds</u> | <u>none</u> | <u>none</u> | <u>none</u> |
| <u>Objectionable weed seeds **</u> | <u>none</u> | <u>none</u> | <u>none</u> |
| <u>Germination and hard seeds</u> | <u>85.0 percent</u> | <u>85.0 percent</u> | <u>85.0 percent</u> |

* Other varieties shall not include variants characteristic of the variety.

** Objectionable weed seeds are dodder, hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

History: Effective July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-03-13

74-03-13-01. General field standards and land Land requirements.

1. A crop will not be eligible for certification if planted on land that was in any class of dry field beans or green beans the preceding two years or soybeans the preceding year. Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.
2. ~~The field shall be considered a unit for certification. A strip at least five feet [1.52 meters] wide which is either mowed, uncropped, or planted to some other separable crop shall constitute a field boundary for the purpose of these standards.~~
3. ~~Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.~~

History: Amended effective May 1, 1986; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-03. Specific field Field standards (dry field beans).

1. Isolation. Prior to inspection, a field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip of at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped.
2. Specific field standards.

| Factor | Foundation | Maximum Tolerance | |
|------------------------------|-----------------------------|----------------------------|---------------------------|
| | | Registered | Certified |
| Other varieties or classes * | 0-03 .01 percent | 0.05 percent | 0.1 percent |
| Inseparable other crops | none | none | none |
| Prohibited noxious weeds ** | none | none | none |
| Objectionable weeds *** | none | none | none |
| Bacterial bean blights + | .01 percent | -04 .05 percent | -04 .1 percent |
| Anthraxnose | none | none | none |
| Wilt | none | none | none |
| Common bean mosaic | none | 0.5 percent | 1.0 percent |

* Other varieties shall not include variants characteristic of the variety.

- ** Prohibited noxious weeds include only field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for prohibited or objectionable weeds, or both, will be determined by the inspector.
- *** Objectionable weeds include nightshade species and cocklebur.
- + 1. The grower shall isolate and not thresh within a one hundred-foot [30.5-meter] radius of all staked (flagged) plants. A grower must leave in place any stakes or flags by plants with blight-infected pods.
- 2. Areas to be isolated must be mapped out on field inspection report.
- 3. In any case, it is important that blighted areas be clearly defined by flags. These blighted areas must be left unthreshed while the rest of the field is threshed. The inspector may recheck the field to ensure that these blighted areas were indeed left. Failure to leave the rejected area will result in total field being rejected.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

74-03-13-04. Seed standards (~~dry field beans~~)--Seed count required on ~~dry field beans~~.

Seed count required on dry field beans.

| Factor | Standards for Each Class | | |
|-------------------------------|--------------------------|--------------|----------------|
| | Foundation | Registered | Certified |
| Pure seed (minimum) | 98.5 percent | 98.5 percent | 98.5 percent |
| Inert matter (maximum)* | 1.5 percent | 1.5 percent | 1.5 percent |
| Total weed seeds (maximum) | none | none | 2 per pound |
| Other varieties or classes | 0.01 percent | 0.05 percent | 0.1 percent |
| Other crops (maximum) | none | none | 1 per 2 pounds |
| Prohibited noxious weed seeds | none | none | none |
| Objectionable weed seeds** | none | none | none |
| Germination (minimum) | no standard | 85.0 percent | 85.0 percent |
| Bacterial blight test*** | pass | pass | pass |
| <u>Anthraxnose***</u> | <u>none</u> | <u>none</u> | <u>none</u> |

* Foreign matter other than broken seed may not exceed 0.50 percent.

** Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), hoary alyssum, horsenettle,

quackgrass, wild oats, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

*** The grower is responsible for having a bacterial blight test and anthracnose test, performed by a seed department-approved laboratory, on the harvested seed of each field or seed lot of dry field beans. If seed from more than one field is blended or commingled prior to testing, a bacterial blight test and anthracnose test must be performed on each separate seed lot or subplot.

A seed treatment to reduce surface bacterial contamination of the seed coat is recommended.

History: Amended effective May 1, 1986; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-09-03, 4-09-05, 4-09-16

Law Implemented: NDCC 4-09-16, 4-09-17, 4-09-18

CHAPTER 74-04-01

74-04-01-07. Seed classification and limited generation.

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.
2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections shall originate from pathogen-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock (generation zero). Nuclear seed (first field year) is the progeny of prenuclear seed, generation 1 (second field year) is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, and sixth generation (seventh field year, certified class) is the progeny of generation 5 seed. The certified designation will be granted to lots meeting the minimum standards outlined in section 74-04-01-08 and by approval of the commissioner.
3. Prenuclear seed stocks intended to be grown in the field as nuclear (GO) seed potatoes must be laboratory-tested, be demonstrated to be free of the following pathogens, and meet the following standards:
 - a. *Clavibacter michiganensis michiganensis* subsp. *sepedonicus* (ring rot).
 - b. *Erwinia carotovora* (blackleg and soft rot).
 - c. Potato virus A.
 - d. Potato virus M.
 - e. Potato virus X.
 - f. Potato virus Y.
 - g. Potato leafroll virus.
 - h. Potato spindle tuber viroid.
 - i. Potato mop top virus.
 - j. All micropropagation production must be approved by a certification agency.

- k. Good records must be maintained on all tests and submitted with the application for field inspection.
 - l. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.
4. Basic seed must originate from sources described above and developed in seed plots and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of generations.

Experimental cultivars under evaluation by the state seed department in cooperation with universities or industry will meet program requirements of and will be maintained under guidelines and standards established by the state seed department. Seed stocks will be grown a limited number of generations.

5. Foundation class seed must be seed meeting standards for recertification.
- a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks must be replaced on a farm in which bacterial ring rot has been found.
 - b. Excessive blackleg symptoms will be cause for rejection as foundation stock.
6. The certified class must meet the minimum field tolerances described in section 74-04-01-08. The classification serves as a quality standard for commercial planting purposes only and must meet all the requirements and responsibilities of this chapter. The certified class designation may be applied to any generation under the criteria set forth in section 74-04-01-07.8.
7. Generation numbers increase with years of field reproduction from the original seed source. Generation five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.
8. Except for varietal mixtures, seed lots may be downgraded or advanced in generation if they do not meet the disease tolerances for that generation or they may be placed in the certified class and sold by their generation number as certified seed providing they meet the

specifications for that class. Disease tolerances for each generation of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2010.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-08. Field inspection standards.

1. Each seed potato field will be ~~visibly~~ visually inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.
2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed ~~visibly~~ visually may be present.

| | First Inspection Tolerances (%) Foundation Class Generation | | | | | | Certified Class Generation |
|----------------------|--|-----|-----|-----|-----|-----|-------------------------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 0-6 |
| Varietal mixture | 0.1 | 0.2 | 0.3 | 0.5 | 0.5 | 0.5 | 0.5 |
| Spindle tuber viroid | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Severe mosaics (PVY) | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 1.0 |
| Leaf roll (PLRV) | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 1.0 |
| Total serious virus | 0.2 | 0.3 | 0.4 | 0.5 | 0.5 | 0.5 | 1.0 |
| *Bacterial ring rot | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | Second and All Subsequent Inspections Tolerances (%) Foundation Class Generation | | | | | | Certified Class Generation |
|----------------------|--|-----|-----|-----|-----|-----|-------------------------------|
| | 0 | 1 | 2 | 3 | 4 | 5 | 0-6 |
| Varietal mixture | 0.1 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 0.3 |
| Spindle tuber viroid | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| Severe mosaics (PVY) | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 1.0 |
| Leaf roll (PLRV) | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 1.0 |
| Total serious virus | 0.0 | 0.1 | 0.2 | 0.3 | 0.3 | 0.3 | 1.0 |
| *Bacterial ring rot | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Ring rot. Seed fields will be subject to a third (final) field inspection focused primarily on inspection for symptoms related to ring rot. If the field has not received a third inspection, the grower will be required to submit a four hundred tuber sample (minimum) per field for laboratory testing.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification tags.

3. Field conditions.

- a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.
- b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, a laboratory test may be required or strips of unkilld vines must be left in the seed fields to facilitate final inspections, or both. When strips are left

for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.

- c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.
 - d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.
 - e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official postharvest tests shall be considered ineligible for certification tags.
4. Appeal inspection. Inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done ~~previous~~ prior to reinspection.
5. Bacterial ring rot control.
- a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.
 - b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.
 - c. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.
6. The variety name stated on the application will be the standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics meet the requirements of the chapter.
7. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification

means only that the potatoes were randomly inspected, and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. ~~Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state.~~ The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, and grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March ~~2002~~ 2010, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:
 - a. Shape. Fairly well-shaped except for long varieties.
 - (1) Dryland type (see definitions section 74-04-01-01).
 - (2) Except for shape (see definitions section 74-04-01-01).
 - b. Free from:
 - (1) Freezing injury.
 - (2) Blackheart.
 - (3) Soft rot and wet breakdown.
 - (4) Late blight tuber rot.
 - (5) Bacterial ring rot.
 - (6) Nematode or tuber moth injury.
 - (7) Fresh cuts or fresh broken-off second growth.
 - c. Free from serious damage caused by:
 - (1) Hollow heart.

- (2) Vascular ring discoloration.
 - (3) Wireworm.
 - (4) Growth cracks.
- d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).
- e. Size:
- (1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.
 - (2) Maximum size may not exceed twelve ounces [340.2 grams] for round-shaped or intermediate-shaped varieties and fourteen ounces [396.9 grams] for long varieties.
 - (3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.
- f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:
- (1) For defects:
 - (a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.
 - (b) Ten percent for potatoes in any lot which are damaged by soil. (see definitions section 74-04-01-01).
 - (c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.
 - (d) Potatoes affected by silver scurf are not grade factors.
 - (e) Not more than ten percent of the potatoes seriously damaged by wireworm.
 - (f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the

following percentages shall be allowed for the defects listed:

| | Percent |
|---|---------|
| Bacterial ring rot | 0.00 |
| Late blight tuber rot | 1.00 |
| Damage by dry-type or moist-type fusarium tuber rot | 2.00 |
| Nematode or tuber moth injury | 0.00 |
| Frozen, soft rot, or wet breakdown | 0.50 |
| Varietal mixture | 0.50 |

(2) For off-size:

- (a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.
- (b) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart, wireworm, internal discoloration, firmness, sprouts, and sunken, flattened, or depressed areas with or without underlying flesh discolored, and are not seriously damaged by soil and for increase in maximum size, and for increased tolerance for defects listed below:

Tolerances.

a. For defects:

- (1) Twenty percent for potatoes seriously damaged by hollow heart.
- (2) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.
- (3) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.

b. Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round-shaped or

intermediate-shaped varieties and sixteen ounces [453.60 grams] for long varieties.

3. ~~White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred within the state of North Dakota only. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request. The white tag North Dakota-certified seed potato grade shall consist of certified seed potatoes of one variety that are graded according to agreement between the seller and the purchaser as to size and defects. The official label must be used and marked as white tag.~~
4. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.
5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.
6. Classification of defects.
 - a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.
 - b. Table I - External defects.

| Defect | DAMAGE | |
|--|--|---|
| | When materially detracting from the appearance of the potato | OR When removal causes a loss of more than 5 percent of the total weight of the potato |
| Air cracks | | x |
| Bruises | | x |
| Cuts and broken-off second growth (healed) | x | x |
| Elephant hide (scaling) | x | |
| Enlarged, discolored, or sunken lenticels | x | |
| Folded ends | x | |

| | | |
|--|---|---|
| Second growth | x | |
| Shriveling | When more than moderately shriveled, spongy, or flabby. | |
| Sprouts | When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 millimeters] in length. | |
| Surface cracking | x | x |
| Flea beetle injury | x | x |
| Grub damage | x | x |
| Rodent and/or bird damage | x | x |
| Wireworm or grass damage | Any hole more than 3/4 inch [19.1 millimeters] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 millimeters] ¹ . | |
| Dry-type or moist-type fusarium rot | | x |
| Rhizoctonia | x | |
| Scab, pitted | x | x |
| Scab, russet | When affecting more than 1/3 of the surface. | |
| Scab, all surface | When affecting more than 5 percent of the surface. | |
| Growth cracks | When seriously detracting from the appearance. | |
| Pressure bruises and sunken areas with underlying flesh discolored | | When removal causes a loss of more than 10 percent of the total weight. |

¹ Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

c. Table II - Internal defects.

| Defect | DAMAGE | |
|--------|--|---|
| | When materially detracting from the appearance of the potato | OR When removal causes a loss of more than 5 percent of the total weight of the potato |
| | | |

| | | |
|--|--|---|
| Ingrown sprouts | | x |
| Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning, and heat necrosis). | When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 millimeters] in diameter ¹ . | |
| All other internal discoloration, excluding discoloration confined to the vascular ring. | | x |

SERIOUS DAMAGE

| Defect | When seriously detracting from the appearance of the potato | OR | When removal causes a loss of more than 10 percent of the total weight of the potato |
|---|--|----|--|
| Internal discoloration confined to the vascular ring. | | | x |
| Hollow heart or hollow heart with discoloration. | When affected area exceeds that of a circle 3/4 inch [19.1 millimeters] in diameter ¹ . | | |

¹ Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

7. Classification and serologically tested stocks.

- a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.
- b. Serologically tested stocks for potato virus x, potato virus s, potato virus y, potato virus a, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.

8. Grade inspections are not intended to induce growers' or producers' reliance regarding the presence or absence of disease, the identity of the variety or selection, quantity, or quality of the seed or crop produced or the fitness of the seed.

Blue and yellow tag shipments must be inspected and meet respective grade requirements.

History: Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010.

General Authority: NDCC 4-10-03

Law Implemented: NDCC 4-10-04

TITLE 75

DEPARTMENT OF HUMAN SERVICES

TITLE 75
DEPARTMENT OF HUMAN SERVICES

JULY 2010

CHAPTER 75-02-06

75-02-06-02.5. Property costs. Property-related costs and other passthrough costs include only those costs identified in this section:

1. Depreciation.
2. Interest expense on capital debt.
3. Property taxes including special assessments as provided for in section 75-02-06-09.
4. Lease and rental costs.
5. Startup costs.
6. Reasonable legal and related expenses:
 - a. Incurred or as a result of a successful challenge to a decision by a governmental agency, made on or after January 1, 1990, regarding a rate year beginning on or after January 1, 1990;
 - b. Related to legal services furnished on or after January 1, 1990; and
 - c. In the case of a partially successful challenge, not in excess of an amount determined by developing a ratio of total amounts claimed successfully to total amounts claimed in the partially successful challenge and applying that ratio to the total legal expenses paid.
7. Allowable bad debt expense under section 75-02-06-10 in the report year in which bad debt is determined to be uncollectible with no likelihood of future recovery.

8. Education expense allowed under section 75-02-06-12.1 in the report year in which it is expended.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996; January 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-10. Bad debts.

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable, provided all the requirements of this subsection are met.
 - a. The bad debt must result from nonpayment of the payment rate or part of the payment rate.
 - b. The facility shall document that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility, including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.
 - c. The collection fee may not exceed the amount of the bad debt.
 - d. The bad debt may not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.
 - e. The bad debt may not result from nonpayment of a private room rate in excess of the established rate, charges for special services not included in the established rate, or charges for bed hold days not billable to the medical assistance program under subsections 3, 4, 5, and 6 of section 75-02-06-14.
 - f. The facility shall have an aggressive policy of avoiding bad debt expense that limits potential bad debts. The facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment.
2. Allowable bad debt expense may not exceed one hundred ~~twenty~~ eighty days of resident care per rate year or an aggregate of three hundred sixty days of resident care for any one individual.

3. Finance charges on bad debts allowable under subsections 1 and 2 are allowable only if the finance charges have been offset as interest income.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12. Offsets to cost.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility, with the exception of an established rate, income from payments made under the Workforce Investment Act, bed reduction incentive payments, donations, the deferred portion of patronage dividends credited to the facility and not previously offset, ~~and income from charges for private rooms, special services, or~~ noncovered bed holds hold days, and late charges must be offset up to the total of the appropriate actual allowable cost. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. Sources of income include:
 - a. "Activities income". Income from the activities department and the gift shop must be offset to activity costs.
 - b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.
 - c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.
 - d. "Insurance recoveries income". Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.
 - e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.

- f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.
 - g. "Private duty nurse income". Income received for the providing of a private duty nurse must be offset to nursing salaries.
 - h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment must be offset to property costs.
 - i. "Telegraph and telephone income". Income received from residents, guests, or employees must be offset to administration costs. Income from emergency answering services need not be offset.
 - j. "Therapy income". Except for income from medicare part A, income from therapy services, including medicare part B income, must be offset to therapy costs unless the provider has elected to make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.
 - k. "Vending income". Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.
 - l. "Bad debt recovery". Income for bad debts previously claimed must be offset to administrative property costs in total in the year of recovery.
 - m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., such as supplies or equipment, or the amount related to the default of a contractual agreement related to education expense assistance, must be offset, in total, to the cost category where the item was expensed or depreciated.
2. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to

the department, to support a claim that a payment represents a true donation.

3. When an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.
4. When the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.
5. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.
6. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2002; January 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12.1. Nonallowable costs. Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;

5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;
6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;
8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockholder and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with a transaction described in subsection 3 of section 75-02-06-07; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;

16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;
17. Costs incurred by the provider's subcontractors, or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 18, 1984;
18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;
19. Depreciation expense for facility assets not related to resident care;
20. Nonnursing facility operations and associated administration costs;
21. Direct costs or any amount claimed to medicare for medicare utilization review costs;
22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;
23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:
 - a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;
 - b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and
 - c. The facility documents all costs associated with a vehicle not exclusively used by the facility;
24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;
25. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;

26. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;
27. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;
28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefit all eligible employees;
29. Employment benefits associated with salary costs not includable in a rate set under this chapter;
30. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;
31. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;
32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;
33. The following taxes:
 - a. Federal income and excess profit taxes, including any interest or penalties paid thereon;
 - b. State or local income and excess profit taxes;
 - c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;
 - d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;
 - e. Taxes on property not used in the provision of covered services;
 - f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider; and

- 9. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture;
- 34. The unvested portion of a facility's accrual for sick or annual leave;
- 35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds;
- 36. Hair care, other than routine hair care, furnished by the facility;
- 37. The cost of education unless:
 - a. The facility is claiming an amount for repayment of an employee's student loans related to educational expenses incurred by the employee prior to the current cost report year provided:
 - (1) The education was provided by an accredited academic or technical educational facility;
 - b- (2) The allowable portion of a student loan relates to education expenses were for materials, books, or tuition and does not include any interest expense;
 - e- (3) The education expenses were incurred as a result of the employee was being enrolled in a course of study intended to prepare that prepared the employee for a position at the facility, and the employee is in that position; and
 - d- (4) The facility claims the cost of the education amount of student loan repayment assistance at a rate that does not exceed one dollar two dollars and twenty-five cents per hour of work performed by the employee in the position for which the employee received education at the facility's expense, provided the amount claimed per employee may not exceed two the lesser of one-half of the allowable student loan or three thousand seven hundred fifty dollars per year, or an aggregate of eight fifteen thousand dollars, and in any event may not exceed one-half of the cost to the facility of the employee's education;.
 - b. The facility is claiming education expense for an individual who is currently enrolled in an accredited academic or technical educational facility provided:
 - (1) The education expense is for materials, books, or tuition;
 - (2) The facility claims the education expense annually in an amount not to exceed the lesser of one-half of the individual's

education expense incurred during the cost report year or three thousand seven hundred fifty dollars;

- (3) The aggregate amount of education expense claimed for an individual over multiple cost report periods does not exceed fifteen thousand dollars; and
- (4) The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of one thousand six hundred sixty-four hours of employment after completion of the education program for each year education expense assistance was provided, as well as a repayment plan if the individual does not fulfill the contract obligations.

- 38. Repealed effective January 1, 1999.
- 39. Increased lease costs of a facility, unless:
 - a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;
 - b. The increased costs related to the ownership are charged to the lessee; and
 - c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;
- 40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services;
- 41. Costs associated with or paid for the acquisition of licensed nursing facility capacity;
- 42. Goodwill; and
- 43. Lease costs in excess of the amount allocable to the leased space as reported on the medicare cost report by a lessor who provides services to recipients of benefits under title XVIII or title XIX of the Social Security Act.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.
2.
 - a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.
 - b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.
3. Limitations.
 - a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.
 - b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If

aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

- c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the report year ended June 30, ~~2003~~ 2006. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.
- d. The limit rate for each of the cost categories must be established as follows:
 - (1) Historical costs for the report year ended June 30, ~~2003~~ 2006, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.
 - (2) For the rate year beginning January 1, ~~2006~~ 2010, the limit rate for each cost category is:
 - (a) For the direct care cost category, ~~ninety-five~~ one hundred fifteen dollars and ~~fifty-seven~~ seventy-eight cents;
 - (b) For the other direct care cost category, ~~eighteen~~ twenty-one dollars and ~~twenty-seven~~ ninety-four cents; and
 - (c) For the indirect care cost category, ~~forty-five~~ fifty-five dollars and ~~twenty-three~~ forty-two cents.
 - (3) For rate years beginning on or after January 1, ~~2007~~ 2011, the limit rate for each cost category is calculated based on:
 - (a) For the direct care cost category, ~~ninety-five~~ one hundred twenty-seven dollars and ~~fifty-seven~~ fifty cents multiplied by the adjustment factor determined under subsection 4;
 - (b) For the other direct care cost category, ~~eighteen~~ twenty-three dollars and ~~twenty-seven~~ eighty-nine

cents multiplied by the adjustment factor determined under subsection 4; and

- (c) For the indirect care cost category, ~~forty-five~~ sixty dollars and ~~twenty-three~~ fifty-seven cents multiplied by the adjustment factor determined under subsection 4.
 - e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.
 - f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:
 - (1) Actual census for the report year; or
 - (2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:
 - (a) Multiplied times three hundred sixty-five; and
 - (b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.
 - g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:
 - (1) The facility has reduced licensed capacity; or
 - (2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.
 - h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.
4. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.

5. Rate adjustments.

a. Desk audit rate.

- (1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by telephone or mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.
- (2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.
- (3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.
- (4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.
- (5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.
- (6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

- (1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.

- (2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.
- (3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.
- (4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.
- (5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:
 - (a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.
 - (b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.
 - (c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.
 - (d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

- (1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided

information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

- (2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.
 - (3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.
 - (4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.
- d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a

pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

- a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.
- b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.
- c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.
- d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.
- e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

- a. Rates for a facility changing ownership during the rate period are set under this subdivision.

- (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:
 - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:
 - (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; and
 - (b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or if the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.
- (3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must

be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

- b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.
 - (1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.
 - (2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report

is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.

- (3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.
 - (4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.
- c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.
- d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must

be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

- e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.
 - f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.
 - g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.
8. One-time adjustments.
- a. Adjustments to meet certification standards.
 - (1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state

department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

- (2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:
 - (a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;
 - (b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and
 - (c) Provide a detailed list of any other costs necessary to meet survey standards.
 - (3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.
 - (4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
- b. Adjustments for unforeseeable expenses.
- (1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.
 - (2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:
 - (a) An explanation as to why the facility believes the expense was unforeseeable;

- (b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and
 - (c) A detailed breakdown of the unforeseeable expenses by expense line item.
 - (3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.
 - (4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.
 - (5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.
- c. Adjustment to historical operating costs.
- (1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.
 - (2) The following conditions must be met before a facility can receive the adjustment:
 - (a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;
 - (b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and

- (c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.
 - (3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.
 - (4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.
 - (5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.
- d. Adjustments for disaster recovery costs when evacuation of residents occurs.
- (1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.
 - (2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.
 - (3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.
 - (4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for

the first six months following the month the facility readmits the first resident.

- (5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.
9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010.

General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

CHAPTER 75-02-10

75-02-10-05. Eligibility criteria. An individual may receive necessary benefits under this chapter if the individual:

1. Is a resident of this state;
2. Is:
 - a. Sixty-five years of age or older; or
 - b. Eighteen years of age or older and disabled or blind;
3. Has applied for and been found eligible for medicaid benefits;
4. Has countable income which, when reduced by the cost of necessary benefits provided under:
 - a. Subsection 1 or 2 of section 75-02-10-02, does not exceed sixty dollars the personal needs allowance established pursuant to legislative appropriation; or
 - b. Section 75-02-10-02, except subsection 1 or 2, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381, et seq.], which the individual would receive if the individual had no income or assets;
5. Has not made an assignment or transfer of property for the purpose of rendering the individual eligible for assistance under this chapter; and
6. Based on a functional assessment made in accordance with this chapter, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating; and
 - a. Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or a licensed basic care facility; or
 - b. Is impaired in three of the following four instrumental activities of daily living:
 - (1) Preparing meals;
 - (2) Doing housework;
 - (3) Taking medicine; and
 - (4) Doing laundry.

History: Effective May 1, 1995; amended effective June 1, 2002; January 1, 2010.
General Authority: NDCC 50-06-16, 50-24.5-02(8)
Law Implemented: NDCC 50-24.5

TITLE 92

WORKFORCE SAFETY AND INSURANCE



TITLE 92
WORKFORCE SAFETY AND INSURANCE

JULY 2010

CHAPTER 92-01-02

92-01-02-11.1. Attorney's fees. Upon receipt of a certificate of program completion from the ~~office of independent review~~ decision review office, fees for legal services provided by employees' attorneys and legal assistants working under the direction of employees' attorneys will be paid when an administrative order reducing or denying benefits is submitted to administrative hearing, district court, or supreme court and the employee prevails; or when a managed care decision is submitted to binding dispute resolution and the employee prevails subject to the following:

1. The organization shall pay attorneys at one hundred thirty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at sixty-five dollars per hour.
2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to seventy dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at thirty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.
3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:
 - a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

- b. Two thousand five six hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.
 - c. Five thousand one three hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held. If the employee prevails after an evidentiary hearing and the organization wholly rejects the recommended decision, and the employee appeals from the organization's final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.
 - d. Five thousand seven nine hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Seven thousand six nine hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.
 - e. Nine thousand three six hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand four hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.
 - f. One thousand ~~four~~ five hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.
 - ~~g. Five hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.~~
 - ~~h. Should a settlement or order amendment offered during the OIR DRO process be accepted after the OIR DRO certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.~~
4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates

representing the employee in connection with the same dispute regarding an administrative order at all stages in the proceedings. A "dispute regarding an administrative order" includes all proceedings subsequent to an administrative order, including hearing, judicial appeal, remand, an order resulting from remand, and multiple matters or proceedings consolidated or considered in a single proceeding.

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).
6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.
7. The following costs will be reimbursed:
 - a. Actual postage, if postage exceeds three dollars per parcel.
 - b. Actual toll charges for long-distance telephone calls.
 - c. Copying charges, at eight cents per page.
 - d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.
 - e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.
8. The following costs will not be reimbursed:
 - a. Facsimile charges.
 - b. Express mail.
 - c. Additional copies of transcripts.

- d. Costs incurred to obtain medical records.
- e. On-line computer-assisted legal research.
- f. Copy charges for documents provided by the organization.

The organization shall reimburse court reporters for mileage and other expenses, for reasonable and necessary travel, in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09.

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-15

Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

92-01-02-12. Mileage and per diem for travel to and from medical treatment. Workforce safety and insurance recognizes payment for travel to and from medical treatment as a reasonable and necessary medical expense. These expenses will be paid according to North Dakota Century Code section 65-05-28, except that reimbursement for out-of-state lodging may not exceed one hundred twenty-five percent of the allowance for in-state lodging. ~~Intracity mileage may not be reimbursed.~~

History: Effective August 1, 1988; amended effective April 1, 1997; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-08, 65-05-28

92-01-02-13. Merger, exchange, or transfer of business.

1. **Definitions.** In this section:

- a. "Business entity" means any form of business organization, including proprietorships, partnerships, limited partnerships, cooperatives, limited liability companies, and corporations.
- b. "Constituent business" means a business entity of which a surviving entity is composed.
- c. "Surviving entity" means the business entity resulting from a merger, exchange, or transfer of business assets from one or more constituent businesses.

2. **Experience rating.** The surviving entity resulting from a merger, exchange, or transfer of business assets will be assigned an experience rating derived from the combined premium, payroll, and loss history of all the employer accounts involved in the merger, exchange, or transfer. The employer accounts of the constituent businesses shall

merge, exchange, or transfer into the surviving entity. The organization may change the experience rating of the surviving entity.

If the organization determines a business entity is a continuation or extension of an already existing business entity and not a surviving entity composed of one or more constituent businesses, and the existing business entity is already experience-rated, the experience rate of the existing business entity will transfer to its continuation or extension. Future experience rates will be calculated using the combined premium, payroll and loss history from the existing business entity and its continuations or extensions.

3. Compensation coverage.

- a. The organization may transfer compensation coverage of any constituent business to the surviving entity. The organization may require the surviving entity to provide information on the constituent businesses of which it is comprised and its owners, officers, directors, partners, and managers. If the organization determines a surviving entity is merely a continuation of the constituent business or businesses, the organization may transfer the premium liability to the surviving entity or decline coverage until the delinquency is resolved.
- b. Factors the organization may consider in determining if a surviving entity is a mere continuation of a constituent business include:
 - (1) Whether there is basic continuity of the constituent business in the surviving entity as shown by retention of key personnel, assets, and general business operations.
 - (2) Whether the surviving entity continues to use the same business location or telephone numbers.
 - (3) Whether employees transferred from the constituent business to the surviving entity.
 - (4) Whether the surviving entity holds itself out as the effective continuation of the constituent business.
- c. The organization shall calculate premium based on actual taxable payroll for the period of time involved. The organization may prorate the payroll cap based on one-twelfth of the statutory

payroll cap per month per employee at the beginning of the period of time involved.

History: Effective June 1, 1990; amended effective January 1, 1992; April 1, 1997; May 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-01

92-01-02-14. Procedure for penalizing employers accounts for failure to pay premium or failure to submit payroll reports.

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.
2. The organization shall send the first billing statement to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer and the payment due date. The statement must explain the installment payment option. The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement.
3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.
4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:
 - a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;
 - b. The employer's account has been referred to the collections unit of the policyholder services department; and

- c. Workforce safety and insurance may cancel the employer's account.
5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.
 6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.
 7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer by electronic transmission or regular mail addressed to the employer's last-known address that the employer is uninsured.
 8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.
 9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing due date is fifteen days following the expiration of the employer's payroll period statement may have a past-due premium billing due date. Any employer account billed without benefit of the employer payroll report has a may have a past-due premium billing due date which is fifteen days following the expiration of the employer's payroll year.
 10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.

11. ~~The~~ Upon receipt of an incomplete or unsigned payroll report, the employer shall submit the completed payroll report within fifteen days of the organization's request. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report. If the payroll report is not timely received by the organization, the organization may assess a penalty of up to two thousand dollars and shall notify the employer that the employer is uninsured.

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08, 65-04-33

Law Implemented: NDCC 65-04-33

92-01-02-15. Altering payroll reporting periods for employers. The organization, ~~upon an employer's request,~~ may alter an employer's payroll reporting period to conform with regular quarter endings (March thirty-first, June thirtieth, September thirtieth, December thirty-first) in cases where an employer's payroll reporting period would not normally coincide with a quarter's end.

History: Effective June 1, 1990; amended effective July 1, 2010.

General Authority: NDCC 65-02-08, 65-04-33

Law Implemented: NDCC 65-04-33

92-01-02-16. Expiration date change. ~~At an employer's request, the~~ The organization may change the expiration date on the employer's account. The organization shall calculate premium based on actual taxable payroll for each employee up to the statutory payroll cap, prorated for the actual number of days in the adjusted payroll period.

History: Effective June 1, 1990; amended effective January 1, 1994; April 1, 1997; May 1, 2002; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-01

92-01-02-18. Experience rating system. The following system is established for the experience rating of risks of employers contributing to the fund:

1. Definitions. In this section, unless the context otherwise requires:
 - a. "~~Five-year~~ Three-year losses" means the total sum of ratable losses accrued on claims occurring during the first ~~five~~ three of the ~~six~~ four years immediately preceding the premium year being rated.
 - b. "~~Five-year~~ Three-year payroll" means the total sum of limited payroll reported for the first ~~five~~ three of the ~~six~~ four years immediately preceding the premium year being rated.

- c. "~~Five-year~~ Three-year premium" means the total sum of earned premium for the first ~~five~~ three of the ~~six~~ four years immediately preceding the premium year being rated.
 - d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately preceding the premium year being rated for claims experience.
2. An employer's account is not eligible for an experience rating until the account has completed three consecutive payroll periods and has developed aggregate manual premiums of at least ~~twenty-five~~ fifteen thousand dollars for the rating period used in developing the experience modification factor.
 3. For accounts with ratable manual premium of ~~twenty-five~~ fifteen thousand dollars or more:
 - a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.
 - b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:
 - (1) Calculate the actual primary losses (A_p), which consist of the sum of those ~~five-year~~ three-year losses, comprising the first ten thousand dollars of each individual claim.
 - (2) Calculate the actual excess losses (A_e), which consist of the sum of those ~~five-year~~ three-year losses in excess of the first ten thousand dollars of losses of each individual claim, limited to the maximum loss amount contained in the most recent edition of North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.
 - (3) Calculate the total expected losses (E_t), which are determined by adding the products of the actual payroll for each year of the ~~five-year~~ three-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

- (4) Calculate the expected excess losses (E_e), which are determined by adding the products of the actual payroll for each year of the ~~five-year~~ three-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
- (5) Calculate the "credibility factor" (Z) based on the formula that is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
- (6) The experience modification factor is then calculated as follows:
 - (a) Calculate the "ballast amount" (B) which is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.
 - (b) Add the actual primary losses to the product of the actual excess losses times the credibility factor.
 - (c) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.
 - (d) To this sum add the ballast amount (B).
 - (e) Divide this total sum by the sum of the total expected losses plus the ballast amount (B).

The resulting quotient is the experience modification factor to be applied in calculating the estimated premium for the current payroll year.

(7) The formula for the above-mentioned calculation is as follows:

$$EMF = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + B}{E_t + B}$$

4. Small account credit or debit program. Accounts that fall below the eligibility standard for experience rating outlined in subsection 2 are subject to the small account credit or debit program. The rating period and ratable losses used to determine eligibility for the small account credit or debit program are the same as those used for the experience rating program outlined above. The amount of the credit or debit will be determined annually in conjunction with the development of rating plan values for the prospective coverage period.
5. The organization shall include any modification to the North Dakota workforce safety and insurance rating plan values in its ratemaking process pursuant to North Dakota Century Code section 65-04-01.

History: Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997; July 1, 2001; July 1, 2006; July 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08, 65-04-17

Law Implemented: NDCC 65-04-01

92-01-02-24. Rehabilitation services.

1. When an employment opportunity suited to an employee's education, experience, and marketable skills is identified within thirty-five miles [56.33 kilometers] from the employee's home, the appropriate priority option must be identified as return to related occupation in the local job pool under subdivision e of subsection 4 of North Dakota Century Code section 65-05.1-01, and relocation expense under subsection 3 of North Dakota Century Code section 65-05.1-06.1 may not be paid.
2. The organization may award services to move an employee's household where the employee has actually located work under subdivision e of subsection 2 of North Dakota Century Code section 65-05.1-06.1 only when the employee identifies the job the employee will perform, the employee's employer, and the employee's destination. A relocation award must be the actual cost of moving the household to the location where work has been obtained. A minimum of two bids detailing the costs of relocation must be submitted to the organization for approval prior to incurring the cost. The organization shall pay per diem expenses, as set forth under subsection 2 of North Dakota Century Code section 65-05-28, for the employee only. Reimbursement for mileage expenses may not be paid for more than one motor vehicle.

3. When the rehabilitation award is for retraining, the organization shall pay the actual cost of books, tuition, and school supplies required by the school. The school must provide documentation of the costs necessary for completion of the program in which the employee is enrolled. Reimbursable school costs may not exceed those charged to other students participating in the same program. The award for school supplies may not exceed twenty-five dollars per quarter or thirty dollars per semester unless the employee obtains prior approval of the organization by showing that the expenses are reasonable and necessary. A rehabilitation award for retraining may include tutoring assistance to employees who require tutoring to maintain a passing grade. Payment of tutoring services will be authorized when these services are not available as part of the training program. The award for tutoring services may not exceed the usual and customary rate established by the school. Expenses such as association dues or subscriptions may be reimbursed only if that expense is a course requirement.
4. An award for retraining which includes an additional ~~twenty-five percent wage-loss~~ rehabilitation allowance to maintain two domiciles as provided in subdivision b of subsection 2 of North Dakota Century Code section 65-05.1-06.1 may continue only while the employee is actually enrolled or participating in the training program, ~~and is actually maintaining two domiciles.~~
5. ~~An employee who is required to be in attendance at a training facility for at least three days a week is determined to be attending on a daily basis for purposes of determining eligibility for the twenty-five percent second domicile allowance.~~
6. An award of a specified number of weeks of training means training must be completed during the specified period of weeks, and rehabilitation benefits may be paid only for the specified number of weeks of training.
7. 6. The organization may reimburse an employee's travel and personal expenses for attendance at an adult learning center or skill enhancement program at the request of the employee and upon the approval of the ~~claims analyst~~ organization. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred. The organization shall reimburse these expenses at the rates in effect on the date of travel or the date the expense was incurred at which state employees are paid per diem and mileage, or reimburse the actual cost of meals and lodging plus mileage, whichever is less. ~~Mileage calculations will be based upon atlas or map mileage from city limit to city limit and will not include intracity mileage.~~ The calculation for reimbursement for travel by motor vehicle must be calculated using miles actually and necessarily traveled. The organization may not reimburse mileage or travel expenses when the distance traveled is

less than fifty miles [80.47 kilometers] one way, unless the total mileage in a calendar month equals or exceeds two hundred miles [321.87 kilometers].

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; February 1, 1998; May 1, 2002; July 1, 2006; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05.1

92-01-02-25. Permanent impairment evaluations and disputes.

1. Definitions:

- a. Amputations and loss as used in subsection 11 of North Dakota Century Code section 65-05-12.2.

"Amputation of a thumb" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the second or distal phalanx of the thumb" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of the first finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the first finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the first finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the second finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the second finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the third or distal phalanx of the second finger" means disarticulation at or proximal to the distal interphalangeal joint.

"Amputation of the third finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the third finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the fourth finger" means disarticulation at the metacarpal phalangeal joint.

"Amputation of the middle or second phalanx of the fourth finger" means disarticulation at or proximal to the proximal interphalangeal joint.

"Amputation of the leg at the hip" means disarticulation at or distal to the hip joint (separation of the head of the femur from the acetabulum).

"Amputation of the leg at or above the knee" means disarticulation at or proximal to the knee joint (separation of the femur from the tibia).

"Amputation of the leg at or above the ankle" means disarticulation at or proximal to the ankle joint (separation of the tibia from the talus).

"Amputation of a great toe" means disarticulation at the metatarsal phalangeal joint.

"Amputation of the second or distal phalanx of the great toe" means disarticulation at or proximal to the interphalangeal joint.

"Amputation of any other toe" means disarticulation at the metatarsal phalangeal joint.

"Loss of an eye" means enucleation of the eye.

- b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.
- c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, fifth edition.
- d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely result in a monetary impairment award.

- e. "Treating doctor" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license who has physically examined or provided direct care or treatment to the injured employee.
2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, fifth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.
 3. The organization shall establish a list of medical specialists who have the training and experience necessary to conduct an evaluation of permanent impairment and apply the American medical association guides to the evaluation of permanent impairment, fifth edition. When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a physician from the list. The organization may not schedule a permanent impairment evaluation with the employee's treating doctor. The organization and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the organization ~~shall furnish the list of appropriate specialists to the employee.~~ The organization and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the list until a name is chosen will identify qualified specialists and submit all objective medical documentation regarding the dispute to specialists who have the knowledge, training, and experience in the application of the American medical association guides to the evaluation of permanent impairment, fifth edition. To the extent more than one physician is identified, the organization will consult with the employee before appointment of the physician.
 4. Upon receiving a permanent impairment rating report from the doctor, the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.
 - a. Pain impairment ratings. A permanent impairment award may not be made upon a rating solely under chapter 18 of the guides when there is no accompanying rating under the conventional organ and body system ratings of impairment. In addition, no rating for pain may be awarded when the evaluating physician determines the individual being rated has low credibility, when the individual's pain is ambiguous or the diagnosis is a controversial pain syndrome. A controversial pain syndrome is a syndrome that is not widely accepted by physicians and does not have a well-defined pathophysiologic basis.

- b. An evaluating physician qualified in application of the guides to determine permanent impairment shall conduct an informal pain assessment and evaluate the individual under the guide's conventional rating system according to the body part or organ system specific to that person's impairment. If the body system impairment rating adequately encompasses the pain, no further assessment may be done.
- c. If the pain-related impairment increases the burden of the individual's condition slightly, the evaluating physician may increase the percentage attributable to pain by up to three percent and, using the combined values chart of the fifth edition, calculate a combined overall impairment rating.
- d. If the pain-related impairment increases the burden of the individual's condition substantially, the evaluating physician shall conduct a formal pain assessment using tables 18-4, 18-5, and 18-6 of the guides and calculate a score using table 18-7.
- e. The score from table 18-7 correlates to an impairment classification found in table 18-3.
- f. If the score falls within classifications two, three, or four of table 18-3, the evaluating physician must determine whether the pain is ratable or unratable.
- g. To determine whether the pain is ratable or unratable, the evaluating physician must answer the three questions in this section. If the answer to all three of the following questions is yes, the evaluating physician should consider the pain ratable. If any question is answered no, the pain is unratable.
 - (1) Do the individual's symptoms or physical findings, or both, match any known medical condition?
 - (2) Is the individual's presentation typical of the diagnosed condition?
 - (3) Is the diagnosed condition one that is widely accepted by physicians as having a well-defined pathophysiologic basis?
- h. If the pain is unratable, no percentage may be assigned to the impairment.
- i. If the pain is ratable, the evaluating physician shall classify the individual into one of the categories in table 18-3 and, using the combined values chart of the fifth edition, calculate a combined overall impairment rating.

- j. The impairment percentages assigned to table 18-3 are:
 - (1) Class 1, mild: one to three percent.
 - (2) Class 2, moderate: four to five percent.
 - (3) Class 3, moderately severe: six to seven percent.
 - (4) Class 4, severe: eight to nine percent.
- 5. Permanent mental and behavioral disorder impairment ratings.
 - a. Any evaluating physician determining permanent mental or behavioral disorder impairment shall:
 - (1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;
 - (2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, fifth edition, giving specific attention to:
 - (a) Chapter 13, "central and peripheral nervous system"; and
 - (b) Chapter 14, "mental and behavioral disorders"; and
 - (3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, fifth edition, including:
 - (a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, fifth edition; and
 - (b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and premorbid history and a determination of causality and apportionment.
 - b. If the permanent impairment is due to organic deficits of the brain and results in disturbances of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 13, "central and peripheral nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same

permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.

- C. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter. The overall permanent impairment rating for depression or anxiety, or both, must be based upon objective psychological test results, utilizing the following accepted procedures and tests:

- (1) Two symptom validity tests shall be conducted: Green's word memory test (WMT) and, in addition, either the computer assessment of response bias (CARB) or the Victoria symptom validity test (VSVT).

If the evaluator determines good effort is not demonstrated on one or both of the symptom validity tests, no impairment rating is reported.

- (2) In all cases of evaluation for depression or anxiety, either the MMPI-2 or the MMP1-2 RF must be administered. If chronic pain is being evaluated, the pain patient profile (P3) and either the MMPI-2 or the MMPI-2 RF must be administered.
- (3) Upon determination of the level of depression or anxiety, or both, through objective valid psychological test results, the evaluating physician shall classify the individual into one of the categories in table 14-1 of the guides.

The levels of permanent mental impairment percentages assigned to table 14-1 are:

| <u>Percent</u> | <u>Category</u> |
|----------------|---|
| <u>0%</u> | <u>Class 1. No impairment</u> |
| <u>1-15%</u> | <u>Class 2. Mild permanent impairment</u> |
| <u>16-25%</u> | <u>Class 3. Moderate permanent impairment</u> |
| <u>26-50%</u> | <u>Class 4. Marked permanent impairment</u> |
| <u>51-100%</u> | <u>Class 5. Extreme permanent impairment</u> |

- (4) The permanent impairment report must include a written summary of the mental evaluation.

- d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.
 - e. All permanent impairment reports must include an apportionment if the impairment is caused by both work and non-work injuries or conditions.
6. Errata sheets and guides updates. Any updates, additions, or revisions by the editors of the fifth edition of the guides to the evaluation of permanent impairment as of April 1, 2009 2010, are adopted as an update, addition, or revision by the organization.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-05-12.2

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.
2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.
3. The organization will not authorize or pay for the following treatment:
 - a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy must be provided by a licensed physical therapist, licensed occupational therapist, licensed chiropractor, or licensed massage therapist.
 - b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).

- c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.
- d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.
- e. Vertebral axial decompression therapy (Vax-D treatment).
- f. Intradiscal electrothermal annuloplasty (IDET).
- g. Prolotherapy (sclerotherapy).

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-31. Who may be reimbursed.

1. Only treatment that falls within the scope and field of the treating medical service provider's license to practice is reimbursable.
2. Paraprofessionals who are not independently licensed must practice under the direct supervision of a licensed medical service provider whose scope of practice and specialty training includes the service provided by the paraprofessional, in order to be reimbursed.
3. Health care providers may be refused reimbursement to treat cases under the jurisdiction of the organization.
4. Reasons for holding a medical service provider ineligible for reimbursement include one or more of the following:
 - a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.

- b. Failure, neglect, or refusal to respond to requests by the organization for additional reports.
- c. Failure, neglect, or refusal to observe and comply with the organization's orders and medical service rules, including cooperation with the organization's managed care vendors.
- d. Failure to notify the organization immediately and prior to burial in any death if the cause of death is not definitely known or if there is question of whether death resulted from a compensable injury.
- e. Failure to recognize emotional and social factors impeding recovery of claimants.
- f. Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the claimant.
- g. Submission of false or misleading reports to the organization.
- h. Collusion with other persons in submission of false or misleading information to the organization.
- i. Pattern of submission of inaccurate or misleading bills.
- j. Pattern of submission of false or erroneous diagnosis.
- k. ~~Knowingly submitting bills to a claimant for treatment of a work-related condition for which the organization has accepted liability, charging or attempting to charge claimants fees in addition to the fee paid by the organization for care of the occupational injury, or billing~~ Billing the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or billing the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.
- l. Failure to include physical conditioning in the treatment plan. The medical service provider should determine the claimant's activity level, ascertain barriers specific to the claimant, and provide information on the role of physical activity in injury management.
- m. Failure to include the injured worker's functional abilities in addressing return-to-work options during the recovery phase.
- n. Treatment that is controversial, experimental, or investigative; which is contraindicated or hazardous; which is unreasonable or

inappropriate for the work injury; or which yields unsatisfactory results.

- o. Certifying disability in excess of the actual medical limitations of the claimant.
- p. Conviction in any court of any offense involving moral turpitude, in which case the record of the conviction is conclusive evidence.
- q. The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs.
- r. Declaration of mental incompetence by a court of competent jurisdiction.
- s. Disciplinary action by a licensing board.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-34. Treatment requiring authorization, preservice review, and retrospective review.

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.
2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.
3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.
 - a. Durable medical equipment.
 - (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement

of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.

- (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.
 - (3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.
 - (4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.
- b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.
 - c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment

of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

- d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.
4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.
 5. Medical service providers shall request preservice review from the utilization review department for:
 - a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.
 - b. All nonemergent major surgery. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the utilization review department actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate

of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the utilization review department may require an independent consultation with a doctor of the organization's choice. The organization shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the organization shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the organization may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the organization believes the proposed surgery is excessive, inappropriate, or ineffective and the organization cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.

- c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. The organization may waive preservice review requirements for procedures listed in this subdivision when requested by a doctor who is performing an independent medical examination or permanent partial impairment evaluation at the request of the organization.
- d. Physical therapy and occupational therapy treatment beyond the first ten treatments or beyond thirty days after first prescribed, whichever occurs first, or physical therapy and occupational therapy treatment after an inpatient surgery, outpatient surgery, or ambulatory surgery beyond the first ten treatments or beyond thirty days after therapy services are originally prescribed, whichever occurs first. Postoperative physical therapy and occupational therapy may not be started beyond ninety days after surgery date. The organization may waive this requirement in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.
- e. Electrodiagnostic studies, which may only be performed by electromyographers who are certified or eligible for certification by the American board of electrodiagnostic medicine, American board of physical medicine and rehabilitation, or the American board of neurology and psychiatry's certification in the specialty of clinical neurophysiology. Nerve conduction study reports must include

either laboratory reference values or literature-documented normal values in addition to the test values.

- f. Thermography.
 - g. Intra-articular injection of hyaluronic acid.
 - h. Trigger point injections if more than three injections are required in a two-month period. No more than twenty injections may be paid over the life of a claim. If a trigger point injection is administered, the organization may not pay for additional modalities such as cryotherapy and osteopathic manipulations performed in conjunction with the trigger point injection. For purposes of this paragraph, injections billed under CPT code 20552 or 20553 will count as a single injection. Only injections administered on or after May 1, 2002, will be applied toward the maximum number of injections allowed under this subdivision.
 - i. Facet joint injections.
 - j. Sacroiliac joint injections.
 - k. Facet nerve blocks.
 - l. Epidural steroid injections.
 - m. Nerve root blocks.
 - n. Peripheral nerve blocks.
 - o. Botox injections.
 - p. Stellate ganglion blocks.
 - q. Cryoablation.
 - r. Radio frequency lesioning.
 - s. Facet rhizotomy.
 - t. Prolotherapy.
 - u. Implantation of stimulators and pumps.
6. Chiropractic providers shall request preservice review from the organization's chiropractic managed care vendor for chiropractic treatment beyond the first twelve treatments or beyond ninety days after the first treatment, whichever occurs first. The evaluation to

determine a treatment plan is not subject to review. The organization may waive this subsection in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

7. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.
8. The organization may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting.
9. The organization or managed care vendor must respond to the medical service provider within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service, unless the organization or managed care vendor requires a review by the organization's medical director. If a review by the medical director is performed, the organization or the managed care vendor must respond to the provider's request within seventy-two hours of receiving the necessary information. Within the time for review, the organization or managed care vendor must recommend approval or denial of the request, request additional information, request the claimant obtain a second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.
10. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:
 - a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or
 - b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

All medical service providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the organization or the managed care vendor, the medical information requested in relation to the reviewed service.

11. The organization must notify provider associations of the review requirements of this section prior to the effective date of these rules.

12. The organization must respond to the medical service provider within thirty days of receiving a retrospective review request.

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-41. Independent medical examinations - Definitions.

1. The organization may request an independent medical examination or independent medical review pursuant to North Dakota Century Code section 65-05-28:
 - a. To establish a diagnosis or to clarify a prior diagnosis that may be controversial or ill-defined.
 - b. To outline a program of rational treatment, if treatment or progress is controversial.
 - c. To establish medical data from which it may be determined whether the medical condition is related, or not related, to the injury.
 - d. To determine whether and to what extent a preexisting medical condition is aggravated by an occupational injury.
 - e. To establish when the claimant has reached maximum medical improvement or medically stationary status.
 - f. To establish a percentage of rating for permanent impairment.
 - g. To determine whether a claim should be reopened for further treatment on the basis of aggravation of a compensable injury or significant change in a medical condition.
 - h. To determine whether overutilization by a health care provider has occurred.
 - i. To determine whether a change in health care provider is indicated.
 - j. To determine whether treatment is necessary if the claimant appears to be making no progress in recuperation.
 - k. When the attending doctor has not provided current medical reports.

2. It is the organization's intention to obtain objective examinations to ensure that correct determinations are made of all benefits to which the injured claimant might be entitled.
3. Examiners must be willing to testify or be deposed on behalf of the claimant, employer, or the organization.
4. The organization must provide at least fourteen days' notice to the claimant of an independent medical examination. The organization must reimburse the claimant's expenses for attending the independent medical examination pursuant to North Dakota Century Code section 65-05-28.
5. As used in subsection 3 of North Dakota Century Code section 65-05-28 regarding doctors designated or approved by the organization, "duly qualified doctor" means a person chosen by the organization who is a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist who has the specialization necessary to perform an independent medical examination or an independent medical review. The organization's determination of whether an individual it has chosen is a duly qualified doctor and the organization's choice of the duly qualified doctor who will perform an independent medical examination or an independent medical review are not appealable decisions and these decisions may not be considered when determining whether a claimant has failed to submit to, or in any way intentionally obstructed, or refused to reasonably participate in an independent medical examination.
6. As used in subsection 3 of North Dakota Century Code section 65-05-28, "reasonable effort" means an attempt by the organization to locate and consider individuals as possible duly qualified doctors for independent medical examinations using criteria established by the organization. These attempts need not be exhaustive and need not be on a specific case-by-case basis. An attempt may consist of a review performed by the organization from time to time of individuals in North Dakota or other states in order to form an informal group from which the organization may select an examiner. Whether the organization has undertaken reasonable effort may not be considered when determining whether a claimant has failed to submit to, or in any way intentionally obstructed, or refused to reasonably participate in an independent medical examination. Whether the organization has undertaken reasonable effort may not be considered when weighing the opinion of the examiner who performed the independent medical examination.

History: Effective January 1, 1994; amended effective October 1, 1998; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-45.1. Provider responsibilities and billings.

1. A provider may not submit a charge for a service which exceeds the amount the provider charges for the same service in cases unrelated to workers' compensation injuries.
2. All bills must be fully itemized, including ICD-9-CM codes, and services must be identified by code numbers found in the fee schedules or as provided in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as provided in the fee schedules or in these rules. All bills must be submitted to the organization within one year of the date of service or within one year of the date the organization accepts liability for the work injury or condition.
3. All medical service providers shall submit bills referring to one claim only for medical services on current form UB 04 or form CMS 1500, except for dental billings which must be submitted on American dental association J510 dental claim forms and pharmacy billings which must be submitted electronically to the organization's pharmacy managed care vendor using the current pharmacy transaction standard. Bills and reports must include:
 - a. The claimant's full name and address;
 - b. The claimant's claim number and social security number;
 - c. Date and nature of injury;
 - d. Area of body treated, including ICD-9-CM code identifying right or left, as appropriate;
 - e. Date of service;
 - f. Name and address of facility where the service was rendered;
 - g. Name of medical service provider providing the service;
 - h. Physician's or supplier's billing name, address, zip code, telephone number; physician's unique physician identification number (UPIN) or national provider identifier (NPI), or both; physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; advanced practice registered nurse's UPIN or NPI, or both, or North Dakota state license number;
 - i. Referring or ordering physician's UPIN or NPI, or both;

- j.. Type of service;
 - k. Appropriate procedure code or hospital revenue code;
 - l. Description of service;
 - m. Charge for each service;
 - n. Units of service;
 - o. If dental, tooth numbers;
 - p. Total bill charge;
 - q. Name of medical service provider providing service along with the provider's tax identification number; and
 - r. Date of bills.
4. All records submitted by providers, including notes, except those provided by an emergency room physician and those on forms provided by the organization, must be typed to ensure that they are legible and reproducible. Copies of office or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications may not refer to more than one claim.
5. Providers shall submit with each bill a copy of medical records or reports which substantiate the nature and necessity of a service being billed and its relationship to the work injury, including the level, type, and extent of the service provided to claimants. Documentation required includes:
- a. Laboratory and pathology reports;
 - b. X-ray findings;
 - c. Operative reports;
 - d. Office notes, physical therapy, and occupational therapy progress notes;
 - e. Consultation reports;
 - f. History, physical examination, and discharge summaries;
 - g. Special diagnostic study reports; and

- h. Special or other requested narrative reports.
- 6. ~~Providers submitting bills for filling prescriptions also shall include the prescribing provider's name on the bill.~~
- 7. When a provider submits a bill to the organization for medical services, the provider shall submit a copy of the bill to the claimant to whom the services were provided. The copy must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the claimant.
- 8- 7. If the provider does not submit records with a bill, and still does not provide those records upon request of the organization, the charges for which records were not supplied may not be paid by the organization, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.
- 9- 8. Disputes arising out of reduced or denied reimbursement are handled in accordance with section 92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment rendered to that claimant, equipment, or products unless a claimant desires to receive them and has accepted responsibility for payment, or unless the payment for the treatment was denied because:
 - a. The claimant sought treatment from that provider for conditions not related to the compensable injury or illness.
 - b. The claimant sought treatment from that provider which was not prescribed by the claimant's attending doctor. This includes ongoing treatment by the provider who is a nonattending doctor.
 - c. The claimant sought palliative care from that provider not compensable under section 92-01-02-40 after the claimant was provided notice that the palliative care service is not compensable.
 - d. The claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.
 - e. The claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.

- f. The claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.
- ~~40~~. 9. A medical service provider may not bill for services not provided to a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.
- ~~41~~. 10. Pursuant to North Dakota Century Code section 65-05-33, a medical service provider may not submit false or fraudulent billings.
- ~~42~~. 11. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.
- ~~43~~. 12. When a claimant is seen initially in an emergency department and is admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission are part of the inpatient treatment.
- ~~44~~. 13. Hot and cold pack as a modality will be considered as a bundled charge and will not be separately reimbursed.
- ~~45~~. 14. Limit of two modalities per visit for outpatient physical therapy services, outpatient occupational therapy services, and chiropractic visit.
- ~~46~~. 15. When a medical service provider is asked to review records or reports prepared by another medical service provider, the provider shall bill review of the records using CPT code 99080 with a descriptor of "record review". The billing must include the actual time spent reviewing the records or reports and must list the medical service provider's normal hourly rate for the review.
- ~~47~~. 16. When there is a dispute over the amount of a bill or the necessity of services rendered, the organization shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code.
- ~~48~~. 17. If medical documentation outlines that a non-work-related condition is being treated concurrently with the compensable injury and that condition has no effect on the compensable injury, the organization may reduce the charges submitted for treatment. In addition, the attending doctor must notify the organization immediately and submit:
- a. A description or diagnosis of the non-work-related condition.
 - b. A description of the treatment being rendered.

- c. The effect, if any, of the non-work-related condition on the compensable injury.

The attending doctor shall include a thorough explanation of how the non-work-related condition affects the compensable injury when the doctor requests authorization to treat the non-work-related condition. Temporary treatment of a non-work-related condition may be allowed, upon prior approval by the organization, provided the condition directly delays recovery of the compensable injury. The organization may not approve or pay for treatment for a known preexisting non-work-related condition for which the claimant was receiving treatment prior to the occurrence of the compensable injury, which is not delaying recovery of the compensable injury. The organization may not pay for treatment of a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of a non-work-related condition is being rendered, the attending doctor shall submit reports monthly outlining the effect of treatment on both the non-work-related condition and the compensable injury.

- ~~19:~~ 18. In cases of questionable liability when the organization has not rendered a decision on compensability, the provider has billed the claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the claimant or other insurer in full and bill the organization for services rendered.
- ~~20:~~ 19. The organization may not pay for the cost of duplicating records when covering the treatment received by the claimant. If the organization requests records in addition to those listed in subsection 5 or records prior to the date of injury, the organization shall pay a minimum charge of five dollars for five or fewer pages and the minimum charge of five dollars for the first five pages plus thirty-five cents per page for every page after the first five pages.
- ~~21:~~ 20. The provider shall assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes will be returned to the provider.
- ~~22:~~ 21. Billing codes must be found in the most recent edition of the physician's current procedural terminology; health care financing administration common procedure coding system; code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.
- ~~23:~~ 22. A provider shall comply within thirty calendar days with the organization's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the organization's determination of compensability, medical necessity, or excessiveness or the organization may refuse payment for services provided by that provider.

23. A provider may not bill a claimant a fee for the difference between the maximum allowable fee set forth in the organization's fee schedule and usual and customary charges, or bill the claimant any other fee in addition to the fee paid, or to be paid, by the organization for individual treatments, equipment, and products.

History: Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2008; July 1, 2010.

General Authority: NDCC 65-02-08, 65-02-20, 65-05-07

Law Implemented: NDCC 65-02-20, 65-05-07, 65-05-28.2

92-01-02-50. Other states' coverage.

1. The terms used in this section have the same meaning as in North Dakota Century Code title 65 and in North Dakota Administrative Code title 92, except:
 - a. "Covered employment" means hazardous employment principally localized in this state which involves incidental operations in another state. The term "covered employment" does not include employment in which the employer is required by the laws of that other state to purchase workers' compensation coverage in that other state.
 - b. "Employee" means any North Dakota employee as that term is defined in North Dakota Century Code section 65-01-02 who engages in covered employment and who is eligible to file for workers' compensation benefits in another state if the employee suffers a work-related illness or injury or dies as a result of work activities in that state. The term "employee" also includes a person with optional workers' compensation coverage in this state under North Dakota Century Code section 65-04-29 or 65-07-01 who engages in covered employment and is eligible to file for workers' compensation benefits in another state if that person suffers a work-related illness or injury or dies as a result of work activities in that state.
 - c. "Employer" means an employer as defined in North Dakota Century Code section 65-01-02, who is not materially delinquent in payment of premium, and who has employees engaged in covered employment. An employer is not materially delinquent in payment of premium if the premium is no more than thirty days delinquent.
 - d. "Incidental operations" ~~in a state other than a qualified state~~ means business operations of an employer for fewer than thirty consecutive days in which the employer has no contacts sufficient, under the workers' compensation laws of that other state to subject the employer to liability for payment of workers' compensation premium in that other state and which operations do not require

the employer to purchase workers' compensation insurance under the laws of that state.

- e. ~~"Incidental operations" in a qualified state means operations of an employer for fewer than thirty days in a state in which the employer has no other significant contacts. "Significant contacts" in a qualified state means operations of an employer in that state for thirty or more consecutive days.~~
 - f. ~~"Qualified state" means a state in which an insurance company, formed pursuant to North Dakota Century Code chapter 65-08.1, is qualified to sell, and does sell, workers' compensation insurance.~~
2. If an employee, hired in this state for covered employment by an employer covered by the Workers' Compensation Act of this state, receives an injury while employed in incidental operations outside this state, the injury is subject to the provisions of this section if the employee elects to receive benefits under the workers' compensation laws of that other state in lieu of a claim for benefits in this state. This section applies only if the workers' compensation laws of the other state allow the employee to elect to receive benefits under the laws of that state. If the employee does not or cannot elect coverage under the laws of another state, the injury is subject to the provisions of North Dakota Century Code chapter 65-08.

The provisions of this section do not apply to:

- a. States having a monopolistic state fund.
 - b. States having a reciprocal agreement with this state regarding extraterritorial coverage.
 - c. Compensation received under any federal act.
 - d. Foreign countries.
 - e. Maritime employment.
 - f. Employer's liability or "stop-gap" coverage.
3. An employee who elects to receive benefits under the workers' compensation laws of another state waives the right to seek compensation under North Dakota Century Code title 65.
4. The organization may pay, on behalf of an employer, any regular workers' compensation benefits the employer is obligated to pay under the workers' compensation laws of a state other than North Dakota, with respect to personal injury, illness, or death sustained as a result of work activities by an employee engaged in covered employment in that

state, if the employee or the employee's dependents elect to receive benefits under the other state's laws in lieu of benefits available under the North Dakota Workers' Compensation Act. The term "dependents" includes an employee's spouse. The organization may pay benefits on behalf of an employer but may not act nor be deemed as an insurer, nor may the organization indemnify an employer for any liabilities, except as specifically provided in this section.

The benefits provided by this section are those mandated by the workers' compensation laws of the elected state. This includes benefits for injuries that are deemed compensable in that other state but are not compensable under North Dakota Century Code chapters 65-05 and 65-08. Medical benefits provided pursuant to this section are subject to any fee schedule and other limitations imposed by the workers' compensation law of the elected state. The North Dakota fee schedule does not apply to this section.

The organization may reimburse an employer covered by this section for legal costs and for reasonable attorney's fees incurred, at a rate of no more than ~~eighty-five~~ one hundred thirty dollars per hour, if the employer is sued in tort in another state by an injured employee or an injured employee's dependents relative to a work-related illness, injury, or death; or if the employer is alleged to have failed to make payment of workers' compensation premium in that other state by the workers' compensation authorities of that state. This reimbursement may be made only if it is determined by the organization or by a court of competent jurisdiction that the employer is subject to the provisions of this section and was not required to purchase workers' coverage in that other state relative to the employment of the injured employee.

The organization may not reimburse any legal costs, attorney's fees, nor any other costs to a coemployee sued in tort by an injured employee.

5. The organization may contract with a qualified third-party administrator to adjust and administer claims arising under this chapter. The organization shall pay the costs of the third-party administrator from the general fund.
6. Benefits paid on behalf of an employer pursuant to this section will be charged against the employer's account for experience rating purposes. The experience rating loss will be equal to the actual claim costs. The assessment charge plus appropriate penalties and interest, if any, levied pursuant to North Dakota Century Code section 65-05-07.2, will be assessed on all claims brought under this section.
7. The employer shall notify the organization when a claim is filed in another state by an employee covered by this section. The employer shall notify the organization of the claim in writing. The employer has thirty days after actual knowledge of the filing of a claim in which to

notify the organization. That time can be extended for thirty days by the organization if the employer shows good cause for failing to timely notify the organization. If the employer fails to timely notify the organization when a claim is filed in another state by an employee covered under this section, the organization may not pay benefits under this section.

The organization may not pay costs, charges, or penalties charged against an employer for late reporting of an injury or claim to the workers' compensation authorities of the state of injury.

8. The exclusive remedy provisions of North Dakota Century Code sections 65-01-01, 65-01-08, 65-04-28, and 65-05-06 apply to this section.

History: Effective January 1, 1994; amended effective April 1, 1997; July 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-08.1-02, 65-08.1-05

92-01-02-55. Dividend programs. The organization may offer dividends to qualifying employers. Eligibility and distribution:

1. Dividends are not guaranteed. ~~Dividends may only be declared by the workforce safety and insurance board of directors.~~
2. If an employer's account has been in effect for less than an entire premium year, any dividend offered shall be prorated by the number of months the employer's account has been active with the organization. Premiums paid and losses incurred during a dividend review period defined by the organization, and other criteria identified by the organization, may be used to determine the amount of the dividend. Minimum premium and volunteer accounts are not eligible for dividend payments.
3. The organization shall offset past-due balances on any account by the dividend earned on that account.
4. The distribution of a dividend may not reduce an employer's premium below the minimum premium.

History: Effective May 1, 2000; amended effective July 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-04-19.3

APPENDIX A

~~WORKFORCE SAFETY AND INSURANCE~~

PERMANENT MENTAL IMPAIRMENT RATING REPORT

WORK SHEET

Since the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, does not provide a quantified method for assigning permanent impairment percentages under Chapter 14, "Mental and Behavioral Disorders", the evaluating physician shall utilize this form. When using this form, the evaluating physician shall:

- a. Become familiar with the content of the work sheet and develop an understanding of the percentages and categories listed in "I. Level of Permanent Mental Impairment" and Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition;
- b. Enter the permanent mental category rating associated with each item in all sections of "II. Areas of Function" as it applies to the injured worker; and
- c. Enter a rating for the "Overall Permanent Impairment Rating" provided within this appendix. The "Overall Permanent Impairment Rating" must be based upon the categories provided in Table 14-1.
- d. All permanent impairment reports must include the cause of the impairment and must contain an apportionment if the impairment is caused by both work and non-work injuries or conditions.

The various degrees of permanent impairment from "II. Areas of Function" on within this appendix are not added, combined, or averaged. The overall mental rating should be based upon clinical judgment and Table 14-1, and be consistent with other chapters of the AMA guides.

~~—PLEASE PHOTOCOPY AS NEEDED—~~

PERMANENT MENTAL IMPAIRMENT RATING

REPORT WORK SHEET

Patient Name _____ DOB _____

WG# _____ SSN _____

I:

~~LEVELS OF PERMANENT MENTAL IMPAIRMENT - as identified in Table 14-1 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition:~~

~~Percent~~

~~Category~~

~~0%~~

~~Class 1. No Impairment~~

~~1-15%~~

~~Class 2. Mild Permanent Impairment~~

~~16-25%~~

~~Class 3. Moderate Permanent Impairment~~

~~26-50%~~

~~Class 4. Marked Permanent Impairment~~

~~51-100%~~

~~Class 5. Extreme Permanent Impairment~~

II:

~~AREAS OF FUNCTION~~

~~1. Activities of Daily Living~~

~~Self-care personal hygiene (urinating, defecating, brushing teeth, combing hair, dressing oneself, bathing, eating, preparing meals, and feeding oneself)~~

~~Communication (writing, typing, seeing, hearing, speaking)~~

~~Physical activity (standing, sitting, reclining, walking, climbing stairs)~~

~~Travel (driving, riding, flying)~~

~~Nonspecialized hand activities (grasping, lifting, tactile discrimination)~~

~~Sexual function (orgasm, ejaculation, lubrication, erection)~~

~~Sleep (restful, nocturnal sleep pattern)~~

~~2. Social Functioning~~

~~Get along with others~~

~~Initiate social contacts~~

~~Communicate clearly with others~~

~~Interact and actively participate in group activities~~

~~Cooperative behavior, consideration for others, and awareness of others' sensitivities~~

~~Interacts appropriately with the general public~~

~~Asks simple questions or requests assistance~~

~~Accepts instructions and responds appropriately to criticism from supervisors~~

~~Gets along with coworkers and peers without distracting them or exhibiting behavioral extremes~~

~~Maintains socially appropriate behavior~~

~~Adheres to basic standards of neatness and cleanliness~~

3. Memory, Concentration, Persistence, and Pace

~~Comprehend/follow simple commands~~

~~Works with or near others without being distracted~~

~~Sustains an ordinary routine without special supervision~~

~~Ability to carry out detailed instructions~~

~~Maintain attention and concentration for specific tasks~~

~~Makes simple work-related decisions~~

~~Performs activities within a given schedule~~

~~Maintains regular attendance and is punctual within customary tolerances~~

~~Completes a normal workday and workweek without interruptions from psychologically based symptoms~~

~~Maintains regular attendance and is punctual within customary tolerances~~

4. Deterioration or Decompensation in Complex or Worklife Settings (Adaptation to Stressful Circumstances)

~~Withdraws from the situation or experiences exacerbation of signs and symptoms of a mental disorder~~

~~Decompensates and has difficulty maintaining performance of activities of daily living (ADLs), continuing social relationships, or completing tasks~~

~~Able to make good autonomous decisions/exercises good judgment~~

~~Perform activities on schedule~~

~~Interacts appropriately with supervisors and peers~~

~~Responds appropriately to changes in work setting~~

~~Aware of normal hazards and takes appropriate precautions~~

~~Able to use public transportation and can travel to and within unfamiliar places~~

~~Sets realistic goals~~

~~Makes plans independent of others~~

~~OVERALL PERMANENT IMPAIRMENT RATING~~ _____

~~IMPAIRMENT CAUSED BY WORK~~ _____

~~Physician~~ _____ ~~Date~~ _____

~~(signature)~~

~~PERMANENT WORK-RELATED MENTAL IMPAIRMENT RATING
REPORT WORK SHEET~~

CHAPTER 92-01-03

92-01-03-01. History and functions of the office of independent review decision review office.

1. **History.** Legislation enacting the ~~office of independent review~~ decision review office was passed in 1995 and is codified as North Dakota Century Code section 65-02-27. The legislation took effect on August 1, 1995.
2. **Functions.** The program has been developed to educate and provide assistance to injured employees in the workers' compensation system. The goal is to resolve claims disputes in a timely and professional manner. If an employee has a concern with a claim, the employee may contact the ~~office of independent review~~ decision review office and request assistance.

History: Effective April 1, 1996; amended effective May 1, 2000; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-27

92-01-03-02. Definitions. In this chapter:

1. "Act" means the North Dakota Workers Compensation Act.
2. ~~"Advocate" means a person employed by the program to assist a claimant in a disputed claim.~~
3. "Attempt to resolve" means a prompt, active, honest, good-faith effort by the claimant to settle disputes with the organization, through the program office.
4. ~~3.~~ "Benefits" means an obligation of the organization to provide a claimant with assistance as required by the Act.
5. ~~4.~~ "Certificate of completion" means the form sent to the claimant when the program office closes its file, which acknowledges the claimant made a good-faith effort to resolve the dispute.
6. ~~5.~~ "Claimant" means an employee who has filed a claim for benefits with the organization.
7. ~~6.~~ "Constructive denial" occurs when sixty days have passed since all elements of filing under subsection 2 of section 92-01-02-48 have been satisfied, but the organization has not made the decision to accept or deny the claim.
7. "Decision review specialist" means a person employed by the office to assist a claimant in a disputed claim.

8. "Disputed claim" means a challenge to an order issued by the organization.
9. "Interested party" means:
 - a. The claimant.
 - b. The claims analyst adjuster assigned to that claimant's claim.
 - c. A claims supervisor.
 - d. The claimant's employer or immediate supervisor.
 - e. The claimant's treating doctor.
 - f. A member of the organization's legal department.
 - g. Any other person the ~~advocate~~ decision review specialist determines appropriate.
10. "Office" means the decision review office.
11. "Order" means an administrative order issued pursuant to North Dakota Century Code chapter 28-32 or section 65-01-16.
- ~~11.~~ 12. "Organization" means workforce safety and insurance, or the director, or any department heads, assistants, or employees of the organization designated by the director to act within the course and scope of their employment in administering the policies, powers, and duties of the Act.
- ~~12.~~ "Program" ~~means the office of independent review.~~
13. "Vocational consultant's report" means the report issued by the rehabilitation consultant outlining the most appropriate rehabilitation option identified for the claimant.

History: Effective April 1, 1996; amended effective May 1, 2000; July 1, 2004; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-27

92-01-03-03. Request for assistance - Timely request for consideration or rehearing. A claimant shall request assistance with the resolution of a dispute that arises from an order in writing within thirty days from the date of service of the order. An oral request is sufficient to toll the statutory time limit for requesting

rehearing if that request is followed by a written request for assistance which is received by the program office within ten days after the oral request was made.

History: Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-27

92-01-03-04. Procedure for dispute resolution.

1. A claimant may contact the program office for assistance at any time. The claimant shall contact the program office to request assistance with a dispute arising from an order within thirty days of the date of service of the order. The claimant may also contact the program office for assistance when a claim has been constructively denied or when a vocational consultant's report is issued. A claimant must make an initial request in writing for assistance with an order, a constructively denied claim, or a vocational consultant's report.
2. In an attempt to resolve the dispute, the advocate decision review specialist may contact any interested parties. After oral or written contact has been made with the appropriate interested parties, the advocate decision review specialist will attempt to accomplish a mutually agreeable resolution of the dispute between the organization and the claimant. The advocate decision review specialist may facilitate the discussion of the dispute but may not modify a decision issued by the organization.
3. If a claimant has attempted to resolve the dispute and an agreement cannot be reached, the advocate shall issue a certificate of completion. The advocate decision review specialist will send the certificate of completion to the claimant and will inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the certificate of completion is mailed.
4. If a claimant has not attempted to resolve the dispute, the program office shall notify the claimant by letter, sent by regular mail, of the claimant's nonparticipation in the program office and that no attorney's fees shall be paid by workforce safety and insurance should the claimant prevail in subsequent litigation. The advocate decision review specialist shall inform the claimant of the right to pursue the dispute through hearing. To pursue a formal rehearing of the claim, the claimant shall file a request for rehearing with the organization's legal department within thirty days after the letter of noncompliance is mailed.
5. If an agreement is reached, the organization must be notified and an order or other legal document drafted based upon the agreement.

6. The program office will complete action within thirty days from the date that the program office receives a claimant's request for assistance. This timeframe can be extended if the advocate decision review specialist is in the process of obtaining additional information.

History: Effective April 1, 1996; amended effective May 1, 1998; May 1, 2000; July 1, 2004; July 1, 2006; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-02-27

CHAPTER 92-02-01

92-02-01-01. References to other standards. Title Any update, amendment, or revision to title 29 of the Code of Federal Regulations, part 1910, occupational safety and health standards for general industry, ~~with amendments as of July 1, 2003;~~ and, part 1926, occupational safety and health standards for the construction industry, ~~with amendments as of July 1, 2003;~~ both promulgated by the occupational safety and health administration of the United States department of labor effective as of April 1, 2010, are the standards of safety and conduct for the employers and employees of the state of North Dakota.

History: Amended effective August 1, 1987; June 1, 2000; July 1, 2004; July 1, 2010.

General Authority: NDCC 65-03-01

Law Implemented: NDCC 65-03-01

CHAPTER 92-05-02

92-05-02-01. Definitions. As used in this article:

1. "Baseline period" means the period of time immediately preceding the premium period being rated for risk management programs. The baseline period may not be less than six months and not more than eighteen months.
2. "Employer" means employer as defined in North Dakota Century Code section 65-01-02.
3. "Frequency rate" means the total number of claims accepted by the organization attributable to an employer in that employer's premium period multiplied by one million dollars and divided by the employer's gross payroll for mandatory coverage and the current wage cap for optional coverage.
4. "Good standing" for purposes of this article means an employer account that is not in default pursuant to North Dakota Century Code section 65-04-22.
5. "Measurement year" means the premium period being rated for the risk management programs.
6. "Organization" means workforce safety and insurance.
7. ~~"Preferred provider" means a designated medical provider of medical services, including consultations or referral by the provider. Any employer may select a designated medical provider pursuant to North Dakota Century Code section 65-05-28.1. The employer must provide written documentation that all employees have been notified of the designated medical provider selection and the employee's option to add additional providers to the employer's selection. The employer must provide written documentation that the employer has notified the designated medical provider that it has elected to participate in the designated medical provider program.~~
8. "Risk management programs" means all premium reduction and premium calculation programs offered and approved by the organization. Participants in the deductible and retrospective rating program are not eligible for discounts under this chapter.
- 9: 8. "Safety intervention" means any program, practice, or initiative approved by the organization intended to eliminate workplace hazards.
- 10: 9. "Severity rate" means the rate calculated by multiplying the total number of days for which disability benefits were paid by the organization because of a workplace injury during the measurement

year by one million dollars and divided by the employer's gross payroll for mandatory coverage and the current wage cap for optional coverage. The total number of lost time days incurred during the employer's premium period will be calculated only for those claims with acceptance dates in the measurement year and preceding four premium billing periods. Death claims shall be assessed three hundred sixty-five lost time days during the premium billing period in which the workplace death occurs and an additional three hundred sixty-five lost time days for the subsequent premium billing period.

History: Effective July 1, 2006; amended effective July 1, 2007; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1

92-05-02-03. Eligibility - Billing. All employers, except participants in the retrospective rating and deductible programs are eligible to participate in the organization's risk management ~~program plus~~ programs.

An employer may elect, subject to the organization's approval, to participate in an alternative risk management program.

The organization, in its discretion, shall determine eligibility for the safety outreach program. Pursuant to this program, the organization will serve the sector of industry and business that has historically generated high frequency or severity rates, or both.

Volunteer accounts are not eligible for participation in risk management programs.

At the organization's discretion, an employer account that is delinquent, uninsured, or not in good standing pursuant to section 92-05-02-01 may not be eligible for discounts under this article.

Discounts are automatically calculated by the organization. At the organization's discretion, discounts earned under section 92-05-02-06 may be payable either as a credit to the employer's premium billing statement or as a cash payment to the employer.

History: Effective July 1, 2006; amended effective April 1, 2008; July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1

92-05-02-04. Death claims. Repealed effective July 1, 2010. ~~In exceptional circumstances, and at the sole discretion of the executive director of~~

the organization, the impact of a compensable death claim may be removed from that employer's risk management program plus calculation.

History: Effective July 1, 2006.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1

92-05-02-05. Risk management program plus. Repealed effective July 1, 2010.

1. ~~Risk management program plus provides a five percent premium discount for a reduction of at least ten percent in frequency rate and a five percent premium discount for a reduction of at least ten percent in severity rate. If an employer reduces both frequency and severity rates by at least ten percent each in a premium year, that employer is entitled to an additional five percent premium discount. The maximum premium discount available under this program is fifteen percent in a premium year. An employer who has no claims accepted by the organization and no lost time days incurred in the employer's premium period automatically earns the maximum fifteen percent discount. Continued reduction of at least ten percent annually in either an employer's frequency or severity rates, or both, entitles an employer to a discount.~~
2. ~~This subsection applies only to accounts experience rated in the measurement year and only to the frequency rate calculation. If an employer does not attain a ten percent reduction in frequency rate, an employer may still earn a five percent frequency discount if the employer's frequency rate is sixty-five percent or less than the organization's calculation of the five-year average frequency rate for the employer's applicable sector code as assigned by the organization and as published in the North American Industry Classification System; United States, 2002 expanded edition with added "bridges". (2002).~~
3. ~~An employer who has no claims accepted by the organization and no lost time days incurred in the employer's premium period retains the fifteen percent discount for the current premium period.~~

History: Effective July 1, 2006.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

92-05-02-07. Alternative risk management programs. The organization may create a new program risk management programs, or modify an existing employer premium calculation program programs under this article to provide greater or lesser premium discounts.

History: Effective April 1, 2008; amended effective July 1, 2010.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

CHAPTER 92-05-03

92-05-03-06. Hazard elimination learning program. Repealed effective July 1, 2010. ~~The organization may create grant programs to defray the costs of participation in the organization's hazard elimination learning program. A grant award under this section is within the discretion of the organization.~~

History: Effective April 1, 2008; amended effective April 1, 2009.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 65-03-04

TITLE 93

PRIVATE INVESTIGATIVE AND SECURITY BOARD

TITLE 93
PRIVATE INVESTIGATIVE AND SECURITY BOARD

JULY 2010

CHAPTER 93-02-02.1

93-02-02.1-05. Qualifications for apprentice security officers. To qualify for registration as an apprentice private security officer, an individual:

1. Must complete, within thirty days after being registered with the board, a minimum of ~~sixteen~~ twelve hours of classroom instruction relating to the provision of private security services ~~and a minimum of sixteen or twelve~~ hours of field training. The field training must be supervised either by a security officer who has a minimum of two thousand hours of active service in that grade or equivalent combination of training and experience as defined in section 93-02-02.1-10 or by a commissioned security officer. The training must be at a ratio of no more than four trainees to one officer.
2. Until the apprentice private security officer has fulfilled the requirements in this section, the apprentice may only provide private security services under the direct, onsite supervision of a security officer or commissioned security officer employed by the private security agency.
3. A registration under this section will not be issued after the expiration of a temporary registration issued under North Dakota Century Code section 43-30-05.1 unless the apprentice security officer provides sufficient proof to the board of the completion of the instruction and field training requirements in this section.

History: Effective May 1, 2000; amended effective July 1, 2010.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-04

93-02-02.1-11. Prohibitions.

1. An individual, while providing private security services, may not:
 - a. Wear, carry, use, display, or possess any identification, badge, uniform, patch, insignia, sign, decal, or other form of identification;

- b. Make or utter any statement; or
- c. Use, control, possess, or own any motor vehicle of any kind which is marked or identified by any sign, insignia, decal, equipment, device, or contrivance;

which could or might reasonably lead the general public to believe or assume that the individual has any police-type powers or that the individual or vehicle is associated in any way with a governmental law enforcement agency or other governmental agency. Examples of prohibited conduct include use of the word "police", the great seal of the state of North Dakota, or the seal of any political subdivision; or use of any type of common or customary military rank.

- 2. An individual licensed by the board under this chapter, including the holder of an agency license, may not be employed full time or part time in any capacity wherein such individual has any police-type powers or access to any official law enforcement records.
- 3. An individual licensed by the board under this chapter may not solicit or accept any commission or deputization that in any way involves the authority to use or employ, or the use or employment of, any police-type powers, except that of a special deputy sheriff or special police officer, and then, only in the case of an emergency or disaster and only for the immediate time of the emergency or disaster.
- 4. As used in this section, positions with police-type powers do not include official volunteer civil defense positions or membership in the national guard, reserve, or regular armed forces of the United States, but include positions or membership in the military police, security police, or similar police functions of the regular armed forces of the United States.
- 5. If a uniform is worn, for identification purposes, the name of the agency that the individual is employed by must be prominently displayed on the uniform.

History: Effective May 1, 2000; amended effective July 1, 2010.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 12.1-13-04

CHAPTER 93-02-03

93-02-03-03. Renewal of licenses and registrations.

1. Licenses and registrations issued by the board expire on September thirtieth of each odd-numbered year.
2. Every individual or agency who previously held a license or registration issued by the board and whose license or registration has expired may have the same restored immediately upon payment of all lapsed renewal fees and any applicable late fees; provided, however, that not more than thirty days has elapsed since the date of expiration, and provided that the individual or agency has not provided private investigative or private security services during the time in which the license or registration was expired.
3. This section does not relieve any person from criminal prosecution for engaging in practice or providing services without a license as required by North Dakota Century Code chapter 43-30. Once a license or registration has lapsed, the individual or agency who held the license or registration may not provide private investigative or private security services until the license or registration is renewed or until a new license or registration is issued.
4. Any individual or agency who fails to renew a lapsed license or registration and who fails to pay all lapsed renewal fees and late fees within the time required by this section must reapply for a new license or registration and meet all the requirements for licensing or registration, including a state and nationwide criminal history record check.

History: Effective March 1, 1990; amended effective May 1, 2000; May 1, 2005; July 1, 2007; July 1, 2010.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-11

93-02-03-06. Fees - Amount - Late fees. In addition to statutory fees, the board charges the following fees:

1. An individual ~~shall~~ must pay a fee of one hundred dollars to take the examination to become licensed to provide investigative or private security services.
2. An individual ~~shall~~ must pay a fee of one hundred thirty dollars to receive an initial license or renew the individual's license to provide private investigative or private security services. In addition, a late fee of fifty dollars must be paid for each month the renewal is late.
3. An individual or entity ~~shall~~ must pay a fee of one hundred dollars to apply for a license to operate a private security or detective agency.

4. An individual or entity ~~shall~~ must pay a fee of two hundred fifty dollars to receive an initial license or renew a license to operate a private security or detective agency.
5. An individual ~~shall~~ must pay a fee of twenty dollars to receive a private security training certificate.
6. An individual ~~shall~~ must pay an annual fee of twenty dollars to receive an armed private security certificate. Armed private security certificates expire on September thirtieth of each year.
7. An individual or entity ~~shall~~ must pay a fee of ten dollars to obtain a duplicate license.
8. An individual ~~shall~~ must pay a fee of ~~eighteen~~ twenty-five dollars to obtain an initial registration to provide private investigative or private security services. ~~There is no charge~~ An individual must pay twenty-five dollars for renewing ~~an individual's~~ registration to provide private investigative or private security services, ~~but a~~ A late fee of ten dollars must also be paid for each month the renewal is late.

History: Effective May 1, 2000; amended effective May 1, 2005; July 1, 2010.

General Authority: NDCC 43-30-04

Law Implemented: NDCC 43-30-16

TITLE 99
STATE GAMING COMMISSION

JULY 2010

CHAPTER 99-01.3-01

99-01.3-01-01. Ineligible organizations. An organization or a closely related organization is may be ineligible for a license or permit if either organization has failed to resolve an imbalance involving its gaming or trust account according to section 99-01.3-03-05, has deals or games with state gaming stamps that are not accounted for, is delinquent in paying any tax, interest, penalty, or monetary fine due, has failed to comply with the terms and conditions of an administrative order, or was convicted of violating this article or North Dakota Century Code chapter 12.1-28 or 53-06.1. An auxiliary that is not a closely related organization is eligible for a permit. An organization that is licensed or issued a permit must either have its principal executive office in North Dakota or be a foreign corporation authorized to conduct a raffle under chapter 20.1-08. ~~Except for an educational organization, a~~ A county, city, state, political subdivision, or federal entity is not eligible for a license or permit. A nonprofit social, hobby, trade, business, professional, similar club or association, or organization whose primary purpose mainly provides a direct benefit to its officers, is not a public-spirited organization eligible for a license.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01, 53-06.1-01.1

99-01.3-01-03. License.

1. An organization may not conduct games at a site unless the attorney general first approves a site authorization and license for that city or county. A separate license is required for each city or county. For an initial application for a license for an organization that desires to be recognized as an eligible organization, the attorney general shall determine whether the organization qualifies by examining a copy of an organization's articles of incorporation, charter, bylaws, board of directors' minutes for the previous two years, or any other documents or records considered necessary to determine its primary purpose and date of origin. If the attorney general determines that an organization's

actual primary purpose does not qualify it as an eligible organization, the attorney general shall deny the application ~~or revoke the license.~~

2. A license is effective for one year beginning July first and ending June thirtieth and may be issued at any time during the fiscal year. However, the annual license fee is not prorated. If an organization plans to conduct a raffle on or after July first, a license cannot be issued before January first. If an organization received a charity local permit during the fiscal year, it may not receive a state license.
3. When an organization first applies for a license to conduct a game, the license may not be issued to the organization until after its gaming manager satisfactorily demonstrates to the attorney general that the organization is capable of properly managing and controlling the game that it intends to conduct.
4. If an organization only conducts a raffle or calcutta in two or more cities or counties, the organization may apply for a consolidated license prescribed by the attorney general and remit a one hundred fifty dollar license fee for each city or county in which a site is located.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03

99-01.3-01-05. Permits.

1. A permit is issued by a city or county governing body and may be for a site located on public or private property. It may be restricted, including types of games, days of the week, and designation of an area at a site where games will be conducted. A governing body may revoke or suspend a permit based on good cause.
2. A permit is required for each site at which games have been authorized. ~~An organization may be issued two or more local permits at the same time.~~ The primary prize under a permit may not exceed ~~two~~ six thousand ~~five hundred~~ dollars and total prizes of all games may not exceed twelve thousand dollars per year. However, the total cash prizes for raffles may not exceed ~~three~~ four thousand dollars per day and no single cash prize can exceed ~~one~~ four thousand dollars. A donated merchandise prize is valued at its retail price.
3. When a governing body issues a permit, it shall assign a permit number, specify the day or period for which it is effective, and send a copy to the attorney general within fourteen days from when it was issued. An organization that has a license may not at the same time have a permit.

4. An organization may receive one or more local permits to conduct a raffle, bingo, or sports pool from a city or county governing body during a year and may be issued two or more local permits at the same time. For a calendar raffle, a local permit may be issued for a calendar year. If an organization plans to conduct a raffle, a permit may not be issued more than six months prior to the first raffle drawing date unless authorized by the attorney general.
5. An organization may receive one charity local permit to conduct a raffle, bingo, sports pool, paddlewheels, twenty-one, or poker from a city or county governing board during a year. If the organization has received a local permit or license during the fiscal year, it may not receive a charity local permit. If the organization received a charity local permit during the fiscal year, it may not receive a local permit. For a charity local permit an organization shall within thirty days of the event file a report on a prescribed form with the attorney general and governing body.
6. For bingo, an organization shall comply with sections 99-01.3-04-01 and 99-01.3-04-02 and the applicable subsections of section 99-01.3-04-03. For a raffle, an organization shall comply with sections 99-01.3-05-01 through 99-01.3-05-05. For a sports pool, an organization shall comply with section 99-01.3-07-01. For twenty-one, an organization shall comply with sections 99-01.3-08-01, 99-01.3-08-02, 99-01.3-08-08, 99-01.3-08-09, 99-01.3-08-10, 99-01.3-08-11, and 99-01.3-08-12. For poker, an organization shall comply with section 99-01.3-09-01. For paddlewheels, an organization shall comply with subsection 2 of section 99-01.3-11-01.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-03, 53-06.1-06

CHAPTER 99-01.3-02

99-01.3-02-01. Definitions. As used in this article:

1. "Attorney general" includes an agent of the attorney general.
2. "Bar" means retail alcoholic beverage establishment.
3. "Bar employee" is a person, employed by a bar that is not operated by an organization, who redeems winning pull tabs or ~~bingo cards~~ prize boards, or both, involving a dispensing device or who sells raffle tickets or sports pool chances on a board for an organization.
4. "Cash on hand" means coin, currency, and checks, plus an IOU due from another source of cash or nongaming funds, less an IOU owed to another source of cash or nongaming funds.
5. "Cash prize" means coin, currency, marketable security, and a similar item that can be readily redeemed or converted into legal tender. Cash prize does not include precious metal bullion, a coin of precious metal or antique coin that has a market value greater than its face value, or a merchandise gift certificate. The value of a marketable security is its cost.
6. "Cash profit" means:
 - a. For bingo, ~~excluding a dispensing device~~, total ending cash on hand, less starting cash on hand and prizes paid by check, for a bingo session.
 - b. For a raffle, total receipts less prizes paid by cash and check.
 - c. For a commingled game of pull tabs, total ending cash on hand, less starting cash on hand and cash prizes paid by check, for a day's activity.
 - d. For a commingled game of pull tabs ~~and bingo~~ involving a dispensing device, total currency withdrawn from a dispensing device, less ~~the value of daubers sold, credits~~ credit paid on a credit redemption register, cash long or short from an employee bank, and prizes paid, for an interim period.
 - e. For a club special, tip board, seal board, and punchboard, the total daily difference between ending cash on hand and starting cash on hand and less prizes paid by check, for the game.
 - f. For a prize board, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check and cost of coins, for the game.

- g. For a prize board involving a dispensing device, total currency withdrawn from a dispensing device, less total cash prizes paid, prizes paid by check, cost of coins, credit paid on a credit redemption register, and cash long or short from an employee bank, for the game.
 - h. For a sports pool, the total daily difference between ending cash on hand and starting cash on hand, less prizes paid by check.
 - h: i. For twenty-one, and paddlewheels described by subsection 2 of section 99-01.3-11-01, total ending cash on hand, plus drop box cash, less total starting cash on hand, for a day's activity.
 - i: j. For poker, total ending cash on hand, less starting cash on hand, less prizes paid by check, for a day's activity.
 - j: k. For calcuttas, total ending cash on hand, less starting cash on hand, prizes paid by check, and refunds to players, for the event.
 - k: l. For paddlewheels described by subsection 1 of section 99-01.3-11-01, total ending cash on hand, less starting cash on hand and prizes paid by check, for a paddlewheel ticket card.
7. "Conduct of games" means the direct operation of a game on a site, including placing pull tabs ~~or bingo cards~~ in or withdrawing currency from a dispensing device. This term excludes a bar employee who redeems a winning pull tab ~~or bingo card, or both,~~ removes the seal on a prize board involving a dispensing device or who sells a raffle ticket or a sports pool chance on a board.
 8. "Deal" in pull tabs means each ~~box or bag or series of boxes or bags containing one game with the same~~ individual game or series of pull tab packages which makes up a game with a specific form number and a unique serial number. ~~"Deal" in bingo means each box of bingo cards, regardless of the serial number.~~
 9. "Employee" includes a person employed by an organization, an employee of a temporary employment agency who provides gaming-related services to an organization, and a volunteer of an organization.
 10. "Flare" refers to a flare, or master flare, or prize flare as follows:
 - a. Flare. A flare is a display with the state gaming stamp affixed which describes a punchboard, sports-pool board, calcutta board, deal of pull tabs, club special, tip board, prize board, and seal board, ~~and deal of bingo cards involving a dispensing device.~~ The flare for a punchboard is its face sheet. A flare for a sports-pool board,

calcutta board, prize board, club special, tip board, and seal board is the game board.

- b. Master flare. A master flare for a game of pull tabs is the same as a "flare" but it does not have a state gaming stamp affixed. A master flare for paddlewheels is described by subsection 1 of section 99-01.3-11-02.
 - ~~c. Prize flare. A prize flare is a posted display which describes a winning bingo pattern and prize amount involving bingo cards used in a dispensing device.~~
11. "Gaming equipment" means a game piece or device specifically designed for use in conducting games, including integral components of a dispensing device such as a currency validator, processing board, EPROM microchip or other data storage device, attached bar code credit devices, and card shuffling devices. The term excludes fill and credit slips, promotional paper bingo cards, ~~and a bingo dauber daubers, video surveillance equipment, and weight scales.~~
 12. "Inside information" is any information about the status of a game when that game is conducted that may give a person an advantage over another person who does not have that information, regardless if the person uses or does not use the information, when providing that information is prohibited by the gaming law or rules. It includes information provided through written, verbal, or nonverbal communications that implies or expresses the number of unsold chances; relationship of a game's cash on hand to its ideal adjusted gross proceeds; number of unredeemed top tier or minor winning game pieces that is not posted, value of a hole card in twenty-one, number under the tape of a sports-pool board, or number under a seal.
 13. "Organization" in reference to a local permit includes a "group of people" working together for a public-spirited cause.
 14. "Primary game" is the principal game conducted on a site. Determining factors include frequency of conduct, square footage used, duration of time conducted, and volume of activity.
 15. "Retail price" means the purchase price paid by an organization, excluding sales tax.
 16. "Volunteer" means a person who conducts games for no compensation. A volunteer may receive a gift not exceeding a total retail value of thirty dollars for a consecutive twenty-four-hour period, cash tips, and

reimbursement for documented business expenses. No gift may be cash or convertible into cash. See definition of employee.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-02. Record check.

1. ~~Unless a person is not required to have a record check according to subsection 4, an~~ An organization or distributor may not employ the a person as a temporary or permanent "employee" until the organization or distributor has initiated a record check on the person, ~~or the person has independently requested a record check from the bureau of criminal investigation within one year before employment, or a person is not~~ required to have a record check according to subsection 4. However, an organization or distributor may temporarily employ a person pending the results of a record check.
2. An organization or distributor shall initiate a record check of a person by submitting a "request for record check" form to the attorney general within ten calendar days of the first day of employment. ~~If the attorney general determines that a fingerprint card or special authorization form, or both, are necessary, the attorney general shall provide the required documents to an organization or distributor which shall submit the completed documents to the attorney general within ten days from the date received~~ special circumstances exist, including an applicant residing out of state, the organization must follow procedures prescribed by the attorney general. An organization or distributor may only request a record check of a person who has a written promise of employment or who is temporarily employed pending the result of the record check. A person shall attest to the accuracy of the information on the form and authorize the attorney general to release information on any criminal record found, including a copy of the bureau of criminal investigation's criminal history record information, to an organization or distributor which requested the record check.
3. For the purpose of this section, the definition of an "employee" is:
 - a. A person who directly operates games on a site;
 - b. A person who is a shift or gaming manager;
 - c. A person who is employed by a bar that is not operated by an organization, and who is authorized by an organization under subsection 4 of section 99-01.3-12-02 to withdraw currency or a drop box from a pull tab ~~or bingo card~~ dispensing device;

- d. A person who places a deal of pull tabs or ~~bingo cards~~ in a dispensing device, removes currency from the device, or reimburses a bar for redeemed pull tabs or ~~bingo cards~~;
 - e. A person who is a member of a drop box cash count team; or
 - f. A person who directly sells or distributes gaming equipment for a distributor.
4. These employees of an organization are not required to have a record check:
- a. A volunteer, except a gaming manager or person who is a member of a drop box cash count team;
 - b. An employee who is sixteen or seventeen years of age;
 - c. An employee who has an expired work permit and who continues to be employed by the same organization or distributor that the person was employed by when the work permit expired;
 - d. An employee who has had a record check done and, within one year of the record check, has become reemployed by the same organization or employed by a different organization, distributor, or bar than the person was employed by when the record check was done, and who provides the notification copy of a "request for record check" form and, if applicable, a copy of the bureau of criminal investigation's criminal history record information, to the new employing organization, distributor, or bar; or
 - e. An employee, other than a gaming manager, who only conducts a calcutta, raffle, poker, or sports pool or is employed by an organization that conducts games on no more than fourteen days during a calendar year.
5. The attorney general may require fingerprints of a person. A local law enforcement agency may charge a fee for taking fingerprint impressions.
6. The fee for a record check is fifteen dollars and is not refundable. However, if a federal agency or local law enforcement agency has done a record check, the attorney general may waive the fee. The fee must be remitted by an organization, distributor, or person with the request form.
7. ~~Unless a federal or local law enforcement agency conducts a record check, the~~ The attorney general shall do the record check and provide a copy of the "request for record check" form to an organization or distributor which requested the record check and the person on whom

the record check was done unless a federal or local law enforcement agency conducts a record check. This copy must indicate whether a criminal record was found or not found. If a criminal record is found, the attorney general shall also provide an organization or distributor and person with a copy of the bureau of criminal investigation's criminal history record information. An organization or distributor shall review this report to determine whether a person is eligible for employment as an employee according to subdivision a or b of subsection 5 of North Dakota Century Code section 53-06.1-06.

8. If a person is not eligible for employment but has been temporarily employed pending the results of a record check, an organization or distributor, within five days of receiving the copy of the "request for record check" ~~form~~, shall terminate the person's employment. This period cannot be extended.
9. An organization or distributor shall retain the copy of a "request for record check" form and criminal history record information from the federal or local law enforcement licensing document for the time period prescribed by federal law.
10. If a person, while employed by an organization or distributor, pleads guilty to or has been found guilty of a felony or misdemeanor offense referenced by subdivisions a and b of subsection 5 of North Dakota Century Code section 53-06.1-06, the person must immediately notify the organization or distributor. Upon notification, an organization or distributor, within five days, shall terminate the person's employment unless the person received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-03. Restrictions and requirements.

1. An employee shall wear an identification tag while working in the gaming area of a site. The tag must display a person's name, which may be the employee's middle name or a shortened form of a proper name, and first initial of the last name or the person's identification number, and organization's name. The tag must be worn on the upper one-third of a person's body. An organization shall provide a an identification tag to a person gaming employee and is equally responsible with the person for ensuring that the tag is properly displayed.
2. An organization shall have the gaming law; chapter 99-01.3-02, general rules; chapter 99-01.3-03, accounting rules; and the rules chapter of

each game type conducted at a site available in the gaming area for review by any person.

3. An organization shall have a policy manual on its conduct and play of games in the gaming area at a site available for review by any person. The manual must include policies for resolving a question, dispute, or violation of the gaming law or rules. The manual cannot include internal controls.
4. ~~An organization shall maintain a list of all employees on a site, including their name, address, and telephone number. The list must be safeguarded and be available to the attorney general and law enforcement officials.~~
5. ~~An organization shall disclose or make available to players a description of the "gaming area" of a site authorization for applying subsection 1 and sections 99-01.3-04-03(1)(f), 99-01.3-06-02(3)(d), 99-01.3-08-06(3), 99-01.3-12-02(3)(e), and 99-01.3-12-04(2)(e).~~
6. An organization's top official shall provide to the governing board and membership in writing, or by electronic publication method, each quarter information on an organization's adjusted gross proceeds; cash profit; cash long or short; net proceeds; excess expenses; reimbursement of excess expenses; and, for a fraternal, veterans, or civic and service organization, a list of eligible uses. ~~This information and how it was provided must be included in an organization's records.~~ If an administrative complaint is issued to an organization, the top official shall disclose the allegation, in writing, to the board within seven days from the date the complaint was received. If an allegation is substantiated, the top official shall disclose to the board ~~and membership~~, in writing, the allegation and sanction imposed within ninety days of the final disposition of the complaint. The organization shall disclose to the membership how they may obtain information on the quarterly gaming activity and any information regarding the final disposition of a complaint. This information and how it was provided to the governing board and membership must be included in an organization's records.
7. 5. A person may not modify a state gaming stamp or flare, including a last sale prize. An organization may not, independent of a distributor, add or delete a last sale prize.
8. 6. A person under the age of twenty-one may not conduct or play games, except bingo and raffles, and, at an alcoholic beverage establishment, may not be a member of a drop box cash count team. An employee under the age of eighteen may not count drop box cash. A person under the age of sixteen may not conduct bingo.

- 9: 7. An employee or a bar employee may not use inside information or provide inside information to any person.
- 10: 8. The attorney general may waive a rule when it is for the best interest of the gaming industry and public.
- 11: 9. If an organization does not plan to reapply for a license for the next licensing period or relinquishes a license, it shall return its unplayed games, with state gaming stamps, to the attorney general or distributor. An organization may not destroy an unplayed or unreported game without permission of the attorney general.
- 12: 10. When an organization disposes played deals of pull tabs ~~and bingo cards~~, club specials, prize boards, tip boards, seal boards, and punchboards, the disposal method must assure complete destruction.
- 13: 11. If an organization is forced to dispose accounting records or game pieces damaged in a natural or extraordinary disaster, it shall document each item disposed and provide a copy of the documentation to the attorney general within fourteen days before the disposal.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-04. Equipment acquisitions and use.

1. An organization shall procure gaming equipment only from a licensed distributor. However, an organization may:
 - a. Buy raffle tickets with a detachable stub from a printer or buy double ~~admission roll~~ tickets from any vendor;
 - b. Buy, lease, or sell a used pull tab ~~or bingo card~~ dispensing device from or to a distributor or another organization provided that a distributor records the transaction on a sales invoice; ~~or~~
 - c. Buy, sell, rent, lend, exchange, or give its own used playing cards, jar bar, twenty-one or poker table, bingo hard cards, bingo machine, flashboard, dealing shoe, discard holder, poker chips, chip tray, paddlewheel, or paddlewheel table from or to any organization. An organization may not sell or otherwise provide any of these particular items or any other item of gaming equipment, except playing cards, to any other person unless approval is obtained from the attorney general; or
 - d. Buy a twenty-one or paddlewheel table which has been designed and constructed by a carpenter provided that the table playing

surface, chip tray, drop box, and any related gaming equipment is purchased from a distributor.

2. An organization may not use or knowingly permit its gaming equipment to be used for an illegal purpose.
3. An organization or an employee may not conduct or possess a deal of pull tabs ~~or bingo cards~~, club special, tip board, seal board, prize board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards unless its flare has a gaming stamp.
4. If an organization or distributor suspects that a deal of pull tabs ~~or bingo cards~~, club special, tip board, prize board, or punchboard may be defective, the organization or distributor shall comply with guidelines prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-14

99-01.3-02-05. Lessor and organization - Restrictions.

1. A lessor's employee who is not the lessor's spouse, lessor's common household member, management, management's spouse, or lessor's employee or agent who approved the lease may conduct games at that site, including accessing a dispensing device, as an organization employee:
 - a. On a day when the employee is not working for the bar; or
 - b. On a day when the employee is working for the bar but is working in an area of the bar where alcoholic beverages are not dispensed or consumed.
2. No game may be directly operated as part of a lessor's business. However, a lessor may donate a gift certificate or cash or merchandise prize to an organization.
3. ~~Except as allowed by subdivision e,~~ A lessor, lessor's spouse, lessor's common household member, management, management's spouse, officer, board of directors member, or, lessor's employee or agent who approved the lease, may not:
 - a. Loan money or provide gaming equipment to an organization;
 - b. Interfere with or attempt to influence an organization's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds. However, a lessor may recommend

an eligible use. If the lessor violates this rule, the attorney general may suspend any or all games at the site for up to six months;

- c. Conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play any game at the lessor's site;
 - d. Require an organization's employee to assist, for or without compensation, in a lessor's business at the site. However, an organization's employee may voluntarily order drinks for customers; or
 - e. Count drop box cash.
4. A lessor who is an officer or board member of an organization may not participate in the organization's decisionmaking that is a conflict of interest with gaming.
 5. ~~Unless Only~~ an organization or its employee that has first received approval from the attorney general; or follows guidelines prescribed by the attorney general; ~~or an organization's employee patronizes a lessor in the normal course of a lessor's business, the organization or its employee may not buy a gift certificate or merchandise as a gaming prize from a lessor, or buy merchandise, food, or alcoholic or nonalcoholic drinks from the lessor for the lessor's employees or patrons. Except as provided by subdivision e of subsection 3, an employee of an organization may not be an agent of the bar for any bar activity. An organization's employee may patronize a lessor in the normal course of a lessor's business.~~
 6. An organization, employee, or bar may not give a free or discounted game piece, chip, or play of a game except for discounts allowed for bingo and raffle activity, or free or discounted alcoholic drink to a person to play a game. A lessor may at its own expense advertise gaming on promotional drink tickets.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-02-06. Rental agreement.

1. A rental agreement must be signed and dated by a lessor and organization.
2. An agreement must contain:

- a. Term of the agreement which must be on a fiscal year basis from July first to June thirtieth or, if a site authorization is for a shorter period, the term is for the shorter period. Except for a site where bingo is the primary game, an agreement may not exceed three years;
- b. Monetary consideration;
- c. The inclusion of this statement with proper selections made:

"The lessor agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab or bingo card, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization";

- d. If an organization provides a lessor with a temporary loan of funds for redeeming winning pull tabs or ~~bingo cards~~ for paying prize board cash prizes involving a dispensing device, a statement that the lessor agrees to repay the entire loan immediately when the organization discontinues using a device at the site; and
- e. Statements that:
 - (1) Bingo is or is not the primary game conducted;
 - (2) Twenty-one or paddlewheels, or both (involving a playing table), is or is not conducted and the number of tables on which the rent is based, including the number of tables on which a wager over five dollars is accepted;
 - (3) Pull tabs is or is not conducted;
 - (4) The rental agreement is automatically terminated, at a lessor's option, if an organization's license is suspended for more than fourteen days or revoked; and
 - (5) An oncall, temporary or permanent employee, except a bar employee defined by subsection 3 of section 99-01.3-02-01 will not, directly or indirectly, conduct games at the site as an organization employee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

3. Rent must be a fixed dollar amount per month.
 - a. A participatory or graduated rate arrangement based on gross proceeds or adjusted gross proceeds is prohibited.
 - b. If bingo is the primary game ~~and it is not conducted through a dispensing device~~ or if a site is leased by an organization that has the alcoholic beverage license for that site, the monthly rent must be reasonable. Factors include time usage, floor space, local prevailing rates, and available sites and services. An organization may pay seasonal expenses, such as snow removal, air-conditioning, and heating, to a vendor.
 - c. If bingo is not the primary game ~~or if bingo is the primary game and it is conducted through a dispensing device~~, the maximum monthly rent must be according to subsection 5 of North Dakota Century Code section 53-06.1-11. Special considerations are:
 - (1) If two or more organizations conduct twenty-one or paddlewheels, or both, involving a table and pull tabs for less than a month at a temporary site which is a public or private premise, or if two or more organizations are issued site authorizations to conduct games at a site on different days of the week, the maximum monthly rent, in the aggregate, may not exceed the limit set by subsection 5 of North Dakota Century Code section 53-06.1-11; and
 - (2) If a raffle, calcutta, sports pool, or poker is conducted with twenty-one, paddlewheels, or pull tabs, no additional rent is allowed.
 - d. Except for applying subsection 3 or 4 of section 99-01.3-03-04, and additional rent paid to a lessor for simulcast racing, an organization or employee may not pay any additional rent or expense, from any source, or for any other purpose, including office or storage space, snow removal, maintenance or cleaning fees, equipment, furnishings, entertainment, or utilities. Except for a leased site at which bingo is the primary game conducted, an organization may not pay for any capital or leasehold improvements or remodeling.
4. If there is a change in the monthly rent or any other material change to a rental agreement, the agreement must be amended and a copy received by the attorney general before its effective date.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-07.4

99-01.3-02-09. Persons restricted from playing games.

1. An employee who is a shift or gaming manager may not play any game at any of the organization's sites. An employee who services a pull tab ~~or bingo card~~ dispensing device may not play the device at that site.
2. An employee may not play any game while on duty, except a volunteer may participate in a raffle. For the game of bingo, if an organization's total gross proceeds for the previous fiscal year, for which tax returns were filed, was twenty-five thousand dollars or less, a volunteer who is not a bingo caller, shift manager, or gaming manager, may also play bingo ~~not involving a dispensing device~~ while on duty.
3. An employee may not play pull tabs, including through a dispensing device, tip board, club special, prize board, or punchboard until after three hours of active play have occurred since the employee went off duty at that site. "Active" play means that a game has been available for play. A player may not provide and an employee may not accept an unopened pull tab as a tip.
4. An employee who is not a volunteer may play twenty-one while off duty at that site only on a table that has a video surveillance system.
5. A bar employee may not play bingo or pull tabs, which involve a dispensing device, while on duty. A bar employee may play bingo ~~involving a device while off duty, and may play~~ pull tabs involving a device while off duty after three hours of active play have occurred since the bar employee went off duty at that site, unless otherwise prohibited by subdivision d of subsection 3 of section 99-01.3-02-05.
6. An employee or bar employee taking a temporary break is still considered on duty.
7. If an organization allows an employee to play games at its site, it shall disclose or make available to players the policy at that site.
8. A shift manager may not permit and an employee may not allow an employee's common household member, spouse, child, parent, brother, or sister, at a site, to:
 - a. Play pull tabs of a game while the employee is on duty as a jar operator for that game, regardless if the employee takes a temporary break or rotates to conduct another game. This rule does not apply to an employee who only places pull tabs in or withdraws currency from a dispensing device; or
 - b. Play twenty-one or paddlewheels at a table when the employee is dealing or is a wheel operator at that table.

9. An organization may prohibit a person from playing games at a site.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-02-10. Training and acknowledgment of the gaming law and rules.

1. A gaming manager, and an employee who is principally responsible for auditing closed games or daily activity, or does bookkeeping, ~~who have and has~~ no previous gaming-related experience in those capacities; ~~within thirty days of employment,~~ shall request training from the attorney general within thirty days of employment. The training must include the gaming law and rules, recordkeeping, internal control, and tax return.
2. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions that relate to the person's job duties. The attorney general shall designate the provisions to be read. An acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
3. This section does not apply to an organization that only conducts a raffle, calcutta, poker, paddlewheels described by subsection 1 of section 99-01.3-11-01, sports pool, or to an independent contractor.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-03

99-01.3-03-01. Accounting records and system of internal control.

1. An organization shall retain purchase invoices, receipts, accounting and bank records, including receipts documenting eligible uses and solicitations for net proceeds, for three years from the end of the quarter in which the activity was reported on a tax return, unless otherwise provided by rule.
2. A governing board of the organization shall establish a written system of internal control, comprised of accounting and administrative controls. An organization may not permit any unauthorized person as determined by the governing board from reviewing this system. If the attorney general determines that a system of internal control is inadequate, an organization shall address the inadequacy. This subsection does not apply to an organization that has gross proceeds of twenty-five thousand dollars or less, only conducts a calcutta, raffle, sports pool, paddlewheel described by subsection 1 of section 99-01.3-11-01, or poker, or is involved only in conducting no more than two events during a fiscal year of July first through June thirtieth and each event lasts no more than fourteen calendar days.
3. Accounting controls must include procedures and records that achieve these objectives:
 - a. Transactions are executed as authorized by management;
 - b. Gaming activity is properly recorded;
 - c. Access to cash, games, and other assets is permitted as authorized by management; and
 - d. Assets recorded on records are periodically compared to actual assets and any differences are resolved.
4. Administrative controls must describe the interrelationship of employee functions and their division of responsibilities.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-02. Gaming account.

1. An organization shall maintain all gaming accounts at financial institutions located in North Dakota. ~~Except as provided by subsection 3, these~~ These accounts must be used for depositing

gaming funds and transferring net proceeds to a trust account, except as provided by subsection 3. Transfers must be made by the last day of the quarter following the quarter in which the net proceeds were earned. The amount transferred must be for an amount equal to or greater than the adjusted gross proceeds, less gaming and excise taxes, and less the greater of actual or allowable gaming expenses for the quarter. The gaming account may be used for payment of expenses. An organization may transfer funds to its general account for payment of expenses. If an organization is not required to maintain a trust account, a disbursement of net proceeds to an eligible use must be payable to the ultimate use or recipient. A payment may be made by electronic transfer.

2. Interest earned is other income. A service fee is an expense.
3. ~~Except to Organizations shall~~ reimburse the gaming account as required by section 99-01.3-03-05; and ~~to~~ may deposit raffle nongaming funds, bingo dauber receipts, fees from players who use bingo card marking devices, and prizes paid by an insurance company to an organization for payment to a player, ~~and sales tax, the organization may not.~~ Any additional deposit of nongaming funds into a gaming account ~~unless~~ must be approved by the attorney general.
4. If an organization buys a qualifying item of video surveillance equipment according to subsection 2 of section 99-01.3-08-04 and later sells or rents the item, it shall make a record of the transaction, deposit the gross receipts or rental income directly into its gaming account, and make a proper adjustment on the tax return.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-03-03. Trust account.

1. An organization shall maintain all trust accounts at financial institutions located in North Dakota. If an organization only conducts a calcutta, raffle, sports pool, paddlewheel described by subsection 1 of section 99-01.3-11-01, or poker or a combination of these games, or is involved in conducting no more than two events during a fiscal year and each event lasts no more than fourteen calendar days, an organization is not required to maintain a separate trust account and may use the gaming account for the disbursement of eligible uses. Trust accounts are used only to disburse net proceeds to eligible uses and must receive only funds from a gaming account, except to reimburse the account as required by section 99-01.3-03-05 and as provided by subsection 13 of section 99-01.3-14-01. A transfer of net proceeds to another trust account or to a closely related organization is not a disbursement of net proceeds. Net proceeds cannot be pledged as collateral for any loan.
2. An organization shall disburse net proceeds within a reasonable time period.
3. An organization may not transfer funds from a trust account to any other bank account, except for transferring funds to another trust account or to reimburse its general account for compensation that qualifies as an eligible use. A reimbursement must be documented by a supporting schedule. A disbursement must be payable directly to the ultimate use or recipient. However, an organization may make a payment directly to a credit card company for charges on a credit card provided that an organization can identify purchases that qualify as an eligible use from other purchases. ~~A reimbursement must be documented by a supporting schedule.~~ A payment may be made by electronic transfer.
4. If an organization invests net proceeds in a certificate of deposit, bond, stock, mutual fund, or other marketable securities, all income earned, including interest, dividends, and capital gains, must be reported each quarter as an adjustment on a tax return and be disbursed to an eligible use. An actual loss on an investment may not be deducted on a tax return. A service fee is an adjustment to the account's balance.
5. For reporting purposes, an organization may elect to report the gain in market value of the accounts outlined in subsection 4. Adjustments can be made for decreases in market value; however, such decreases cannot reduce the account's value below its adjusted basis. Electing to report securities at market value must be consistently applied each quarter.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-03-04. Restrictions and requirements.

1. An organization is allowed an expense according to subsection 2 of North Dakota Century Code section 53-06.1-11 and an additional expense for qualifying items of security and video surveillance equipment prescribed by subsection 2 of section 99-01.3-08-04. The allowable expense amount may be used for any purpose that does not violate the gaming law or rules.
2. An organization may not base an employee's compensation on a participatory percentage of gross proceeds, adjusted gross proceeds, or net proceeds. An organization may pay a fixed bonus through an incentive program.
3. An organization may not pay or reimburse, nor may a lessor accept a payment or reimbursement from an organization, for any media advertising done by the lessor or any other person that is related to games at a site unless the organization's share of this expense is prorated to the benefit the organization receives and the media advertising is voluntary by the organization.
4. An organization may not pay or reimburse a lessor or share in the cost, nor may a lessor accept a payment, reimbursement, or sharing of the cost from an organization, of any sign advertising related to games at a site unless the sign is not owned by the lessor. If a lessor rents an advertising sign from a vendor, the organization's share of this expense must be prorated to the benefit the organization receives and the sign advertising is voluntary to the organization.
5. A player's uncollectible check is an expense. If an organization establishes a policy to reduce a player's cash prize by the amount of the player's uncollectible check and award the player the difference, if any, the organization shall disclose or make available to players that policy.
6. If a door prize is awarded as a promotion of games, the cost of the door prize is an expense.
7. A net cash short is an expense and a net cash long is other income for a quarter.
8. Only an unopened pull tab, unopened set of stapled jar tickets, or set of banded jar tickets that has the band intact may be accounted for as unsold or defective when a game is reported on a tax return. An organization shall account for any single unsold or defective jar ticket at a proportional selling price of a stapled set of jar tickets.
9. If foreign currency is exchanged into United States currency, any loss is an expense.

10. The attorney general shall determine whether a theft of an organization's gaming funds can be deducted toward adjusted gross proceeds on its tax return and notify the organization. The attorney general shall consider whether the organization:
 - a. Immediately reported the theft to a local law enforcement agency and the attorney general;
 - b. Has documentation that substantiates the theft amount;
 - c. Had physical security of the funds;
 - d. Has an adequate system of internal control; and
 - e. Incurred an identifiable theft.
11. If an organization rents out gaming equipment, the income is nongaming income.
12. All accounting records must be completed and initialed or signed with ~~a nonerasable permanent ink pen. The use of correction fluid or correction tape to make changes to accounting records is prohibited. Changes shall be made with a single strikethrough of the original amount, writing the correct amount, and initialed by the person making the change.~~ An organization shall maintain a register of each employee's name and the employee's initials or signature as the employee normally writes them on a record or report. The initials or signature of a person on a record or report attests that to the person's best knowledge the information is true and correct.
13. A fee charged a player to enter a twenty-one ~~or poker~~ tournament, less the cost of a prize, must be reported as other income.
14. For computing prizes on a tax return, a merchandise prize and a gift certificate are valued at an organization's actual cost, including sales tax, and a donated prize is valued at zero.
15. If a raffle, sports pool, or calcutta prize is ~~forfeited~~ not claimed by the winning player and has previously been reported on a tax return, an organization shall report the prize as other income.
16. When a deal of pull tabs, ~~deal of bingo cards involving a dispensing device,~~ club special, tip board, seal board, prize board, sports-pool board, calcutta board, or a series of paddlewheel ticket cards is placed in play, an employee shall compare the game serial number on the pull tab, ~~bingo card,~~ board, or card to the serial number on the state gaming stamp. If the two serial numbers are different, an employee shall immediately notify the distributor and complete a form prescribed by the attorney general.

17. If an organization pays a fee to an insurance company to insure a contingency cash or merchandise prize for bingo or a raffle, the fee is an expense. If the insurance company pays or provides a prize to a winning player, it is not reported as a prize on a tax return.
18. If an organization conducts twenty-one, it may pay monthly rent for more than one table provided that, ~~for each additional table, the table~~ is used at least thirteen times a quarter. This level of activity is based on a site's historical experience, or seasonal activity, ~~of~~ for each of the previous four quarters, regardless of which organization conducted twenty-one at the site. For a new site or a site that has been completely remodeled in appearance and function, the level of activity must be reviewed and or reestablished after the first full quarter. If an additional table is used at least thirteen times in at least one but not all of the previous four quarters, the allowable monthly rent for that table must be prorated over all the active months of the licensing year. For example, if a second table was used at least thirteen times in only two of the previous four quarters, the additional monthly rent for the second table would be a maximum of two hundred dollars per month (or three hundred dollars per month if a wager greater than five dollars is accepted on the table) multiplied by six months (totaling one thousand two hundred dollars) and prorated to one hundred dollars per month for the licensing year.
19. If an organization does not intend to reapply for a license for the next fiscal year, its license is revoked or suspended for a period of more than six months, or its license application is denied, and it has net proceeds that are not disbursed, the organization shall file an action plan with the attorney general. The plan must be filed within thirty days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied, and include a planned timetable for disbursing all the net proceeds and anticipated uses.

If the action plan is not timely filed, net proceeds must be disbursed within ninety days of the expiration of the license or when the license is relinquished, revoked, suspended, or the license application is denied. The disbursement must be reported to the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06, 53-06.1-11

99-01.3-03-08. Record of win.

1. An employee shall prepare a record of win if a player wins a last sale prize, a seal prize, a cash prize greater than two hundred dollars, a merchandise prize that has a retail price exceeding two hundred dollars, or a donated merchandise prize with a fair market value exceeding two hundred dollars, or wins a cash prize but receives a partial payout of the prize in cash and the remainder by check. If a pull tab has two or more winning prize patterns, the requirement is based on the value of each prize pattern. A record of win must be completed for the total prize even if a player splits the prize with another person. The record may be a check drawn from the gaming account, a numbered receipt, or the flare of a sports-pool board, calcutta board, club special, tip board, prize board, punchboard, or seal board. A bar employee shall print this information on a receipt or an employee shall print this information on a check, receipt, or flare, unless it is already provided:
 - a. Name of the site;
 - b. Game type and, by game type:
 - (1) ~~Bingo, excluding a dispensing device~~ - Date of the session, game number, cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the session.
 - (2) ~~Bingo, involving a dispensing device - Name of the game, cash prize amount, date of activity, and game stamp number.~~
 - (3) Raffles - Date of the drawing, winning ticket number, cash prize amount or description of a merchandise prize and retail price, and date of prize payout if different from the date of the drawing.
 - (4) (3) Pull tabs and prize boards, including a dispensing device, punchboards, club special, tip board, and seal board, ~~and prize board~~ - Name of the game, cash prize amount or description of a merchandise prize and retail price, date of activity, and game stamp number. For a game with a last sale prize or a seal prize, the game stamp number should correspond with the respective deal's flare.
 - (5) (4) Sports pools - Date of the event, cash prize amount, date of prize payout, and gaming stamp number.
 - (6) (5) Twenty-one or poker tournament - Date of the tournament, cash prize amount, or description of a merchandise prize and retail price.

(7) (6) Calcuttas - Date of the event, cash prize amount, date of prize payout, and gaming stamp number;

c. A player's full name and address:

(1) If the player is present but not personally known by a bar employee or an employee, this information must be recorded from a pictured driver's license or tribal, government, or military identification;

(2) If the player is present but does not have one of these pictured identifications, a bar employee or an employee shall record the player's full name from another form of identification or mail the prize to the player; or

(3) If the player is not present, verification of this information is not required and the prize must be mailed; and

d. Initial of a bar employee or an employee.

2. After a record of win is completed at a site, a player shall sign and date it. However, this rule does not apply to a prize mailed to a player.

3. Unless a prize is for a last sale prize feature, a bar employee or an employee shall print, in ink, the check or receipt number on a pull tab; or punchboard punch, ~~or a bingo card involving a dispensing device.~~

4. A player who has actually won a prize shall claim the prize. A bar employee or employee may not falsify or permit a player to falsify a record of win or enable a player to conspire with another person to have the other person claim a prize. If a bar employee or employee determines that a player has falsified or attempted to falsify a record of win before the prize payout, the bar employee or employee shall deny the player the prize and notify the attorney general and local law enforcement agency.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

99-01.3-03-09. Inventory records of games, paper bingo cards, tickets, cash banks, and chips and reconciliation.

1. An organization shall maintain master and site inventory records of all deals and games that have a state gaming stamp affixed to their flares. The master records must include the sales invoice number, date received, name of game, dates of issuance to and received from a site, site name, ~~period played~~ date placed, date closed, and quarter tax

return on which reported, by gaming stamp number. The site records must include the gaming stamp number, date received, date placed, and date closed, by site and name of game. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. Annually an organization shall reconcile its inventory records of all deals and games that have a state gaming stamp affixed to their flares that are recorded as being in play and in inventory as unplayed to the items that are actually in play and in inventory. A person shall count these items that are actually in play and in inventory, compare this count to the inventory records, and resolve any difference.

2. An organization shall maintain master and site inventory records of paper bingo cards. The master records must include for each primary color or serial number, the type of card, the sales invoice number, date received, number of cards bought, dates of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records must include site name, primary color or serial number, type of card, quantity received, date received, and quantity issued and returned for each session, or include information prescribed by a method approved by the attorney general. Annually an organization shall reconcile its inventory records of paper bingo cards that are recorded as being in inventory to the cards that are actually in inventory. A person shall count these items that are actually in inventory, compare this count to the inventory records, and resolve any difference.

3. An organization shall maintain master and site inventory records of rolls of tickets. ~~The record master records must include the date each roll is acquired, ticket color, beginning and ending ticket numbers, and number of tickets on the roll for each ticket roll the color of the roll, date received, beginning ticket number, ending ticket number, number of tickets bought, date of issuance to a site, and site name, or include information prescribed by a method approved by the attorney general. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. The site records must include site name, color of roll, beginning ticket number, ending ticket number, quantity received, date received, and quantity issued and returned for each session or event, or include information prescribed by a method approved by the attorney general.~~ Annually an organization shall reconcile its inventory of rolls of tickets. This reconciliation must include verification of the starting ticket number and total number of remaining tickets that are recorded as being at the home office and site to the rolls of tickets that are actually on hand. ~~If an organization has only one site where inventory is stored, it may combine the master and site inventory records.~~ A person shall count the rolls of tickets at the

home office and site, compare this count to the inventory records, and resolve any difference.

4. An organization shall maintain a master record of ideal cash bank amounts and account for permanent increases or decreases. For each cash bank, the record must include the site, game type, game identifier, and amount. When a cash bank is started or when the ideal amount is permanently increased or decreased, the date, check number, amount, source or destination of the funds, and updated ideal cash bank amount must be recorded. Annually an organization shall reconcile its master cash bank records to the actual cash banks. A person shall count the cash banks, compare the count to the current ideal cash bank amount recorded on the record, and resolve any difference.
5. An organization shall maintain casino and betting chip master and site inventory records. The records must include the dates chips are acquired, transferred to, and received from a site and running totals, by value of chip. Annually an organization shall reconcile its inventory of chips that are recorded as being at the home office and site to the chips that are actually in inventory. If an organization has only one site where inventory is stored, it may combine the master and site inventory records. A person shall count the chips in inventory at the home office and site, compare this count to the inventory records, and resolve any difference.
6. The count and reconciliation must be done by a person who does not have access to deals, games, paper bingo cards, rolls of tickets, cash banks (and who does not have sole signatory authority of the gaming account), or chips. It must be documented, including the name and title of the person who does the count and reconciliation, date and procedure performed, result, corrective action taken, and initials of that person.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-03-10. Bank deposit and audit.

1. The cash profit, less a documented increase or plus the decrease in the starting cash on hand for the next gaming activity, plus cash and merchandise prizes paid by check and cost of coins for a prize board, must be deposited in the gaming account by the third banking day following the day of a bingo session; club special, prize board, tip board, seal board, or punchboard is removed from play; sports-pool game; calcutta event; poker occasion; day's or interim period's pull tab and prize board, and twenty-one or paddlewheel activity; ~~or closed bingo prize flare involving a dispensing device.~~ However, the receipts for a raffle, calendar or master sports-pool board, or paddlewheel

described by subsection 1 of section 99-01.3-11-01 must be deposited in the gaming account by the third banking day following receipt of the cash by the person responsible for the activity.

2. For a day's pull tab and prize board activity, bingo session, raffle drawing, poker occasion, twenty-one and paddlewheel activity, and interim period's pull tab or ~~bingo activity~~ prize boards involving a dispensing device, a deposit slip or receipt must reference a site, name of the game, game type, date of activity, and deposit amount. The deposit amount for twenty-one, and paddlewheel activity described by subsection 2 of section 99-01.3-11-01, may be combined. For a club special, prize board, tip board, seal board, punchboard, and series of paddlewheel ticket cards, a deposit slip or receipt must reference a site, name of the game, date removed from play or date of activity, deposit amount, and gaming stamp number. For a sports-pool board or calcutta board, a deposit slip or receipt must reference a site, date of the event or auction, deposit amount, and gaming stamp number. For all game types, an employee who prepares a deposit shall initial the bank deposit slip. If another employee makes the bank deposit and has access to the cash, the employee shall also initial the bank deposit slip.
3. If an organization prepares a deposit slip for more than one type of game, it shall record on the deposit slip or a supporting schedule by each game type, the information required by subsection 2. A supporting schedule must reconcile to a validated bank deposit slip or receipt. A validated bank deposit slip or receipt and any supporting schedule must be included with the accounting records. If a bank does not return a validated bank deposit slip that contains information required by subsection 2, an organization shall prepare a duplicate deposit slip, make a copy of it, or prepare a supporting schedule that reconciles to the bank deposit amount.
4. For a bank deposit, a person shall record the amount to be deposited on the game's accounting record and retain the copy of a two-part bank deposit slip and any supporting schedule. This person shall forward the accounting record, copy of the bank deposit slip, and any supporting schedule to a bookkeeper. A second person shall take custody of the bank deposit funds and the original of the bank deposit slip and take them to a financial institution or arrange for the funds to be deposited. If, before the bank deposit is made, the custody of bank deposit funds is transferred from a person to another person, face-to-face, and the cash is accessible to be counted, both persons shall participate in a count of the cash in the presence of each other and resolve any difference. After completing and documenting the cash count, both persons shall initial and date the record. The person who makes the bank deposit shall forward a validated bank deposit slip or receipt to a bookkeeper. An organization shall comply with this rule unless it uses another bank deposit procedure which has proper accounting control.

5. If an employee prepares or has custody of a bank deposit which is not scheduled to be immediately deposited, the employee shall safeguard the funds.
6. An employee who did not have access to the cash to be deposited shall, within a reasonable time, verify that the amount recorded on a daily or interim accounting record to be deposited was actually deposited according to a bank statement. The employee shall document the verification by initialing the accounting record and dating it. If more than one deposit amount is recorded on an accounting record, the employee shall initial the record for each verified deposit amount and date the record.
7. A closed game or daily activity must be audited, within a reasonable time, by a person who did not conduct the game and who did not have sole access to the total receipts or cash profit for the game's or day's activity. This person may not have sole signatory authority of the gaming account. A person who audits a closed game or daily activity shall verify the number and value of unsold chances, gross proceeds, number and value of prizes, adjusted gross proceeds, and cash profit. If the audit reveals an irregularity, the person shall notify the appropriate organization representative.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-04

99-01.3-04-01. Bingo.

1. ~~This chapter applies to bingo not involving a bingo card dispensing device.~~
2. "Bingo" is when a player buys a card or uses a bingo card marking device and marks squares, or a radio frequency signal or Wi-Fi transmission marks squares on a marking device, as a caller announces a letter and number or only a number for speedball bingo. Speedball bingo is a game in which a bingo caller announces the drawn numbers in a fast manner. Except for a bonanza bingo or a game that has a certain number or all of its numbers predrawn, a winning player of a game is the player who first covers a predetermined pattern of squares by matching letters and numbers on a bingo card with balls drawn and called for that or another game and the player has timely called bingo. Except for a game that has all of its numbers predrawn, there must be a winning player. Bonanza bingo is a game in which a bingo caller predraws a certain quantity of balls before a session begins for a predetermined pattern and players buy and play cards throughout the session. During the session when the bonanza bingo game is conducted, unless a player has already won, the caller will draw additional balls until a player wins the game. In a game in which a bingo caller draws a certain quantity of balls for the game before a session begins for a predetermined pattern, players may buy and play the cards throughout the session.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-02. Equipment. An organization shall use this equipment:

1. A device from which balls are withdrawn or a random number generator. If a random number generator is not used, a set of either seventy-five or ninety balls bearing the letters and numbers corresponding to the bingo cards in play. The balls must be stored in a safe storage place when not in use and be available for inspection by a player before a session begins. The balls must be equal size, weight, shape, and balance and must be in a receptacle before each game begins. A flashboard is optional.
2. Hard cards and paper cards, including paper cards that have two numbers in a square or enable a player to select and print numbers on a blank card, may be used. A blank card may be used if:

- a. A card is a two-part carbonless card with a control number and five columns of numbers;
 - b. A player shall legibly print in ink one number in each blank square. A middle square, if any, may be a free space. The numbers cannot be repeated on a card and they must correspond with the letters and numbers of the bingo balls;
 - c. After a card is completed, a player shall provide an employee with the card before the start of the game. An employee shall ensure that the numbers are legible, validate the original and duplicate parts of a card, retain the original part, and return the duplicate part to the player; and
 - d. An employee shall verify a winning player's card and match the card's original part to the duplicate part. A card must be voided if it is illegible or altered.
3. Before conducting a bingo session, an employee shall test the equipment and ensure it is working properly.
 4. ~~Except to apply subsection 10 of section 99-01.3-04-03, an~~ An organization may not separate a collated set of paper bingo cards except to apply subsection 10 of section 99-01.3-04-03 or cut up a paper bingo card that has two or more faces on it to separately sell the cards or faces.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-03. Conduct and play.

1. These rules and information must be disclosed or made available to players:
 - a. A person may not separate a paper card when there are two or more faces on a sheet;
 - b. A person under eighteen years of age may not play bingo unless an individual, eighteen years of age or older, accompanies a minor when buying a bingo card or package and throughout the session. The adult may not be an employee on duty. This rule does not apply if a person under twenty-one years of age is not allowed on the site or an organization has a permit or prize structure that does not exceed the limit of a permit;

- c. If an organization does not restrict duplicate paper cards from being in play for a game, it shall disclose or make available that information to all players before their purchase of cards or packages;
 - d. The actual letter and number on a ball drawn or freely awarded is official;
 - e. If a person knowingly uses a fraudulent scheme or technique to cheat or skim involving bingo, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - f. A bingo card is void if it is taken outside the gaming area; and
 - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
2. These policies must be disclosed or made available to players:
- a. A policy of when an organization may cancel a bingo session;
 - b. A policy that if a player has more than one bingo on one card or on two or more cards for a game, whether it is considered as one bingo or more than one bingo for splitting a prize with another winning player;
 - c. A policy that a bingo is timely called by a player when, on the last number called, the player calls the word "bingo" or other required word before the bingo caller announces the whole letter and number of the next ball to be called, or other policy;
 - d. A policy on sharing a prize by two or more winning players on identically or differently priced cards. A policy must include the following except that an organization may award a minimum prize:
 - (1) If a prize is cash and all winning players bingo on identically priced cards, the cash prize must be divided equally. An organization may round fractional dollars.
 - (2) If a prize is cash and the winning players bingo on differently priced cards, an organization shall award each winning player:
 - (a) The designated prize;
 - (b) An equal share of the designated prize; or

- (c) A proportional part of the designated prize for that card or any other fair method. The proportional part is the ratio that each winning player is in relation to the total number of winning players. To illustrate, if three players bingo on differently priced cards, each player is to be awarded one-third of the designated prize for that player's card.
 - (3) If a prize is merchandise and it cannot be divided, an organization shall do one of these options which must be disclosed in the bingo program or promotional material or announced before the bingo session:
 - (a) Award each winning player a substitute merchandise prize which must be of at least equal value and total the retail price of the original prize. A merchandise prize may be redeemable or convertible into cash at an organization's option;
 - (b) Award a certain cash split amount that totals the retail price of the original prize; or
 - (c) Conduct a continuous or separate playoff game between the winning players;
 - e. A policy that a player may or may not use a bingo card marking device and play additional paper bingo cards at the same time; and
 - f. A policy that a player may or may not share the player's bingo package with another player.
- 3. An organization shall make these announcements:
 - a. Before each session, the policies on:
 - (1) When a bingo is timely called by a player;
 - (2) Whether the bingo caller, floorworker, or both must hear and acknowledge a player who calls the word "bingo" or other required word; and
 - (3) That a player is responsible for ensuring that the bingo caller, floorworker, or both hear and acknowledge the player; and
 - b. Before each game, the game's winning bingo pattern.
- 4. An employee may only assist a disabled player in playing a bingo card or assist a player in how to use a bingo card marking device. A legally blind or disabled player may use the player's personal braille or special card

when an organization does not provide such a card. An organization may inspect and reject the card.

5. An employee may not sell or award a gift certificate as a prize unless:
 - a. A certificate is accounted for when it is sold or awarded. An employee shall issue a certificate to the purchaser or player and retain a copy or stub of the certificate with the daily records and record the certificate on a register to document the sale. An organization shall recognize a sale of a certificate as gross proceeds on the tax return for the quarter in which it was sold. A certificate awarded as a prize has no cash value. A certificate must be used to buy only a bingo card or package;
 - b. A register is maintained which accounts for all certificates sold or awarded at a site. A register must include, for each certificate, a consecutive control number, selling price (if applicable), dates issued and redeemed, sites at which it is issued and redeemed, and initials of the employees who issue and redeem the certificate; and
 - c. A redeemed certificate is signed by a player and retained by an organization with the daily accounting records. A player is issued a bingo card or package at the site when the certificate is redeemed.
6. If an organization changes a publicly announced bingo program for a session in which a potential prize or the number of games is reduced, an employee shall notify a player of the change before the player buys a card.
7. If an organization sells two or more differently priced cards or packages for a game, it shall use a different type, color, serial number, or a distinctive identifiable feature for each differently priced card or package. An organization may not use the same serial numbered paper bingo cards for more than one game or group of games during a bingo session, unless the face of a card is a different color or a card audit tracking number is used.
8. If an organization accepts a discount coupon, the redeemed coupon must contain the dollar value or percentage discount and be signed by a player. An employee shall write the value of the bingo card or package purchased on the face of the coupon unless the value is already stated, record the date on the coupon or on a group of coupons for a session, and retain the coupon with the daily records. The value of a player's one or more coupons must be less than the value of the card or package bought.
9. If an organization accepts a donated item in exchange for a discount, an employee shall account for the discount on a register as part of the

daily records. A discount must be less than the value of the card or package bought. A register must contain:

- a. Bingo session and date of the session;
 - b. Amount of the discount;
 - c. Value of the bingo card or package bought;
 - d. Signature of the player;
 - e. Total amount of bingo card or package discounts for the session; and
 - f. Date and initials of the cashier.
10. A card or package must be bought on a site immediately before the start of a game or during a session. However, an organization may presell a card or package for a special session that involves a bingo prize or prizes that equal or exceed ten thousand dollars for the session provided the organization:
- a. Uses a consecutively numbered two-part receipt to register a player who prepays. One part is issued to a player who shall redeem the receipt to receive the card or package. The second part is retained by the organization to account for the gross proceeds;
 - b. Separately accounts for the gross proceeds and reports it on a tax return for the quarter in which the game is conducted; and
 - c. Provides a card or package to the player before the start of the session that day.

~~Except for a bonanza bingo or a game that has all of its numbers predrawn, no~~ No card may be sold for a game which is in progress or ended except for a bonanza bingo or a game that has all of its numbers predrawn. If a paper bingo card is included in a package for a game in progress or ended, the card must be withdrawn and voided or destroyed. An employee may exchange a purchased package for another package if the employee accounts for all the cards of the first package and a session has not started.

11. An organization may allow a player to use a bingo card marking device provided by the organization that marks an electronic card image of a purchased card as follows:
- a. A device cannot be reserved for a player unless a player is disabled. An organization shall provide each player an equal opportunity to

use the available devices on a first-come, first-served basis. A device cannot be issued through a floorworker;

- b. A device must be used only at a site where the site system is located and the session is being conducted;
- c. A device must be rented for a fixed amount, regardless of the price for a card or package or number of cards played through the device, or provided free to a player for the player's temporary use during the session;
- d. No player can use more than one device at a time during a session;
- e. No player can play more than seventy-two single-faced cards per game on a device and cannot choose or reject downloaded cards;
- f. An organization shall use paper bingo cards in the session that are of a series different than the cards downloaded in the devices;
- g. If a card or package may be used in a device and in paper form, it must be sold for the same price. An organization may sell a special card or package to a player for use only in a device. The organization may require a player to buy a minimum-priced card or package to use a device;
- h. If a player rents a device while a game for that session is in progress, the player may not play that game and a cashier shall record on the player's receipt that the specific game number is void;
- i. An organization may print a facsimile of a winning card and post it for players to inspect;
- j. A player may use an input function key on a device or an organization may use a radio frequency signal or Wi-Fi transmission to mark each number as it is called. When a player inputs a number or an organization sends a radio frequency signal or Wi-Fi transmission, a device may automatically mark all the player's cards that contain that number;
- k. If a player has a winning card, the player shall:
 - (1) Timely call bingo according to subdivision c of subsection 2 and it must be by a method other than through a device; and
 - (2) Provide the device with the winning card displayed to a floorworker to verify according to subsection 18;

- l. If a player's call of a bingo is disputed or if the attorney general makes a request, an organization shall print the winning card stored on the device;
 - m. An organization shall have one spare device available should a device in use malfunction. If a player's device malfunctions, the player may exchange the device for a spare device. An organization shall restore the player's same cards from the site system;
 - n. An organization may perform routine maintenance on a device; and
 - o. An organization shall back up all of a site system's accounting information for a session on a report or separate electronic media immediately after that session and retain the backup file for three years from the end of the quarter in which the activity was reported on a tax return. The accounting information must comply with subsection 1 of section 99-01.3-16-09.1.
12. After the start of a session, an organization may not refund the purchase price of a card or package unless a site incurs an electrical power loss, there is inclement weather, an organization experiences an extraordinary incident, a session is canceled, or a player has an emergency.
 13. If an organization sells hard cards before each game, during the game an employee shall count the number of hard cards played by all the players to the number recorded as sold. If the comparison reveals an irregularity, the gaming manager shall take corrective action.
 14. An organization may not sell a bingo package that contains a variable number of cards based on each player's ability to play. Each separately priced package must contain a standard number of cards.
 15. If a game has an actual or potential prize valued at five hundred dollars or greater, an employee shall use an electronic bingo card verifier; record in writing the called numbers and the sequence in which they were drawn; or ~~audiotape~~ audio recording of the bingo caller calling the balls. When a player bingos, an employee shall retain the bingo card verifier record, the written record, or ~~audiotape information~~ audio record, which includes the following and retain these records for three months:
 - a. Game number, winning pattern, type of card (number of faces on a sheet), type of package (regular, premium, super), series (card) number, and last number called; and
 - b. Cash register receipt number, if applicable.

16. A caller shall manually display the letter and number on the ball to players except for speedball bingo or when a monitor or random number generator is used. An employee shall announce the letters and numbers on the balls or displayed by a random number generator in their exact sequence; however, numbers freely awarded do not need to be announced. The caller is also not required to announce all letters and numbers for a game in which the pattern does not require the use of the selected letters or numbers. If a player calls bingo and the bingo is invalid, the next ball called must be in sequence of the balls drawn.
17. A player may bingo more than one time on the same card when an organization conducts continuation games of more than one pattern on the same card.
18. A winning card must be verified by an employee and one neutral player or person unless an electronic bingo card verifier is used and the display of an electronic bingo card verifier is shown to all players on a monitor. A floorworker may not access a verifier. For a winning card on a bingo card marking device, an employee shall compare the serial number of the device to the receipt for the cards played on that device.
19. An organization may offer a variety of prizes to a winning player who may choose a prize by random selection or chance. A player may win an additional prize by choosing the prize by random selection, by an organization drawing from previous winning players, or playing a game of skill if the player is not required to give anything of value. An organization shall disclose the potential prizes in the bingo program and notify a player of these prizes before the player chooses a prize, has the opportunity to win a prize, or plays a game of skill.
20. An organization may award, as a prize, cash, merchandise, merchandise gift certificate, or gift certificate that can be redeemed for a bingo card or package.
21. An organization may conduct a qualifying game whereby a player wins an opportunity to play in a special game.
22. An organization may award a bonus that is based on a factor incidental to a bingo program if it is disclosed in a program, calendar, or flyer, and announced before a session, and is recorded on a prize register. Factors may include a player binging on a certain color of card, combination of colored cards, last number called, particular face of a multifaced card, or winning a game on the player's birthday.
23. If a player bingos and an employee determines that the player is playing more bingo cards than were bought, the player's bingo is void.
24. Bonanza bingo and a game that has all of its numbers predrawn must be conducted as follows:

- a. A caller shall initially call a certain quantity of balls. While a caller initially calls the bingo balls or before the caller calls the next continuous number, a player shall verify that the letter and number on the balls drawn are correctly displayed. A posted display must be used for the games, have restricted access, and reference that game;
- b. A card must be sealed and unpeekable when it is sold;
- c. An organization may sell or exchange cards throughout a session until sales are closed. If an organization exchanges cards, an employee shall, before the next continuous number is called, fully account for the floorworkers' sales of cards according to section 99-01.3-04-07. A floorworker may not turn in any exchanged card after the accounting is begun;
- d. If a player bingos before the next continuous number is called, the player wins. Otherwise, an additional bingo ball is drawn until a player bingos. This rule does not apply to a game that has all of its numbers predrawn;
- e. A game may not extend beyond a session;
- f. If an organization permits a player to exchange a partially played card for a new card and pay a discounted or exchange price, an employee shall:
 - (1) Validate the date of the session on the card with a mechanical device or rubber stamp. A card validated for a session, but not sold, must be voided. The organization shall use a different color of card for each game conducted at a site during a day;
 - (2) Retain the exchanged cards as part of the daily records for six months;
 - (3) Record the validation date and card color used by session; and
 - (4) Reconcile the cards, accounting for:
 - (a) Number of cards taken from inventory which must be independently counted and verified by two employees who shall initial and date the verification;
 - (b) Number of cards sold;
 - (c) Number of cards exchanged, which must be separately maintained for each floorworker. The cards must be

recounted by an employee who is not the floorworker. The employee who controls the floorworker sales report shall band each floorworker's exchanged cards separately, identify the banded group with the floorworker's name, session, and initial and date. A floorworker shall also initial the floorworker's banded group;

- (d) Number of cards returned to inventory and voided which must be independently counted and verified by two employees. Each person shall initial and date the verification; and
- (e) Document any discrepancy and corrective action taken; and

g. A voided card must be retained for six months.

- 25. If an employee determines, during or immediately after the play of a game and before a card is verified as a winning bingo, that a ball is missing, the employee shall void the game and offer the players a fair alternative.
- 26. ~~Except for a game that has all of its numbers predrawn and for which an organization has recorded the information required by section 99-01.3-03-07 on the winning card and retains the card, an~~ An employee shall record a prize and bonus prize on a register according to section 99-01.3-03-07, except for a game that has all of its numbers predrawn and for which an organization has recorded the information required by section 99-01.3-03-07 on the winning card and retains the card.
- 27. ~~Unless written approval is obtained from the attorney general for use of another receipting method, an~~ An organization shall receipt gross proceeds, including an additional amount paid by a player for a chance to win an extra prize in a special game, by a cash register, tickets, paper card count, or floorworker sales report, unless written approval is obtained from the attorney general for use of another receipting method. The receipting method must reference the primary color or serial number, type of cards, number of the cards sold, or reference other information approved by the attorney general.
- 28. For a site where bingo is the primary game or a site that is leased by a licensed organization, the organization or any person may not pay bingo prizes in which the total bingo prizes exceed total bingo gross proceeds for two entire consecutive quarters. However, if bingo is the primary game at the site, a bingo prize that equals or exceeds ten thousand dollars is excluded from the calculation of total bingo prizes.

29. An organization shall have a written bingo program for each session. However, if the program does not change each day or session, an organization may retain one program and record the dates on which it applied. A program must contain:
- a. Name of a site or organization;
 - b. Date or dates of the sessions;
 - c. Description of each game and the game's prize; and
 - d. Selling prices of the cards or packages.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.1

99-01.3-04-04. Cash register. This receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, excluding floorworker sales, by issuing consecutively numbered receipts.

1. A receipt must contain:
 - a. Name of a site or organization;
 - b. Date of the session; and
 - c. Selling price of a card or package and receipt number.
2. A cash register must:
 - a. Have at least a consecutive four-digit receipt number which does not return to zero at the end of any use and retain its transaction count between uses if it is off or without electricity; and
 - b. Separately record each type of regular and discounted priced card or package sold, including a sale of a card or package related to a redeemed gift certificate, and provide a total for each type of sale. For a discounted card or package, the regular price may be recorded provided that the discount is recorded and accounted for on a supporting schedule. When a gift certificate is sold, the selling price must be recorded on a cash register or daily receipting record.
3. A cash register receipt for a void, refund, or similar item must be initialed and retained with the daily records.

4. ~~All transactions and control totals must be recorded on an internal tape that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape from the other use must also be retained.~~
5. A cash register cashier may not issue a refund or void a sale that has been recorded as a transaction, but may do a no sale transaction to access a cash drawer. For a refund, a cashier's supervisor shall execute a refund and initial the refund transaction on the internal tape. For a voided sale, a cashier's supervisor shall execute a void and initial the void transaction on the internal tape. If a supervisor is not available or if the cashier is the supervisor, another employee shall comply with this rule.
5. All transactions and control totals must be recorded on an internal tape that must be retained with the daily records. If a cash register is also used for a purpose other than bingo, the internal tape from the other use must also be retained.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-05. Tickets. The ticket receipting method may be used to record gross proceeds of packages, hard cards, and paper cards, including floorworker sales, by issuing consecutively numbered tickets. These rules apply:

1. ~~All tickets on a roll must have a preprinted consecutive number; and must be issued consecutively from a roll.~~
2. ~~Tickets must be issued consecutively from a roll.~~ The daily records must contain the ticket color, ticket selling price, and lowest and highest numbered tickets issued from each roll for a session. Every ticket on a particular roll must be issued for the same price on that day. Tickets issued for each type of sale must be recorded separately. A ticket not issued during a session that bears a number below the highest numbered ticket issued, along with any tickets from the end of the roll which will not be issued in a future session, must be retained as part of the daily records as unsold.
3. A discount coupon and gift certificate must be recorded in the daily records.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-06. Paper card count. The paper card count receipting method may be used to record gross proceeds of paper bingo cards. The daily records must include the total number of cards or collated sets taken from inventory and returned to inventory. ~~Unless there is only one employee on duty when the cards or sets are taken from or returned to inventory, the~~ A count of the cards or sets taken from or returned to inventory must be done by two persons, ~~unless there is only one employee on duty at the time.~~ Both persons shall participate in a count of the cards or sets in the presence of each other and resolve any difference. After completing and documenting the count, both persons shall initial the record. The record must include the selling price of the card or set and number of cards or sets issued, returned, voided, and sold for each type of card for the session. A discount coupon and gift certificate must be recorded in the daily records.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-04-08. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each session:
 - a. The gross proceeds for each type of sale or game. If a site system involving bingo card marking devices is used, records must include the summary report for the session according to subdivision c of subsection 1 of section 99-01.3-16-09.1;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sessions for a quarter must reconcile to the tax return;
 - d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - e. Inventory records according to subsections 2, and 3,~~and 4~~ of section 99-01.3-03-09;
 - f. If bingo is the primary game at a site, the number of players and time of the count;
 - g. A copy of or reference to a bingo program according to subsection 29 of section 99-01.3-04-03;

- h. All voided paper bingo cards, other voided sealed and unpeekable bingo cards, and exchanged bonanza bingo cards, which must be retained for six months;
 - i. The gift certificate register;
 - j. Redeemed gift certificates and discount coupons; and
 - k. Purchase invoice or receipt documenting the cost of a merchandise prize.
2. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
3. The cash profit defined in subdivision a of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.
- ~~3.~~ 4. The count and reconciliation of paper bingo cards, rolls of tickets, and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-05

99-01.3-05-02. Tickets - Limitations and requirements.

1. Each raffle ticket is a separate and equal chance to win with all other tickets sold. A person may not be required to buy more than one ticket, or to pay for anything other than the ticket, to enter a raffle. An organization may sell several tickets or sell tickets in advance of a special event to a person at a discount. A discounted ticket must be specifically designated as a discounted ticket on the ticket and its stub. The number of discounted tickets must be predetermined and separately issued and accounted for when issued to a ticket seller.
2. An organization may not allow a raffle ticket seller to retain a ticket for free or retain any portion of the price of a ticket as compensation, and may not compensate the seller a certain amount or provide a gift for selling a winning ticket. An organization may provide a raffle ticket seller a fixed amount for selling the most or a certain number of tickets. No raffle ticket can be resold.
3. A raffle ticket must have a detachable stub that is consecutively numbered. ~~Except for the use of double admission tickets, a~~ A raffle ticket stub must have a duplicate number corresponding to the number on the ticket and contain the purchaser's name, address, and telephone number, except when double roll tickets are used. A ticket must be issued, as a receipt, to a player. For a raffle conducted by a licensed organization, the ticket numbers must be mechanically or electronically imprinted. For a raffle conducted by an organization that has a permit, the ticket may be manually imprinted.
4. An employee may not sell a ticket on a site where another organization is licensed or has a permit unless the employee is granted permission by the lessor and other organization. An employee of a lessor may sell raffle tickets at the site for the organization authorized to conduct games at that site.
5. A ticket seller shall return the stubs of all tickets sold. The stubs must be intermixed in a receptacle.
6. An organization shall return the price of a ticket to a player if the stub of the player's ticket was not placed in the receptacle for the drawing.
7. For a calendar raffle, the stub of each ticket sold must be entered in all the drawings conducted since the ticket was sold. A licensed organization may not conduct a calendar raffle for other than a fiscal year beginning July first and ending June thirtieth.
8. An organization may not conduct a drawing unless two employees are present. A drawing must occur at an authorized public or private site.

9. In conducting a drawing, an employee shall draw a stub for the highest valued prize first. If there is more than one prize, an employee shall continue drawing for the prizes in the order of descending value. A prize is valued at its cash value or retail price. An organization may defer announcing the names of the winning players and respective prizes until after all the drawings have occurred and may make the announcement in any sequence. This rule does not apply when an organization adopts a written policy to place a winning player's stub immediately back into a receptacle to potentially be drawn for another prize or multiple drawings with a winner's choice of prizes.
10. An organization may not print any work or phrase on promotional material or advertising which implies or expresses that a purchase of the ticket is a charitable donation.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-05-03. Prize restrictions and requirements.

1. No prize may be real estate, ticket for entry into another raffle, or live animal except for beef or dairy cattle, horse, bison, sheep, or pig. A prize must be an item that may be legally owned and possessed and has a value or a right to a free service. A winning player may not be required to first pay for or buy something to receive a prize. Cash or merchandise prizes may be awarded. A cash prize may be based on a percentage of gross proceeds. However, a single cash prize cannot exceed one four thousand dollars and the total cash prizes cannot exceed three four thousand dollars during a day.
2. On not more than ~~one occasion~~ two occasions per year a licensed organization may, at the request of a winning player, exchange a merchandise prize valued at not more than twenty-five thousand dollars for a cash prize. Merchandise prizes with a value in excess of twenty-five thousand dollars may not be exchanged for cash. If an organization conducts ~~only one raffle~~ no more than two raffles per year, it may advertise, except on the raffle ticket, that cash may be requested as an alternative to the merchandise prize being offered.
3. An organization shall own, have a contract to acquire, or be able to obtain a merchandise prize before offering a merchandise prize in a drawing. However, an organization does not need to register or title an automobile or similar item.
4. Besides a primary prize that is awarded, an organization may offer an additional unguaranteed cash prize limited to one thousand dollars or merchandise prize provided:

- a. A ticket must describe the prize;
 - b. The prize is predetermined and may be limited to a winning player of one of the other prizes;
 - c. A player is not required to pay an additional amount, forfeit a prize, or be present to participate;
 - d. Unless an organization owns a prize, an award of the prize must be insured; and
 - e. Unless the prize is limited to a winning player of one of the other prizes, a drawing must be conducted from all tickets sold.
5. If an organization has not been able to recover the cost of the prize, it may cancel a raffle with approval from the attorney general and refund the gross proceeds.
 6. A prize winner must be drawn or determined on the date and at the location indicated on a ticket unless a different date or location is requested in writing and approved by the attorney general before the date of the drawing. If a different drawing date or location is approved, an organization shall notify the purchasers of the tickets of the change by contacting each purchaser or by making a public announcement. The attorney general may, for good cause, change the date or location for a drawing.
 7. Within seven days of a raffle, an organization shall notify the winning player verbally or, if the value of the prize exceeds two hundred dollars, in writing, of the prize and arrange the pickup or delivery of the prize. If a prize remains unclaimed by a winning player for thirty days following the date of the written notification and an organization has made a good-faith effort to contact the winner to redeem the prize, the organization may retain the prize, have a second prize drawing, or award it in another raffle or game.
 8. An organization may award a bonus prize based on a separate drawing of previously drawn winning tickets.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 36-21.1-09, 53-06.1-01.1, 53-06.1-10.1

99-01.3-05-04. Information on a ticket. ~~Except for double admission tickets, each~~ Each raffle ticket must contain this preprinted information, except for double roll tickets:

1. Name of organization;

2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize, description of an optional prize selectable by a winning player, and or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or ~~one~~ four thousand dollars. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding ~~twenty~~ twenty-five dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on the same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning a prize is restricted to a person of a minimum age, a statement that a person must be at least " " years of age to buy a ticket or win a prize;
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, horse, bison, sheep, or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or ~~one~~ four thousand dollars.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-05. Double admission roll tickets. An organization may use double admission roll tickets provided:

1. Two single tickets must be printed side by side on a roll with a consecutive number. Both tickets must have the same number;
2. A list of the prizes must be disclosed or made available to players or the prize must be present at the site. If there is more than one prize, an organization may use a different receptacle for each prize to enable an employee or player to place one of the tickets in the receptacle related to a certain prize, or one receptacle in which the winning player can select from a variety of prizes. All tickets must be sold consecutively or in consecutive sets if the tickets are tracked by each ticket seller at a an authorized site on the day of the raffle. All the tickets of each separately colored roll must be sold for the same price on that day. An organization may use a separate colored roll to sell several tickets to a person at a discount. The organization and player each retains one ticket, unless the player is allowed to temporarily retain the entire ticket until the player places one ticket into a receptacle;
3. A winning player need not be present when a drawing is held but shall claim the prize within a reasonable redemption period set by the organization. Otherwise, an organization shall conduct one or more additional prize drawings until the prize is claimed. A statement of the time of the drawing and redemption period must be on all promotional material and be posted at a site; and
4. An organization shall record in its daily records the color and selling value of each ticket and the lowest and highest numbered ticket sold from each roll. Any tickets left on a roll which will not be sold in any other raffle must be retained as part of the daily records. This subsection does not apply to a local permit.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-05-07. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each raffle:
 - a. Purchase invoice documenting the purchase of tickets and range of ticket numbers printed;

- b. Ticket distribution log containing a ticket seller's name, quantity issued, range of single and discounted ticket numbers issued to the seller, and quantity sold;
 - c. Reconciliation of the cash received from each ticket seller based on the number of tickets sold, including discounted tickets, date cash is received, and a schedule of bank deposits;
 - d. For double ~~admission roll~~ tickets, the daily starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and daily records according to subsection 4 of section 99-01.3-05-05;
 - e. A sample of a ticket;
 - f. The stubs of all sold tickets which must be retained for one year from the end of the quarter in which the activity was reported on a tax return;
 - g. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
 - h. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all raffles for a quarter must reconcile to the tax return; and
 - i. Purchase invoice or receipt documenting the cost of a merchandise prize and documentation of the cost of nongaming activity according to subdivision b of subsection 1 of section 99-01.3-05-06.
2. For double ~~admission roll~~ tickets, inventory records according to ~~subsections subsection 3 and 4~~ of section 99-01.3-03-09.
 3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
 4. The cash profit defined in subdivision b of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.
- ~~4.~~ 5. The count and reconciliation of rolls of tickets and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-06

99-01.3-06-01. Games - Definitions. This chapter applies to ~~an~~ a licensed organization that conducts pull tabs, club specials, tip boards, seal boards, prize boards, and punchboards, but not pull tabs or prize boards involving a dispensing device. The maximum price per chance is two dollars. A prize board, club special, punchboard, seal board, and tip board are conducted as a single game which may have a cash or merchandise prize and one or more seal prizes. The value of a seal prize or a last sale prize may exceed the value of the top tier prize. For pull tabs described by subsection 3, only a cash prize can be awarded, not a merchandise or seal prize.

1. "Club special" means a placard used with pull tabs and it contains numbered lines and a seal covering the winning number of the top tier prize. A player may win a minor prize or, if the player has a pull tab with a number matching a predesignated number on the placard, would sign the player's full name on the line. Only one player's name may be signed on a specific line. When all the lines are signed, a seal is removed to reveal a winning line number. A player whose signature is on that line wins the seal prize. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a flare. The maximum number of pull tabs in a deal is five hundred. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is one hundred fifty dollars.
2. "Prize board" means a board used with pull tabs to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value is preprinted on the board. A board may contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. Only one player's name may be signed on a specific line. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A last sale prize may be awarded. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board. A seal prize and a last sale prize are not considered top tier prizes. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an

unawarded prize in another game, sell the prize, or deposit the coin in the gaming account. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize, last sale prize, or seal prize, including the retail price of a merchandise prize, is five hundred dollars.

3. "Pull tab" means a folded or banded ticket (jar ticket) or a card with break-open tabs (pull tab), or a ticket with a latex covering. ~~Unless otherwise stated, the~~ The terms "pull tab" and "jar ticket" are used interchangeably unless otherwise stated. A winning pull tab contains certain symbols or numbers and may contain multiple winning symbols or numbers. A pull tab game must be played with two or more deals commingled at any time. The maximum cash prize for a winning symbol or number on a pull tab or last sale prize is five hundred dollars.
4. "Punchboard" means a board comprised of holes that contain numbered slips of paper (punches). A punchboard may include a seal prize, and more than one last sale prize if the punchboard is split into more than one section. An employee or player extracts a punch from the punchboard. If the number on the punch matches a number on a flare, the player wins a prize. No punchboard may be closed unless all the top tier winning punches have been redeemed, all the punches are sold, or the punchboard has been conducted for ninety calendar days. A seal prize and a last sale prize are not considered top tier prizes. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board. The maximum cash prize or seal prize, or last sale prize, including the retail price of a merchandise prize, is five hundred dollars.
5. "Seal board" means a placard containing consecutively numbered lines. A seal covers the winning number. A player buys a blank "line" and signs the player's full name on it. Only one player's name may be signed on a specific line. After all the lines are signed, the seal is removed to reveal the winning line number. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board. The maximum seal cash prize or retail price of a merchandise prize is five hundred dollars.
6. "Tip board" means a placard to which jar tickets or pull tabs are attached. A seal covers the winning number of the top tier prize. A player may win a minor prize or, if the number of a player's jar ticket matches a number on the placard, the player signs the player's full name on the line. Only one player's name may be signed on a specific line. After all the lines are signed or all the pull tabs have been sold, the seal is removed to reveal the winning number. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play is on a board. The maximum number of jar tickets or pull tabs in a deal is five hundred. The maximum cash prize or

seal prize, or last sale prize, including the retail price of a merchandise prize, is one hundred fifty dollars.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-02. Conduct and play.

1. Deals of pull tabs must be commingled for a game as follows:
 - a. Two or more deals must be placed in a receptacle and be thoroughly intermixed. When an organization's predetermined number or range of numbers of winning pull tabs remain in a game as unredeemed, an additional deal is added. An employee shall add a deal to a game when there are about two hundred fifty pull tabs remaining and the game cannot be or is not being closed. The new pull tabs must be intermixed with the pull tabs in the receptacle before any pull tab is sold;
 - b. ~~Except for the game serial number, and a minor difference in printing that is approved by the attorney general, the~~ The deals must be identical except for the game serial number, and a minor difference in printing that is approved by the attorney general. If deals of a game involve folded or banded jar tickets, the color of the tickets' band must be the same; however, ~~neapolitan-colored multiple-colored bands on a single ticket~~ may be used. When a deal is added to a game, an employee shall compare the color of a deal's pull tabs to the color of the game's pull tabs. If the two colors are not the same, the deal cannot be used;
 - c. A master flare or flare for at least one deal of a game must be displayed with the game and be visible to and not easily removed by a player. An organization shall retain all original flares at a site while a game is in play. If a deal has a last sale prize feature, the deal's flare must also be displayed. Only the flare of one deal of a game may have a last sale prize feature;
 - d. If an indicator for adding a deal to a game has been reached and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
 - e. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter, a game may be closed anytime if all top tier winning pull tabs have been redeemed;

- f. Except as provided by subdivision g, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
 - (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds are twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days; and
 - g. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period.
2. An employee may not place a deal of pull tabs, club special, or prize board in play which has a manufacturer's or distributor's seal broken on the game's container when the game was received from a distributor. A person may not take off a deal's manufacturer's cellophane shrink wrap or break the manufacturer's or distributor's security seal on the deal's container until the deal is to be placed in a receptacle. If a distributor's or manufacturer's security seal is broken before the deal is used, an organization shall return the deal to the distributor. If a deal is packaged in two or more containers, the full deal must be placed in play at the same time.
 3. These rules must be disclosed or made available to players:
 - a. Restricting the play of a game to one player or a group of players is prohibited;
 - b. A winning pull tab must be redeemed within a fifteen-minute time limit;
 - c. If a person knowingly solicits, provides, receives, or knowingly uses any inside information, from or to any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;

- d. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been bought. This rule is not required to be disclosed or made available to players if an organization does not conduct a prize board;
 - f. A deal may be added to a game at any time; and
 - g. If a player attempts to falsify or falsifies a record of win, the prize is forfeited. This rule is not required to be disclosed or made available to players if an organization does not pay a prize that requires a record of win.
4. These policies and information must be disclosed to players:
- a. For any last sale prize, the method of determining which player is entitled to buy the last pull tab or punch for a last sale prize when two or more players desire to buy the last pull tab or punch;
 - b. The information, if any, authorized by subdivision a or b, or both, of subsection 6;
 - c. Any limit on the number of pull tabs or punches that a player may buy at a time; and
 - d. When a game is being closed, an employee shall:
 - (1) Post a notice that the game is being sold out; and
 - (2) Any limit on the number of pull tabs or punches that two or more players may buy at a time.
5. A player may not redeem and an employee may not knowingly pay a prize for a pull tab after fifteen minutes have elapsed since the pull tab was bought. If a player attempts to redeem a pull tab after the time limit, an employee shall, if possible, retain and void the pull tab.
6. A person may post the information referenced by subdivision a or b, or both, for a commingled game provided that the posting contains a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be as described in subdivision a or b, or both:

- a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
 - b. The number of unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.
7. An organization may limit the number of pull tabs a player may buy regardless if the player is redeeming a winning pull tab.
8. An employee may not selectively pick a pull tab from a receptacle based on its game serial number or other factor. An employee shall take a handful of pull tabs from a receptacle and count off the number bought. An employee may not permit a player to physically handpick a pull tab or honor a player's request to select a specific pull tab. However, an employee may honor a player's suggestion to select a pull tab from a general area of a receptacle. In applying subsection 2 of North Dakota Century Code section 53-06.1-16, the phrase "fraudulent scheme or technique" includes an employee selecting, by any method, only certain pull tabs in a game or an employee not thoroughly intermixing pull tabs of the initial or added deals.
9. An employee may only assist a disabled player in opening a pull tab.
10. An employee shall deface a winning number or symbol of a pull tab, including pull tabs used with a prize board, and punchboard punch when it is redeemed. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced. An employee may not knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, has a game serial number different from the serial numbers of the deals in the game, or is defective.
11. If a player buys a set of stapled jar tickets and, before or after opening any jar ticket, determines that the set contains less than the standard number of tickets, an employee may issue the player only the number of tickets actually missing. If a player buys a set of banded jar tickets and, before breaking the band, determines that the set contains less than the standard number of tickets, an employee may issue the player

a new set in exchange for the defective set. An employee may staple together the proper number of loose jar tickets of a game to sell. An employee may, at any time, sell a loose unopened jar ticket or partial set of banded jar tickets at a proportional selling price of a full set.

12. When a game is being closed, an organization may continue to conduct the game although all of its top tier and minor winning pull tabs have been redeemed. An employee may not permit a player to buy out a game except when a game is being closed. If an organization closes a game that has pull tabs unsold, it may not open or place the pull tabs back into play.
13. Unless an organization conducts a commingled game according to subdivision e of subsection 1 or closes a commingled game at least monthly, an employee who did not conduct the game shall do a monthly interim audit of the game. If the percent-of-accuracy of all the games of a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game shall do a weekly interim audit of the games for that site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds.
14. An employee shall award the last sale cash or merchandise prize to the player who actually buys the last pull tab or punch.
15. An organization may transfer a commingled game, club special, tip board, seal board, prize board, and punchboard from a site to another site, or rotate games among sites. If an organization discontinues gaming at a site, it may close a game. If a game is in the process of being conducted through a jar bar, the game cannot be transferred to a dispensing device. A game must be reported for the site at which it was closed and on a tax return for the quarter in which it was closed.
16. An employee may not pay, from any source of funds, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site. This rule does not apply to a last sale prize.
17. Before leaving a jar bar unattended, an employee shall safeguard the games, cash, and records.
18. An organization may not publicly display a redeemed pull tab.

19. An organization or employee may not reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 6, unless the attorney general approves.
20. If an organization suspects or determines that a game may be defective, the organization shall temporarily suspend the game, notify the attorney general, and follow the attorney general's instructions.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-08

99-01.3-06-03. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs or punches for a game must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
2. For a commingled game, an accounting of each deal's, shift's, or day's redeemed pull tabs, including the number by prize value, total prizes, and number of redeemed top tier pull tabs by game serial number. This accounting must be consistent and be done each time a deal is added to a game, a shift ends, or at the end of each day. If the accounting is done each time a deal is added to a game, the redeemed winning pull tabs for the period must be grouped separately and retained with all other groups of pull tabs of that game. If the accounting is done at the end of each shift or day, the redeemed winning pull tabs for each shift or day must be banded and each banded group must be dated with the date of activity and be retained in a storage container with all other banded groups of that game. For each game, there must be a daily accounting of deals added to a game, by gaming stamp and game serial numbers, and of the cash profit and bank deposit;
3. For a club special, tip board, seal board, prize board, and punchboard, an accounting of prizes, by state gaming stamp number;
4. A daily accounting of starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
5. For a deal of pull tabs or prize board, the game information sheet and flare, and for a club special, tip board, punchboard, and seal board, the flare, with the state gaming stamp affixed;

6. A summary of ideal gross proceeds, value of unsold pull tabs or punches, gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries for a quarter must reconcile to the activity reported on the tax return;
7. Record of win according to section 99-01.3-03-08;
8. Inventory records according to ~~subsections~~ subsection 1 and 4 of section 99-01.3-03-09;
9. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09;
10. An organization approved by the attorney general to use a combined cash bank for pull tab games at a site shall document the allocation of cash profit to each game based on the ratio of a game's adjusted gross proceeds to the total adjusted gross proceeds of all the games;
11. For a commingled game, club special, tip board, seal board, prize board, and punchboard the cash profit defined in subdivisions c, e, and f of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10;
- ~~10.~~ 12. Interim audit records according to subsection 13 of section 99-01.3-06-02;
- ~~11.~~ 13. Purchase invoice or receipt documenting the cost of a merchandise prize; and
- ~~12.~~ 14. The count and reconciliation of deals, games, and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-07

99-01.3-07-02. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, ~~unless otherwise provided by rule:~~

1. For each sports-pool board:
 - a. The sold board with the state gaming stamp affixed which must indicate the winning square or line;
 - b. The daily starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. The type of professional sport and amount of each prize;
 - d. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all sports-pool boards conducted during a quarter must reconcile to the activity reported on a tax return; and
 - e. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to ~~subsections~~ subsection 1 and 4 of section 99-01.3-03-09.
3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
4. The cash profit defined in subdivision g h of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the event's activity according to section 99-01.3-03-10.
- ~~4.~~ 5. The count and reconciliation of sports-pool boards and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-08

99-01.3-08-02. Table, drop box, cards, and dealing shoe.

1. If there is more than one table at a site, a table must have a number. A table playing surface must display no more than seven separate betting spaces and these or equivalent statements:

BLACKJACK PAYS 3 TO 2
and
DEALER MUST STAND ON 17 AND MUST DRAW TO 16
or

If a site allows the dealer to take a hit card when the dealer has a soft seventeen:

BLACKJACK PAYS 3 TO 2
and
DEALER MUST HIT SOFT 17

2. A table must have a drop box that meets the specification of subsection 5 of section 99-01.3-15-02. If there is more than one table at a site, a drop box must have a number matching the table number. A drop box must have a money plunger which must remain in the slot unless the plunger is used to insert currency or forms.
3. The cards must be four, six, or eight decks and be dealt from a dealing shoe located at a dealer's left. The cards must be the same size, shape, design, and be jumbo-faced. However, if a mechanical or electronic hole card reader is used on a table, cards that are not jumbo-faced may be used provided that the organization has received approval from the attorney general. Approval must be based on the attorney general's evaluation of the clarity of the cards on a recorded video of activity for the table. The color of the backs of all decks must be one predominate color, or one-half of the number of decks must be one predominate color and the other decks a different predominate color. The design on the back of each card must be identical.
4. A dealing shoe must hold four or more complete decks of playing cards.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-03. Casino chips.

1. A wager and tip must be made with chips. If an organization accepts a twenty-five dollar wager, it shall provide twenty-five dollar chips to

players for their optional use. Chips may be issued in values of fifty cents, one dollar, two dollars, five dollars, and twenty-five dollars. An organization may use a fifty cent metal coin or fifty cent United States coin as a substitute for a fifty cent chip provided the coin produces sufficient clarity on video surveillance. ~~Except for a commemorative chip, an~~ An organization may not use a different chip of the same value at a site, except for a commemorative chip.

2. Each chip must be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an organization's name and on the other side with the value of the chip. The name may be represented by a unique identification that differentiates an organization's chips from all other organizations' chips. If a site had twenty-one gross proceeds averaging ten thousand dollars or more for two consecutive quarters and this level of activity is expected to continue or an organization installs a video surveillance system at a site, regardless of the value of wagers accepted at the site, the chips must meet the specifications of subsection 3. ~~If video surveillance is not required, an organization may use a fifty cent United States coin as a substitute for a fifty cent chip or fifty cent metal coin.~~
3. Each value of chip must have the following prescribed primary color. ~~Except for a fifty cent chip or metal coin, a~~ A chip also must have one or two contrasting secondary colors as edge spots, except for a fifty cent chip or metal coin. Edge spots must be visible on the perimeter of both sides of a chip and on the chip's circumference. An organization may not use a secondary color on any value of chip that is identical to the primary color used by the organization on another value of chip that results in a reversed combination of primary and secondary colors between the two values of chips. The primary colors and edge spots must be:
 - a. Fifty cent mustard yellow chip - a fifty cent chip has no edge spots. A fifty cent metal coin or fifty cent United States coin may be used as a substitute for the fifty cent chip.
 - b. One dollar white chip - a one dollar chip must have four solid edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width.
 - c. Two dollar pink chip - a two dollar chip must have four split edge spots and each edge spot must be three-eighths of one inch [9.40 millimeters] in width. Each of the two split portions of an edge spot and the space between the two split portions must be one-eighth of one inch [3.05 millimeters] in width. The two split portions of an edge spot must be the secondary color and the middle space may either be the primary color or a third color.

- d. Five dollar red chip - a five dollar chip must have six solid edge spots and each edge spot must be one-quarter of one inch [6.35 millimeters] in width.
 - e. Twenty-five dollar green chip - a twenty-five dollar chip must have eight white solid edge spots and each edge spot must be five thirty-seconds of one inch [4.06 millimeters] in width or, if the center of the chip is embossed in gold or inlaid with a coin, the chip must have three white solid edge spots and each edge spot must be fifteen thirty-seconds of one inch [12.18 millimeters] in width.
 - f. One hundred dollar black chip - a one hundred dollar chip must have four white triple split edge spots and each edge spot must be one-half of one inch [12.7 millimeters] in width. Each of the three split portions of an edge spot and the two spaces between the three split portions must be about three thirty-seconds of one inch [1.52 millimeters] in width. This chip is used in the game of paddlewheels.
4. An employee shall safeguard chips in a safe place or on a table with a locking cover. If a table has been opened and no employee is stationed at it, an employee shall remove or secure the chip tray with a locking cover.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-04. Video surveillance system. If a site had twenty-one gross proceeds averaging ten thousand dollars or more per quarter for two entire consecutive quarters, this level of activity is expected to continue, and wagers exceed two dollars, an organization shall have a video surveillance system operational at the site within forty-five days from the end of the second quarter. However, for a site with seasonal activity, this level of activity is based on the average gross proceeds of the active quarters within the fiscal year July first through June thirtieth. A level of activity is based on a site's recent historical experience, but not earlier than the previous fiscal year, regardless of which organization conducted twenty-one at the site. If an organization conducts twenty-one at a newly acquired site that has a level of activity requiring a video surveillance system, it shall have the system for a table operational within forty-five days of conducting twenty-one or limit wagers to two dollars until the system is operational. A system must be operational for each twenty-one table that is regularly located on a site, regardless of how infrequent a table is used or the value of wagers accepted at the table. A temporary table that is brought onto a site for fourteen or fewer consecutive days for a special event according to subsection 4 of section 99-01.3-01-02, but for not more than two events per quarter, does not need a system. An organization shall:

1. Install a system that meets these specifications:
 - a. A recording unit must be a super VHS (S-VHS) system utilizing super VHS (S-VHS) videotapes or a digital video recorder (DVR) system and must record in real time. A video system must be approved by the attorney general and no time lapse or multiplex video recorders may be used as the primary mode of operation. A recording unit must be secured in a locked cabinet or area, plugged into an outlet that cannot be switched off, and be programmable with a minimum seven-day memory backup. A recording unit must have a built-in or separate time and date generator that displays the time and date on the recorded video without significantly obstructing a recorded picture. A playback unit used to review a recorded video must have forward and reverse frame-by-frame and high-speed scanning capability;
 - b. A super VHS or high resolution color camera that has four hundred or more active lines of horizontal resolution must be used. A camera must have a signal to noise ratio, with the automatic gain circuitry off, of forty-five decibels or better. A camera must be positioned above the center of a table and record gaming activity from the dealer's perspective. A camera must be plugged into a surge protector and use an outlet that cannot be switched off. A camera must be protected by a slotted or clear dome. An automatic iris is optional;
 - c. A camera lens must have an f-stop rating of f-1.2 or better, be color-corrected and have a format size equal to or greater than the format size of a camera. A lens may be fixed or variable focus. A lens must have a field of view to record the face of a dealing shoe, all betting spaces, discard holder, chip tray, currency plunger, and table number;
 - d. A color video monitor with a connection that produces lines of horizontal resolution that equal or exceed the number of active lines of horizontal resolution that a video camera is outputting. A monitor's screen must measure at least thirteen inches [330.2 millimeters] diagonally; ~~and~~
 - e. For a super VHS color camera, super VHS YC or coaxial video cable must be used. For a high resolution color camera, coaxial video cable must be used. The cable must meet these specifications:
 - (1) If the length of a cable is one hundred linear feet [30.48 linear meters] or less and the cable will not be flexed, exposed outside a building, or constantly moved, the center conductor must be stranded or solid pure copper material. Otherwise, the center conductor must be stranded pure copper material.

- (2) The shield must be braided pure copper material. The dielectric must be foam material. A cable must be rated for seventy-five ohms of impedance. If a cable is to be placed in a return air system, the jacket must be teflon or other accepted fire-rated material; and
 - f. A digital video recorder (DVR) system must be capable of allowing organizations to download, burn, or copy files onto a storage device.
2. Buy or lease qualifying items. Additional allowable expense funds may be used for only these qualifying items:
 - a. Super VHS video cassette recorder (VCR), central processing unit (CPU), digital video recorder (DVR), time and date generator, and locking vented enclosure;
 - b. Super VHS, digital, or high resolution color camera with a fixed or zoom lens and dome;
 - c. Super VHS or high resolution color video monitor;
 - d. Super VHS YC or coaxial video cable;
 - e. VCR, CPU, or DVR cabinet, super VHS tapes or computer hard drives, and related storage cabinet;
 - f. Table number and site identification;
 - g. Installation and maintenance of equipment, including lighting fixture;
 - h. In-line video cable amplifier, surge protector, video printer, tape rewinder, battery backup, and tape eraser; and
 - i. Lease payment and interest expense on a financing loan.
3. If an organization conducts twenty-one or paddlewheels at more than one site, a table must have a site identification. A site identification and any table number must be visible on a recorded video.
4. A playing surface must be the standard green, unless authorized by the attorney general. Red or maroon and black jumbo-faced playing cards may be used.
5. Maintain a clean dome and a proper field of view on the playing surface.
6. Authorize only a gaming or shift manager or an independent person to:

- a. Access a recording unit, camera, and stored recorded video;
 - b. Start and stop a recording unit for a table when chips are first made available for use on the table and continue recording until the table is permanently closed for the day; and
 - c. Change a recorded video in a recording unit for a table at the beginning, during, or at the end of a day's activity, regardless if the authorized person is a dealer or wheel operator at the site. An organization may use two real time recorders in sequence to record a table's activity that exceeds the recording capability of one tape. If two recorders are used for one table, their separate recordings for a day's activity must overlap by ten minutes.
7. Retain a recorded video in a safe storage place for thirty days.
 8. On a daily basis an employee shall review and document that a surveillance camera at each twenty-one and paddlewheel table at a site is recording an unobstructed view of the table activity. If a recording unit or camera for a table is not properly operating or not producing an unobstructed view and clear picture of the cards, currency, or chips and is not repaired or remedied within ~~seventy-two continuous~~ forty-eight hours of activity on the table or four calendar days, the organization shall close the table or limit wagers to two dollars on the table until the equipment is repaired.
 9. ~~Use the~~ The attorney general's current recordkeeping system must be used unless approval is obtained from the attorney general for use of another recordkeeping system. An organization shall track a dealer's and wheel operator's percent-of-hold performance. Percent-of-hold is computed as adjusted gross proceeds divided by gross proceeds.
 10. Limit its purchase or lease of a camera, lens, cable, camera dome, digital recording device, time and date generator, and installation, including moving a camera to another site, to a vendor approved by the attorney general. An organization shall defer remitting at least fifty percent of the cost or lease price of this equipment to a vendor until the attorney general approves the clarity of the recorded video for a table. A vendor shall provide the attorney general with a sample recording to evaluate. If an organization acquires video surveillance equipment at a new site from another organization, moves a camera or table to another location at the site, or converts to a digital video recorder (DVR), the organization shall, within fourteen days, provide the attorney general with a sample recorded video to evaluate. If the quality of the sample tape is not satisfactory, an organization and vendor shall resolve the deficiency. An organization may buy or lease a qualifying item from

another organization provided the equipment meets the specification of subsection 1.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10, 53-06.1-11

99-01.3-08-09. Betting.

1. An original wager must be an even dollar amount and may range from one dollar to twenty-five dollars. A wager of one dollar must be accepted unless an organization has more than one active table then a minimum wager may be set on no more than one-half of the tables. An active table under this subsection means a table in which a dealer and chips are present and available for play or has one or more players participating in the game. An organization may establish a maximum wager for each table. If all the tables at a site do not have the same betting limit, a plaque must be placed on top of a table indicating the minimum and maximum wager for the table. If a table that has a minimum wager becomes the only active table at a site or more than one-half of the active tables have a minimum wager, then the organization must notify players that the minimum wager amount will be lowered to a wager of one dollar at the end of the current dealing shoe. A wager that exceeds the maximum wager is valued at a table's maximum wager and the excess must be returned to a player. An organization shall post and announce a change in the maximum wager at a table with adequate notice to a player.
2. An original wager is the amount bet per hand before the first card is dealt and excludes tip betting. After the first card has been dealt, no original wager or tip bet may be changed. A separate wager may be a ~~split, double-down, insurance bet, and tip bet.~~ insurance bet, splitting pairs, and doubling-down. After the first two cards have been dealt to each betting space, with the exception of the tip bet which is placed prior to any cards being dealt, the following additional wagers may be bet:
 - a. Tip bet. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager, but may be limited to less than the table's maximum wager at an organization's option. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a tie (push).

- b. Insurance bet. If a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. An organization may permit insurance betting except on a tip bet. An insurance bet must be one-half the original wager. The payoff on a winning insurance bet is two to one. A dealer shall reposition the chip below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a tie (push). This rule does not apply if an insurance bet is not permitted.
- c. Splitting pairs. A dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split. Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each; however, if an additional ace is drawn it may be split again up to a maximum of four hands. A two-card twenty-one after a split is not a natural twenty-one.
- d. Doubling-down. Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces or a tip bet. An organization may require a double-down wager to equal the original wager or allow a double-down wager to be equal to or less than the original wager. Only one additional card is dealt. A dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to double-down. For doubling-down on an original wager or tip bet, a player shall place a chip vertical to the wager. A player may not double-down on a tip bet unless the player also doubles-down on the original wager. A doubled-down tip bet may be equal to or less than the original tip bet. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.

3. ~~Splitting is permitted on any pair or any two 10-count value cards. A player is allowed a maximum of four hands per betting space. A player's right-hand card in a split must be played to completion before the adjacent split hand is dealt a second card. A player shall take at least one card on a split hand. A wager on each hand must equal the original wager. Split aces draw only one card each. A two-card twenty-one after a split is not a natural twenty-one.~~
4. ~~Doubling-down is permitted on the first two cards dealt to a betting space or the first two cards of a split hand, except on split aces. An organization may require a double-down wager to equal the original wager or allow a double-down wager to be equal to or less than the original wager. Only one additional card is dealt.~~
5. ~~An organization may permit insurance betting except on a tip wager. An insurance bet is placed when a dealer's faceup card is an ace and it must be one-half the original wager. The payoff on a winning bet is two to one.~~
6. ~~An organization may permit tip betting and doubling-down on tip bets. A tip bet is made when the original wager is made by placing a chip outside a betting space, but with the chip touching the lower left edge of the betting space, from a dealer's perspective. A betting space is limited to one tip bet. A tip bet does not have to equal an original wager and may range from fifty cents up to a table's maximum wager, but may be limited to less than the table's maximum wager at an organization's option. A doubled-down tip bet may be equal to or less than the original tip bet. If a player's hand wins, a tip bet is paid off at an equal amount and the tip bet and payoff are placed in a dealer's tip receptacle. If the dealer's hand wins, a tip bet is placed in the chip tray. If a player's and dealer's hands tie, a tip bet is a standoff (push).~~
7. ~~If a player's wager consists of two or more values of chips, a player shall neatly stack the lowest value chip on top of the highest value chip. If the chips are improperly stacked, a dealer shall tell the player and either the dealer or player shall properly stack the chips.~~

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-10. Dealing.

1. After a shuffle, a dealer shall remove the first card face downwards and without showing its value, place it in a discard holder (burning a card) located at the dealer's right. Each new dealer at a table shall burn one card before dealing. If a table is open but there is no player, a dealer shall reshuffle the cards or burn one card when a player comes to the table. Only one of two dealing methods may be used at a site:
 - a. Hole-card-no-peek method. A dealer may not look at the face of a hole card until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards or face downwards (hole card) to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
 - (4) A second card face upwards to a dealer if the first card was dealt face downwards; or, a second card face downwards to a dealer if the first card was dealt face upwards. The dealer may use a mechanical or electronic hole card reader and special cards to determine if the dealer's hand is a natural twenty-one.
 - b. No-hole-card method. A dealer may not deal a second card (hole card) to the dealer until after all cards requested by players are dealt. The cards must be dealt in this order:
 - (1) One card face upwards to each betting space with a wager.
 - (2) One card face upwards to a dealer.
 - (3) A second card face upwards to each betting space with a wager.
2. A dealer shall, starting on the dealer's left, deal the cards by removing them from a dealing shoe with the left hand, turning them face upwards and with the right hand place them on the proper area of a playing surface; however, a dealer may deal cards to the first two betting spaces with the left hand. A player's second card and any hit card must be placed on top of the preceding card covering no more than the lower left-hand quarter of the preceding card, from the dealer's perspective. This rule does not apply to a disabled dealer.

3. If the dealer is using the hole-card-no-peek method of dealing, the dealer's faceup card is an ace or a ten-count card, the dealer is using a mechanical or electronic hole card reader and special cards, and the dealer's hand is a natural twenty-one, the dealer shall play the dealer's hand by:
 - a. Collecting all player's original wagers and original tip bets, unless a player's original hand is also a natural twenty-one which results in a tie; and
 - b. Paying any insurance bet at the rate of two to one.

History: Effective May 1, 1998; amended effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-11. Playing.

1. ~~After the first two cards have been dealt to each betting space and if a dealer's faceup card is an ace, the dealer shall ask the players if they desire to make an insurance bet. A player shall make an insurance bet by placing a chip on the insurance line of the playing surface. A dealer shall reposition the chip below the lower right-hand corner of the first card dealt and to the immediate right of the second card dealt, from the dealer's perspective. A dealer shall then announce "insurance bets are closed". However, if a player who has been dealt a natural twenty-one (blackjack) desires to make an insurance bet and does not desire to double-down, a dealer may, at an organization's option, do an even money payoff rather than having the player place an "insurance" bet. To exercise this option, a dealer shall state "even money" and immediately do a chip payoff to a player equal to the player's original wager. This even money payoff must be done according to subdivision a of subsection 16. A dealer shall then place the player's cards in a discard holder. For this option, a tip bet is a standoff (push). This rule does not apply if an insurance bet is not permitted.~~
2. A dealer may announce the dealer's faceup card one time to all the players at a table. If the dealer is using the hole-card-no-peek method of dealing, the dealer's faceup card is an ace or a ten-count card, the dealer is using a mechanical or electronic hole card reader and special cards, and the dealer's hand is a natural blackjack, the dealer shall play the dealer's hand as prescribed by subdivision c or d of subsection 10. Otherwise, a dealer shall, beginning from the dealer's left and for each player's hand, prompt a player to indicate whether the player desires to split or double-down, or both. As a prompt for optional wagers (splitting pairs or doubling-down), a dealer may announce the point total of each player's hand. For splitting a hand, a player shall place an additional wager, equal to an original wager, horizontal to the original wager. For doubling-down on an original wager or tip bet, a player shall place a

~~chip vertical to the wager. A player may not double-down on a tip bet unless the player also doubles-down on the original wager. If a dealer is unsure of a player's intent, the dealer shall ask the player and properly reposition a chip.~~

2. A dealer may not allow a player to touch any cards and may not switch or remove a player's card or chip, pay on a tie, or do anything to alter a fair and legal outcome of a betting hand.
3. If a player has split or doubled-down, or both, a dealer shall play each hand as follows:
 - a. When a player places a wager for a split, a dealer shall split the cards side by side. If a player has also placed a tip bet, a dealer shall assign and reposition the tip bet to the split hand located at the foremost left of a betting space, from the dealer's perspective. Each split hand must be played separately. If aces are split, one additional card must be dealt face upwards to each of the hands and placed at a right angle to the first card dealt, except if an additional ace is drawn it may be split again up to a maximum of four hands.
 - b. A doubled-down hand must be dealt one additional card face upwards and placed at a right angle to the first two cards dealt. However, if a table does not have a video surveillance system, the card may be placed beneath a player's original wager.
4. A dealer may not take a hit card from a dealing shoe nor may a dealer bypass a player unless the player has first indicated the player's request for a hit card or to stand by a distinct hand signal.
5. As a player indicates to stand or draw a hit card, other than on a hand that has split aces or a double-down, a dealer shall deal face upwards an additional card or cards as the player requests. A player is responsible for correctly computing the total card count of the player's hand.
6. If a player did not split, double-down, or place an insurance bet, and busts (a player's total card count exceeds twenty-one), the player loses an original wager and any tip bet. A dealer shall immediately collect and place a player's chips, including any tip bet, in a chip tray and the cards in a discard holder.
7. If a dealer's faceup card is not an ace or a ten-count card and a player split or doubled-down and busts, the player loses the wager for that split or double-down hand and any tip bet assigned to it. A dealer shall immediately collect and place a player's chips in a chip tray and the cards in a discard holder.

8. If a dealer's faceup card is an ace or a ten-count card and a player split, doubled-down, or placed an insurance bet and busts, the dealer shall gather the cards of that hand and place them outside the betting space. Then, a dealer shall reposition the player's split and or doubled-down wagered chips, in the same betting position, on top of the player's cards of that hand. A tip bet for such a split or double-down hand that busts is lost. A dealer shall immediately place the tip bet chips in a chip tray.
9. If a dealer's faceup card is not an ace or a ten-count card and all players bust, a dealer shall end the round. If a dealer's faceup card is an ace or a ten-count card and all players bust, and no player split, doubled-down, or placed an insurance wager, a dealer shall end the round.
10. If the decisions of all players have been carried out, a dealer shall turn up the dealer's facedown card (hole-card-no-peek method) or deal a second card face upwards to the dealer (no-hole-card method). However, for the no-hole-card method, a dealer shall remove the dealer's second card from a dealing shoe and, without looking at the value of the card, place it beside the dealer's first card. Then, a dealer shall announce the total card count of the two cards. A dealer shall play the dealer's hand as follows:
 - a. If a dealer's faceup card is an ace and the dealer's hand is not a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect all the players' insurance bet chips, with the dealer's right or left hand, in a sweeping motion, and place them in a chip tray. A dealer may not use the right and left hand at the same time. Then, for all the players' busted hands that have been split, doubled-down, or both, a dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands, and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's insurance bet chips and busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.

- b. If a dealer's faceup card is a ten-count card and a dealer's hand is not a natural twenty-one, for all the players' busted hands that have been split, doubled-down, or both, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of busted hands, with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. When no other busted hand remains, a dealer shall place the collected chips in a chip tray, collect those players' busted hands and place the cards in a discard holder. A dealer may, at an organization's option that is consistently applied at a site, collect each player's busted hands and related chips with only the dealer's right hand, on a hand-by-hand basis, and place the chips in a chip tray and the cards in a discard holder. Then, for all the players who have been dealt a natural twenty-one, the dealer shall immediately, starting with the player to the dealer's right and moving left around the table, do the payoff according to subsection 15 or 16, and collect and place those players' cards in a discard holder. If a player's hand remains in play, a dealer shall proceed according to subdivision f or g, and do the payoff procedure on any winning hand according to subsection 15 or 16.
- c. If a dealer's faceup card is an ace, the dealer's hand is a natural twenty-one, and a player has placed an insurance bet, the player wins the insurance wager at the rate of two to one. A dealer shall do the payoff procedure according to subsection 15 or 16. However, if a player's original hand also is a natural twenty-one, subdivision d also applies.
- d. If a dealer's faceup card is an ace or a ten-count card and the dealer's hand is a natural twenty-one, the organization wins all original wagers and original tip bets, unless a player's original hand also is a natural twenty-one which results in a standoff tie (push). All other players lose.
- e. If a player has doubled-down or split against a dealer's faceup card of an ace or a ten-count card and the dealer's hand is a natural twenty-one, only the player's original wager is lost unless the player's original hand also is a natural twenty-one which results in a standoff tie. All separate splitting and doubling-down wagers are voided. A dealer shall return the chips of the separate wagers to the players.
- f. If the count of a dealer's hand is sixteen or under, the dealer shall draw a hit card until the count exceeds sixteen. An additional card must be dealt face upwards to the immediate right of a dealer's first two cards dealt, from the dealer's perspective, and the dealer shall announce the total card count.

9. If the count of a dealer's hand exceeds sixteen but does not exceed twenty-one, the dealer shall stay (not draw a hit card). At its option, an organization may permit a site to allow a dealer to take a hit card when the dealer has a soft seventeen (ace card and a six). If the organization allows this option, it must be posted at the site. If a dealer's hand contains an ace and a count of seventeen, eighteen, nineteen, twenty, or twenty-one can be obtained by counting the ace as an eleven, a dealer shall value the dealer's hand as such and stay. A dealer shall announce the final total card count of the dealer's hand.
- h. If a dealer's hand busts, the remaining players with active hands win.
11. If a player's original hand is a natural twenty-one and a dealer's faceup card is not an ace or a ten-count card, the player's hand wins and is paid off at a rate of three to two, unless the player chooses to double-down. A dealer's chip payoff on a player's wager may occur immediately or when the dealer, in the order of hands, comes to that player's hand.
12. A wager is won or lost by comparing the total card count of each player's hand to the dealer's hand. A dealer or player with the highest total card count wins. Wagers, including tip bets, are paid off at an equal amount according to subsection 15 or 16. All ties are a standoff push - no payoff is made, including on a tip bet.
13. If a player's hand loses against a dealer's hand, an organization wins any tip bet. A dealer shall immediately, starting with the player to the dealer's right and moving left around the table, collect the chips of adjacent losing hands with the dealer's right or left hand, in a sweeping motion. A dealer may not use the right and left hand at the same time. A dealer may, at an organization's option that is consistently applied at a site, collect the chips of losing hands with only the dealer's right hand, on a hand-by-hand basis. When a tie hand is reached, the dealer shall recognize that hand with a tap on the tabletop and announce that it is a push. When a winning hand is reached, a dealer shall place any previously collected chips in a chip tray and do the payoff procedure for adjacent winning hands according to subsection 15 or 16. When a losing hand is again reached, the dealer shall repeat the collection and payoff procedure until all losing wagers have been collected and all winning hands have been paid. The dealer shall then collect all the remaining cards according to subsection 17.
14. If a player's hand wins against a dealer's hand and the player placed a tip bet, the dealer wins the tip bet and the one-to-one payoff from a chip tray according to subsection 15 or 16.
15. If a player's hand wins against a dealer's hand and a table does not have a video surveillance system, the payoff procedure is:

- a. Normal hand. A payoff chip must be placed beside the original wagered chip in a betting space.
 - b. Split hand. The payoff chip must be placed beside the wagered chips in a betting space.
 - c. Double-down hand. The payoff chips must be placed beside the two wagered chips in a betting space.
 - d. Insurance bet. A payoff chip must be first placed beside the insurance bet chip, fanned, then placed on top of the insurance bet chip and the chips pushed to a player.
 - e. Natural twenty-one. The payoff chips must be pyramided with the higher value chip placed beside the original wagered chip in a betting space and the smaller value chip placed on top over the center of the other two chips.
 - f. Tip bet. A payoff chip must be placed beside the tip bet chip and any double-down chip in the inner table area. Then, a dealer shall place the chips directly in a tip receptacle.
16. If a player's hand wins against a dealer's hand and a table has a video surveillance system, the payoff of each winning hand must be done on a hand-by-hand basis. The payoff procedure is:
- a. A dealer shall fan all of a player's wagered chips toward the dealer or side with only the dealer's left hand. A dealer may, at an organization's option that is consistently applied at a site, fan all of a player's wagered chips toward the dealer or side with only the dealer's right hand. However, for a site that has a pit boss on duty and the organization requires a double-down wager to equal the original wager, a dealer may, for a player who has placed a split bet or double-down bet, or both, fan only one of the player's stacks of wagered chips. A dealer shall reposition a tip bet chip in the inner table area with the dealer's left hand and fan the chips. A dealer may, at an organization's option that is consistently applied at a site, fan all the players' tip bets and double-down chips after the payoff procedure has been done on all winning players' hands. However, if a player's bet exceeds five dollars, the dealer shall separate the player's chips, by value, fan them in sets of five chips, and then fan any remaining chips. A dealer shall, with the dealer's right hand, take a chip from a chip tray, equal in value to the player's wagered chips (not tip bet chips), place the payoff chip in a stacked manner beside the wagered fanned chips, fan the payoff chips toward the dealer or side, and move the dealer's hands away from the chips. However, if the prize payoff exceeds twenty casino chips of the same value, the dealer may use a rack to account for

one or more sets of twenty chips and fan the remaining chips. A dealer shall repeat this procedure for each separate winning hand.

- b. After the payoff procedure has been done on all winning players' hands and the tip bet chips have been fanned, a dealer shall, with the dealer's right hand, take a chip from a chip tray of the same value as the tip bet chip, place the payoff chip in a stacked manner beside the fanned chips, and fan the payoff chips. A dealer shall repeat this procedure for each separate winning tip bet. Then, a dealer shall move the dealer's hands away from the chips. After a dealer has picked up the cards according to subsection 17, the dealer shall place the chips directly in a tip receptacle.
17. At the end of a round of play, a dealer shall pick up all the cards remaining on the playing surface so that they can be played back to recreate each hand, starting with the player to the dealer's right and moving to the left around the table. After the cards have been collected in a sweep or hand by hand, a dealer shall pick up the dealer's cards against the top of the players' cards and place them in a discard holder.
18. If a table has a video surveillance system, a dealer's shift ends, and the dealer:
 - a. Does not desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view. A dealer shall then take the tip receptacle and leave the table.
 - b. Does desire to exchange the dealer's tips for other chips in the chip tray, the dealer shall take all the chips out of the tip receptacle. A dealer shall place the chips in the inner table area at the dealer's left; sort, stack, and fan only the chips to be exchanged; take chips from a chip tray equal in value to the fanned chips; place the replacement chips at the dealer's right; sort, stack, and fan the chips, momentarily move the dealer's hands away from the chips so the chips are within a camera's view; place the exchanged chips in a chip tray; then place the replacement chips and unexchanged chips in a tip receptacle. A dealer shall then momentarily show both sides of the dealer's hands, with fingers extended, within a camera's view, take the tip receptacle, and leave the table. As an option, a dealer for the next shift may exchange the present dealer's tips.
19. ~~A dealer may not allow a player to touch a card.~~
20. ~~A dealer may not switch or remove a player's card or chip, pay on a standoff, or do anything to alter a fair and legal outcome of a betting hand.~~

24. An organization may adopt a policy to allow a dealer, when a player leaves a table, to exchange two or more of the player's casino chips for higher value chips provided that the dealer first asks the player's permission, the player agrees, and the dealer announces the value of chips being exchanged.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-10

99-01.3-08-12. Dealing mistakes. ~~Unless an organization has an alternative written policy, these~~ These procedures must be applied for dealing mistakes, ~~unless an organization has an alternative written policy:~~

1. A card found turned face upwards in a dealing shoe must be burned.
2. If no cards are dealt to a player's betting space containing a wager, the betting space is inactive for the round. If only one card is dealt to a player's betting space, at the player's option, a dealer shall deal a second card to the player after all other players have received a second card. Otherwise, a player's betting space is inactive and the card dealt must be burned.
3. If a dealer deals a card to an inactive betting space and continues dealing cards to active betting spaces, the dealer shall burn the card dealt to the inactive betting space.
4. If a dealer misses dealing the dealer's first or second card, the dealer shall continue dealing the first two cards to each player, and then deal the proper number of cards to the dealer.
5. If a dealer does not ask a player if the player desires to place an insurance wager and the hand is played, the hand is valid.
6. If a dealer drops a player's or dealer's card off a table, the dealer shall burn the card.
7. A card drawn from a dealing shoe in error without the card's face being exposed to any player must be used as if it were the next card from the shoe.
8. After the first two cards are dealt to each player and a card is drawn from a dealing shoe in error with the card's face exposed to any player, the card must be burned.
9. ~~If there is~~ an insufficient number of cards ~~remaining~~ remains in a dealing shoe to complete a round of play, all of the cards in a discard holder

must be shuffled and cut, the first card must be burned, and a dealer shall complete the round of play.

10. If a dealer has a count of at least seventeen and draws a hit card, the card must be burned.
11. If a dealer permits a player to wager an unlawful amount and the player's hand wins, the dealer shall return the improper portion of the wager to the player. A dealer shall value a player's hand at the proper wager for the payoff. However, if a dealer permits a player to wager fifty cents and is dealt a card, the dealer shall return the fifty cents to the player and burn the card.
12. ~~After a round of play, if~~ If a dealer or player suspects that the dealer miscounted the dealer's hand after a round of play, the dealer shall play back the cards.
13. If a dealer does not burn a card at the beginning of dealing a shoe, the dealer shall burn the card after the first complete round of play.
14. If a dealer's facedown card is exposed to any player before the decisions of all the players are carried out, the dealer shall burn the card and, after the decisions of all the players have been carried out, draw a new facedown card.
15. If a dealer misses dealing a player a hit card, the dealer shall continue dealing any requested hit cards to all other players and then deal a hit card to the player who was missed.

History: Effective May 1, 1998; amended effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-14. Drop box cash count.

1. A drop box that has been used must be removed from a table by the end of the day's activity. If a drop box is removed from a table and the cash is not counted immediately, the drop box must be transported by the shift manager and, if there is more than one employee on duty, escorted by an employee to a safe storage place. The cash must be removed from the drop box before the drop box can be used for another day's activity. An empty drop box may be stored on a table or in a safe storage place.
2. A drop box must be opened by a two-person count team. The persons must be independent of each other. A count team may be an independent person and a gaming employee; two representatives of a financial institution, accounting firm, security agency, or security company; two nongaming employees; or two gaming employees provided they did not conduct games at the same site on the day of

the gaming activity and day of the count. One of these two gaming employees may have conducted games at the site associated with the drop box cash. ~~For other than independent contractors, a~~ A count team may not be two persons who have a direct supervisor and subordinate relationship and may not be a common household member, spouse, child, parent, brother, or sister of the other count team member, except when using an independent contractor.

3. The key to the lock securing the contents of a drop box must be controlled by one count team member who may not access the drop box unless both count team members are present. If there are two separate locks that secure the contents of a drop box, the key to the second lock must be controlled by the other count team member.
4. Each person shall independently count the drop box cash in the presence of the other person and resolve any difference between the two counts. Documentation of the count must be initialed and dated by both count team members.
5. An organization shall comply with this rule unless it uses another drop box cash count procedure that has been approved by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-08-16. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For each day's activity:
 - a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
 - b. Drop box cash and values of fill and credit slips of each table;
 - c. Daily surveillance review log;
 - d. For a tournament, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08;
- d. e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all twenty-one activity for a quarter must reconcile to the tax return; and

- e. f. For a video surveillance system, dealer percent-of-hold information ~~and daily review log~~ that must be retained for one year from the end of the quarter of the activity.
- 2. Inventory records according to ~~subsections 4 and~~ subsection 5 of section 99-01.3-03-09.
- 3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
- 4. An organization using a combined cash bank for twenty-one and paddlewheel at a site shall document the allocation of cash profit on a monthly basis to each game type based on the ratio of the game type's adjusted gross proceeds to the total adjusted gross proceeds of both game types.
- 5. The cash profit defined in subdivision ~~h i~~ of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.
- 4. 6. The count and reconciliation of cash banks and casino and betting chips according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-09

99-01.3-09-01. **Poker Definitions.** As used in this article:

1. "Add-on" is the last opportunity a player has to buy additional chips in an attempt to better the player's chances to win in a tournament that allows the additional purchase of chips. The amount and time restriction is found in the tournament rules.
2. "Buy-in" is the minimum amount of money required to enter a tournament.
3. "Poker" is a card game dealt by one dealer. A player bets on the cards (hand) the player holds. All bets are collected together in the center of the table which is the pot. There may be an initial ante round and a blind bet by players. Then, after players receive their starting cards and after each round of new cards, there is a betting round. Each round, a player decides whether to continue contending for the pot by calling or raising the bet. After all the dealing of cards and betting has occurred and there are two or more players still in contention, there is a showdown to determine which player has the best hand. The object is for a player to win the pot by making a bet no other player is willing to match or for the player to have the most valuable hand after all the betting is over. Cards and hands are ranked according to the normal rules of poker.
4. "Poker run" is an event in which each participant in the event follows a charted course, stopping at five to seven checkpoints along the route to pick up a single playing card. Upon all participants' arrival at the final checkpoint, a showdown of the poker hands is conducted and prizes are awarded.
5. "Rebuy" is when a player qualifies to purchase another buy-in during a tournament that allows a player to continue competing in the tournament. The number and time restriction are found in the tournament rules.
6. "Satellite" is a qualifying tournament in which the prize is a buy-in to a larger tournament.
7. "Side game" is a poker game running concurrently with a tournament made up of players who have either been eliminated or opted not to play in the tournament.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-09-02. **Limitations and fees.**

1. An organization may only conduct poker on two occasions per year. An occasion may include more than one authorized site. A nontournament occasion ~~is and a side game are restricted to~~ a twenty-four-hour period of play. Tournament activity, including any satellite activity, is an occasion of not more than three consecutive calendar days of play. Both tournament and nontournament play can occur as part of the same occasion provided that the nontournament play ~~does and a side game do~~ not exceed a twenty-four-hour period of play.
2. For nontournament play and a side game, if an organization does not provide a dealer, players shall use cash. If an organization provides a dealer, players shall use chips. An organization shall charge a player a fee not to exceed two dollars per one-half hour of playing time and collect the fee in advance. An employee shall record the fee when it is collected. The fee schedule must be disclosed or made available to players.
3. For a tournament, an organization may provide a dealer who cannot play in the game or allow the players to alternate as dealers and:
 - a. An organization may award a buy-in to a larger tournament to multiple winning players of each satellite; however, the buy-in prize is nontransferable to another player.
 - b. Advance players with the most number of chips from each preliminary round to the next round or championship round. A player with the most number of chips, based on preliminary rounds or a championship round, wins. ~~An organization may award a prize to the winning player of each preliminary round.~~ Any remaining players in the tournament may agree to split the prize rather than finish the tournament.
 - ~~b-~~ c. Use no-value chips. The ~~cumulative entry~~ buy-in fee, ~~including rebuys plus any rebuy or add-ons~~ add-on fees collected, for a tournament cannot exceed ~~two~~ three hundred dollars per player and are considered gross proceeds for a tournament. Only a cash prize may be awarded and the total prizes may not exceed ninety percent of the entry fees.
 - d. Satellite tournaments may be conducted with a separate fee not to exceed three hundred dollars per player and are considered part of gross proceeds for the tournament.
4. An organization shall establish and post tournament rules for each poker occasion and indicate the buy-in fee for satellite tournaments and the main tournament. Any restrictions regarding rebuys and add-ons, if allowed, shall be provided in the tournament rules.

5. An organization that conducts poker through a "poker run" involving more than one site shall comply with guidelines prescribed by the attorney general.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.2

99-01.3-09-03. Disclosure. These rules must be disclosed or made available to players:

HOUSE RULES

Must use one deck of cards

which is dealt out of the hand

Must use a cut card to conceal the bottom card of the deck

May allow a blind bet and set a minimum table limit

May allow a minimum ante

May allow a maximum of three raises per round

Must limit each raise to an amount equal to
or greater than the original bet; however, each
raise must be equal to or greater than the original
bet of that betting round

PLAYER RULES

Must be twenty-one years of age or older

No side bets or credit play is allowed

History: Effective May 1, 1998; amended effective July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.2

99-01.3-09-04. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported; ~~unless otherwise provided by rule:~~

1. For each poker occasion:
 - a. The starting and ending cash on hand and chips according to section 99-01.3-03-06;
 - b. For nontournament play and a side game, the fees collected for each one-half hour interval on each table, number of players, time each fee is collected and the name, signature, and time worked of the employee who collected the fee;
 - c. For tournament play, including satellite games, the fees, rebuys, and add-ons collected, name of each player, and signature or initials and date of the employee who collected the fee;

- d. For tournament play, including satellite games, prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08; and
 - e. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all poker activity for a quarter must reconcile to the tax return; and
 - f. A copy of the tournament rules for each poker occasion.
2. Inventory Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
 3. The cash profit defined in subdivision i j of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.
 4. The count and reconciliation of cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-10

99-01.3-10-01. Calcutta. A "calcutta" is a sporting event in which players wager at an auction on the competitors. A sporting event is a competitive sport involving physical skill or endurance and scores a person's physical ability. The conduct of a calcutta is the auction process. An auction pool is comprised of the wagers paid by players who offered the highest bids on the competitors. The auction pool is distributed to the player who wagered on the winning competitor. The winning competitor may be one competitor, a team of competitors, or ranked competitors. The payout of the cash prize to a winning player is based on a predetermined percentage of the auction pool, which may not exceed ninety percent. Only cash prizes may be awarded.

1. A calcutta may only be conducted for a professional or amateur sporting event held in North Dakota, but not for an elementary, secondary, or postsecondary education sporting event. An organization may conduct more than one calcutta on the same sporting event. More than one organization may independently conduct a calcutta on the same event.
2. An organization shall acquire a calcutta board from a distributor and complete on it the sporting event, date of the sports event, and manner of distributing the auction pool as a prize. The requirements of the players must be disclosed or made available to the players on the site.
3. Each competitor in a sporting event must be identified before the auction begins. A competitor may also be a player who may wager on oneself. A competitor may wager on another competitor.
4. Each competitor must be eighteen years of age or older to be eligible to be listed on a calcutta board. Each eligible competitor must be offered through an auction to prospective players. An organization may require that all eligible competitors be bid on and may set a minimum bid. A player who offers the highest bid for a competitor by a verbal, sealed, or open bid wagers on that competitor. A player may wager any amount and buy more than one competitor. A competitor may be auctioned off only to one player.
5. An open bid enables a potential player, during a certain time, to write the player's name and bid for a competitor on a register assigned that competitor. Each successive potential player interested in that competitor shall write the player's name and bid, of an amount higher than the previous bid, on the register. When the time period ends, the last player listed on the register wagers the amount bid on that competitor.
6. An organization shall conduct an auction at its site that may be where the sporting event is held. A player must be present to bid.
7. Before an auction, an employee shall:

- a. Verbally announce the predetermined percentages of the auction pool that will be paid to a winning player and retained by an organization. The amount a player may win depends on the total amount of the auction pool and not on any odds; and
 - b. Complete for each line on a board a sequential number starting with the number one and a name of a competitor.
8. The sequence of a verbal bid auction must be determined by a random drawing of the numbers assigned each line.
9. If a competitor is not bid on by a player, an organization may sell the competitor by:
 - a. If there is more than one competitor not bid on, placing the competitors in one or more groups and auction a group as one competitor; or
 - b. Allowing a competitor to purchase oneself for a predetermined minimum wager.
10. After an auction, an employee shall complete this information for each line on a board and total the amounts wagered:
 - a. Full name and address of the player who bought the competitor; and
 - b. Amount wagered by the player.
11. If a competitor was bought by a player and does not compete in the event, an organization shall refund the wagered amount to the player and adjust the prize payout.
12. After a sporting event, an employee shall complete on the board, for each winning player, the amount of the auction pool won. A winning player is the player who wagered on the competitor who won the event. An organization may award the prize to a winning player where the event is held. If an eligible competitor was not bought by a player and wins or places in the event, the organization shall retain the prize that would have been awarded on the competitor. If an ineligible competitor wins or places in the event, the organization shall award the prize that would have been awarded on the competitor to the next highest ranked eligible competitor.
13. An organization shall make a good-faith effort to contact a winning player to award a prize. If a prize is unclaimed for thirty days following

the notification or a player attempts to falsify or falsifies a record of win, the prize is forfeited.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.3

99-01.3-10-02. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, ~~unless otherwise provided by rule:~~

1. For each calcutta:
 - a. A calcutta board with the state gaming stamp affixed indicating the winning competitor and player;
 - b. The starting and ending cash on hand and IOU records according to section 99-01.3-03-06;
 - c. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all calcuttas conducted for a quarter must reconcile to the tax return; and
 - d. Prize register according to section 99-01.3-03-07 and record of win according to section 99-01.3-03-08.
2. Inventory records according to ~~subsections~~ subsection 1 and 4 of section 99-01.3-03-09.
3. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09.
4. The cash profit defined in subdivision j k of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10.
- ~~4.~~ 5. The count and reconciliation of calcutta boards and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-11

99-01.3-11-03. Paddlewheel, table, chips, and video surveillance system.

1. A paddlewheel is a round mechanical vertical wheel, at least thirty inches [76.2 centimeters] in diameter, and may be divided into a maximum of five concentric circles. The outer circle must contain at least forty numbers or symbols. A paddlewheel may have house numbers or symbols for an optional odd or even bet. Each inner circle may contain up to one-half of the number of numbers or symbols as that circle's adjacent outer circle. The numbers and symbols may repeat on a circle. Each circle must be divided into equally spaced sections, be a different primary color, and correspond to the colored numbers or symbols of a table playing surface. The colored numbers or symbols of all concentric circles must be at least five-eighths of one inch [15.88 millimeters] in height.
2. A peg must protrude, on the circumference of a paddlewheel, between each section of the outside circle. A pointer must be positioned above a paddlewheel. It is used to stop a spin of a paddlewheel and determine the winning colored number or symbol.
3. A table must have:
 - a. A chip tray and a rail for holding a player's chips;
 - b. A playing surface which must be permanently imprinted with colored numbers or symbols of at least one and one-half inches [3.81 centimeters] in height relating to each circle of a paddlewheel. A table may have spaces for various wagers, including sets of numbers, colored numbers, symbols, and "ODD" and "EVEN" bets;
 - c. Either a mirror to reflect or a color video camera and monitor to display the winning colored number or symbol on the paddlewheel; and
 - d. A table must have a "drop box" that meets the specification of subsection 5 of section 99-01.3-15-02. A "drop box" must have a money plunger which must remain in the slot unless the plunger is used.
4. An organization shall issue solid color-coded sets of chips for betting purposes. No betting chip can be the primary color of mustard yellow. The number of different sets and number of chips within each set is based on an organization's discretion. Each chip must be one and nine-sixteenths inches [39.62 millimeters] in diameter and be permanently impressed, engraved, or imprinted on one side with an

organization's name and the other side may have a stated value of one dollar. The name may be represented by a unique identification that differentiates an organization's chips from other organizations' chips. Each chip is valued at one dollar. An organization shall issue casino chips in values of one dollar, five dollars, twenty-five dollars, and one hundred dollars for paying a winning bet or exchanging a betting chip. A casino chip must meet the specification of subsection 3 of section 99-01.3-08-03.

5. An organization shall have a picture-in-picture video surveillance system on a table and paddlewheel. The system must meet the specifications and requirements prescribed by subsections 1, 2, 3, 5, 6, 7, 8, 9, and 10 of section 99-01.3-08-04.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-07.4

99-01.3-11-04. Opening and closing a table, number of employees, chip bank services, procedure for accepting currency and chips, and drop box.

1. To open a paddlewheel table, an employee shall inspect each peg and the pointer of a paddlewheel for uneven wear, immediately replace any worn peg or pointer, and evaluate the balance of a paddlewheel. To close a paddlewheel table, an employee shall make it inoperable.
2. An organization may not conduct paddlewheels unless two employees are on duty at the site.
3. A fill and credit slip must be prepared and used according to section 99-01.3-08-05. An organization shall perform chip bank services according to section 99-01.3-08-06. An organization may account for the games of paddlewheels and twenty-one separately and, if the activity is separately recorded, shall use casino chips prescribed by the attorney general.
4. A wheel operator, upon receiving currency from a player at a table, shall spread each bill of currency facedown and flat, in sequence of denomination, in the inner table area, perpendicular to a chip tray, and momentarily move the wheel operator's hands away from the currency so it is within a camera's view. A wheel operator, upon receiving a casino chip from a player at a table to be exchanged for a betting chip, shall place the chip in the inner table area at the dealer's left and sort, stack, and fan the chips. However, a wheel operator may use a rack to account for one or more sets of twenty chips of the same value. A wheel operator shall then take betting chips from the chip tray, equal in value to the currency or casino chip, fan the betting chips, and momentarily move the wheel operator's hands away from the betting chips so they are

within a camera's view. A wheel operator shall then restack the betting chips, push the betting chips to the player, and place the currency in a drop box or place the casino chip in the chip tray, or both.

5. After a day's activity, an employee shall transport a drop box from a table, store it, and count drop box cash according to section 99-01.3-08-14.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-11-07. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. For paddlewheel activity described by subsection 1 of section 99-01.3-11-01:
 - a. For each day's activity, the starting and ending cash banks and IOU records according to section 99-01.3-03-06;
 - b. For each ticket card of each series of paddlewheel ticket cards:
 - (1) Date conducted, card number, cash prize amount or cost and description of a merchandise prize;
 - (2) All winning tickets and unsold ticket cards which must be retained for one year from the end of the quarter in which the activity was reported on a tax return; and
 - (3) The flare with the state gaming stamp affixed;
 - c. Inventory records according to subsection 1 of section 99-01.3-03-09;
 - d. The count and reconciliation of each series of paddlewheel ticket cards according to subsection 6 of section 99-01.3-03-09;
 - e. Prize register according to section 99-01.3-03-07; and
 - f. Purchase invoice or receipt documenting the cost of a merchandise prize.
2. For paddlewheel activity described by subsection 2 of section 99-01.3-11-01:

- a. The starting and ending cash and chip banks and IOU records according to section 99-01.3-03-06;
 - b. Drop box cash and values of fill and credit slips;
 - c. Daily surveillance review log;
 - d. Wheel operator percent-of-hold information ~~and daily review log~~ must be retained for one year from the end of the quarter of the activity;
 - ~~e.~~ e. Inventory records according to subsection 5 of section 99-01.3-03-09; ~~and~~
 - f. An organization using a combined cash bank for twenty-one and paddlewheel at a site, shall document the allocation of cash profit on a monthly basis to each game type based on the ratio of the game type's adjusted gross proceeds to the total adjusted gross proceeds of both game types; and
 - ~~e.~~ g. The count and reconciliation of casino and betting chips according to subsection 6 of section 99-01.3-03-09.
3. For all paddlewheel activity:
- a. A summary of gross proceeds, prizes, adjusted gross proceeds, cash profit, cash long or short, and bank deposit. The summaries of all paddlewheel activity for a quarter must reconcile to the tax return;
 - b. The cash profit defined in subdivisions ~~h j~~ and ~~k l~~ of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10;
 - c. ~~Inventory~~ Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09; and
 - d. The count and reconciliation of cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-12

99-01.3-12-02. Use and requirements of an organization.

1. An A licensed organization may operate a pull tab dispensing device when the organization's employee is on duty and may have a bar employee redeem a winning pull tab when the organization's employee is or is not on duty.
2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. An organization shall disclose or make these rules available to players:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both; and
 - e. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
 - a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
 - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a record check on the employee; and
 - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and

secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.

5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem a winning pull tab. A loan and any increase in the loan must be made by check payable to the bar and be interest free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting pull tabs at a site through a device. When the bar repays the loan, the organization shall deposit the funds in its gaming account and the deposit slip or receipt must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.
10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and pull tab ~~or bingo card~~ accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a game is closed:
 - a. The game must be reported on a tax return for the site at which it was closed;

- b. An employee shall buy back all remaining redeemed winning pull tabs from a bar; and
 - c. If the game has unsold pull tabs, these cannot be put back into play.
13. An organization or employee may not:
- a. Modify the assembly or operational functions of a device;
 - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
 - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A game must be conducted and played through a device as follows:
- a. ~~Except for a game serial number and color of the pull tabs, the~~ The deals must be identical, except for a game serial number and color of the pull tabs;
 - b. An employee shall securely attach a master flare to the interior or exterior of a device, or on an adjacent wall, so the flare's information is visible to players. When a deal is added, the deal's flare may be retained in a device or at an organization's office;
 - c. An employee shall place at least one complete and one-third to one-half of a second deal in a device at the same time at the start of a game. The remaining pull tabs of any partial deal must be stored onsite and added to the game before any additional deals may be added. If during the quarter a deal is added to a game and the complete deal's tickets will not fit in a device, any remaining pull tabs of the partial deal must be stored onsite and added to the game before any additional deals may be added;
 - d. ~~If a device does not have a tray, at~~ At the start of a game the pull tabs must be randomly placed in all the stacking columns. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by randomly mixing these pull tabs with the pull tabs in the device;
 - e. ~~If a device has a tray, at the start of a game the pull tabs from one deal must be placed in two stacking columns and at least one-third to one-half of the pull tabs from a second deal must be placed in~~

~~two other stacking columns until full. Next, any leftover pull tabs from the first deal must be placed in any remaining empty column. Then, the pull tabs in the columns must be evened out. To add pull tabs to a game, an employee shall first add any remaining pull tabs of a deal previously partially placed in the device or pull tabs of a new deal by taking the unsold pull tabs from all, except two, of the columns and placing them on top of the unsold pull tabs of those two columns. Next, the employee shall place any overflow of unsold pull tabs and the partial or new deal's pull tabs in the empty columns until full and then place leftover pull tabs in those two other columns. Then, the pull tabs in the columns must be evened out;~~

- f. If a deal is to be added to a game and an organization does not have a deal to add, the organization shall temporarily suspend the game until it procures a deal. However, if the organization is unable to procure a deal from the distributors and all the top tier winning pull tabs have been redeemed, it may close the game;
- ~~g.~~ f. If a site's total gross proceeds of pull tabs averages twelve thousand five hundred dollars or less per quarter or if a site has not previously had gaming, a game may be closed anytime if all top tier winning pull tabs have been redeemed;
- ~~h.~~ g. Except as provided by subdivision i h, if a site's total gross proceeds of pull tabs averages more than twelve thousand five hundred dollars per quarter, no game may be closed unless an organization discontinues gaming at the site, or all the top tier winning pull tabs have been redeemed and:
 - (1) Fifty deals have been added to a game;
 - (2) A game's actual gross proceeds are twenty-five thousand dollars; or
 - (3) A game has been in play for twenty-five consecutive calendar days;
- i. h. An organization shall close a game by the end of a quarter. If all top tier winning pull tabs have been redeemed or low-level switches in all but two columns of a device have been triggered, an organization may close a game for the quarter within fourteen calendar days before the end of that quarter. An organization may start a new game for the next quarter within fourteen calendar days before the next quarter begins. However, an organization may not start a new game and end that game within this fourteen-calendar-day period. When a game is being closed, an employee shall post a sign stating that the game is being sold out;

- j. i. If the percent-of-accuracy of all the games involving a device for a site for the previous quarter was less than ninety-eight and one-half percent, and a cash shortage of more than one hundred dollars, an employee who did not conduct the game shall do a weekly interim audit of the games at the site for up to twelve continuous weeks or until the organization determines, resolves, and documents the cause. One of the weekly interim audits may be the audit required by subsection 7 of section 99-01.3-03-10. An organization shall start the weekly audits no later than the date on which its tax return for the quarter was filed with the attorney general. However, if games involving a device are conducted without a bar employee redeeming a winning pull tab, pull tab games not involving a device are also conducted, and the combined percent-of-accuracy of all pull tab games at the site for the previous quarter was ninety-eight and one-half percent or greater, no weekly interim audit is required. Percent-of-accuracy is computed as cash profit divided by adjusted gross proceeds; and
 - k. j. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a game or transfer the game to a device at another site. If a game is in the process of being conducted through a device, an organization may not transfer the game to a jar bar.
15. Two or more organizations may use devices at the same site on different days of the week provided the organizations use different names of games in the devices and the bar uses separate cash banks.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-03. Requirements of a bar.

1. A bar shall:
 - a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
 - b. Prohibit a person from tampering or interfering with the operation or play of a device;
 - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed, a bar employee or an employee is available to redeem a winning pull tab and a bar has cash on hand to redeem a winning pull tab;

- d. Absorb a loss related to a counterfeited or lost pull tab, redeemed pull tab that was not bought at the site, and loss or theft of the temporary loan of funds;
 - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting pull tabs through a device at a site;
 - f. If a malfunction of a device is known by the bar or its employee, turn the device off and promptly notify the organization. Otherwise, the bar or its employee is responsible for any cash shortage; and
 - g. Use an organization's loan of money only to redeem a winning pull tab. If the bar violates this rule, the attorney general may suspend any or all games at the site for up to six months.
2. ~~Except to withdraw currency or a drop box according to subsection 4 of section 99-01.3-12-02, a~~ A bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of a device for any reason, except to withdraw currency or a drop box according to subsection 4 of section 99-01.3-12-02.
 3. If a bar employee believes that a deal is defective or there is a problem with a redeemed pull tab, the bar employee shall contact an organization and may turn a device off.
 4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.
 5. Only a bar employee who is authorized by a bar may redeem a winning pull tab.
 6. A bar employee may not summarize or audit a game of pull tabs for an organization.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-04. Requirements of a bar and an organization.

1. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed. Tickets redeemed for credit must be defaced by an employee of the organization at the time of

the interim period site visit. If a pull tab has two or more winning prize patterns, a winning number or symbol of at least one pattern must be defaced.

2. A bar employee or an employee may not:
 - a. Assist a player in opening a pull tab except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial numbers of the deals in the game;
 - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
 - d. Publicly display a redeemed pull tab;
 - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;
 - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
 - g. Reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect or has an incorrect posting of information described by subsection 7, unless the attorney general approves.
3. A prize must be cash. There may be no last sale prize.
4. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement. If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.
5. A bar employee and an employee shall document and attest to the number and value of redeemed winning pull tabs, by value and in total, that are exchanged for cash or check. These pull tabs must be grouped, banded, and retained separate from other pull tabs that an organization

employee may have redeemed, and separate from those redeemed through a credit redemption device, by interim period.

6. An organization shall provide a bar employee and a bar shall maintain a current copy of subsection 9 7 of section 99-01.3-02-03 and sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, 99-01.3-12-03, and 99-01.3-12-04 regarding the bar employee's and bar's duties and restrictions.
7. A bar employee or an employee may post the information referenced by subdivision a or b, or both, provided that an organization does not have a partial deal that is to be added to a device. An organization shall post a statement that the information is correct to the best of the organization's knowledge and that the information is not guaranteed to be accurate. If an organization does not have a policy on when to stop posting this information when a game is being closed, it shall stop posting the information when there are less than six winning pull tabs, through a level of prize value determined by the organization, that remain unredeemed. Posted information may be the information described in subdivision a or b, or both:
 - a. The minimum number of unredeemed winning pull tabs or a range of numbers of unredeemed winning pull tabs, through a level of prize value determined by an organization, that will always be in a game unless the game is being closed. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern.
 - b. The number or unredeemed winning pull tabs, through a level of prize value determined by an organization, that remain in a game. This information may be for each prize value or the total of several prize values. The level of prize value must be posted. If a pull tab has two or more winning prize patterns, the information must be based on the value of each prize pattern. The information must be continually updated.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12-05. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs for a game and be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
2. The deal's game information sheet and flare with the state gaming stamp affixed;
3. A record of game serial numbers for each game;
4. Record of win according to section 99-01.3-03-08;
5. Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid;
6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, and prizes redeemed by prize value, total prizes, credits paid, and cash long or short, and number of redeemed top tier pull tabs by game serial number;
7. Interim period site summary, including meter readings, test vends, gaming stamp number and game serial number of a deal added to a device, currency withdrawn, redeemed prizes by denomination obtained from a bar, total prizes, total prizes credited through the device if applicable, information on top tier winners redeemed by game serial number, credit redemption register refunds, cash profit or loss, and bank deposit;
8. A summary that includes the following:
 - a. Number of redeemed top tier pull tabs by game stamp and serial number, cumulative cash profit (loss), bank deposits, and prizes;
 - b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
 - c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, prizes, adjusted gross proceeds, cash profit, and cash long (short). The summaries of all games for a quarter must reconcile to the tax return;
9. Inventory records according to ~~subsections~~ subsection 1 and 4 of section 99-01.3-03-09;
10. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09;

11. Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee;
12. Interim period audit records according to subdivision i of subsection 14 of section 99-01.3-12-02;
- ~~44.~~ 13. The cash profit defined in subdivision d of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10; and
- ~~42.~~ 14. The count and reconciliation of deals and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-12.1
PRIZE BOARD DISPENSING DEVICES

Section

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99-01.3-12.1-01. Definition. This chapter applies to a licensed organization that conducts prize boards involving a dispensing device. The maximum price per chance is two dollars. The value of a seal prize or a column sold out indicator may exceed the value of the top tier prize.

For purposes of this chapter, "prize board dispensing device" means a board used with pull tabs dispensed from a device to award cash or merchandise prizes. Coins of various values may be affixed to the board and, under each coin, a cash prize value preprinted on the board. A board may contain numbered lines and a seal covering a winning number. A player having a pull tab with a number matching a predesignated number on a board for a seal prize signs the player's full name on the numbered line or supplemental sheet. However, if a number or symbol matches a winning number or symbol assigned to a specific coin or minor prize, the player wins that coin or prize, and a cash prize value stated under the coin. A column sold out indicator may be awarded. The column sold out indicator is an additional prize, which must be described on the flare, and is used to assist organizations in selling out pull tabs. Pull tabs with a column sold out indicator need to be distinctly marked as the last pull tab in each column and must contain the initials and date of the organization employee putting the column sold out indicator on the pull tab and upon redemption must include the signature of the winning player and date that the pull tab was redeemed. When the board is closed, a seal is removed to reveal the winning line number. A player whose signature is on that line wins the seal prize. No board may be closed unless all the top tier winning pull tabs have been redeemed, all the pull tabs are sold, all the seals have been opened, or the board has been conducted for ninety calendar days. An organization is responsible for ensuring that a description and retail price of a merchandise prize or cash prize to be awarded and cost per play are on a flare. The maximum number of pull tabs in a deal is two thousand. The maximum cash prize, total of all column sold out indicators, or seal prize, including the retail price of a merchandise prize, is five hundred dollars.

History: Effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12.1-02. Use and requirements of an organization.

1. An organization may operate a prize board dispensing device when the organization's employee is on duty and may have an authorized bar

employee redeem a winning pull tab and pay a cash or merchandise prize when the organization's employee is or is not on duty.

2. If a distributor's or manufacturer's security seal is broken on a deal's container before the deal is used, an organization shall return the deal to the distributor.
3. An organization shall disclose or make these rules available to players:
 - a. Restricting access to or delaying using credits on a device is prohibited;
 - b. A winning pull tab must be redeemed within fifteen minutes;
 - c. A pull tab cannot be redeemed if it has been taken from the gaming area;
 - d. If a person knowingly solicits, provides, or receives any inside information, by any person, by any means, or knowingly uses a fraudulent scheme or technique to cheat or skim involving pull tabs, regardless of the amount gained, the offense is a class C felony punishable by a five thousand dollar fine or five years in jail or both;
 - e. To the best of the organization's knowledge, a prize remaining on a board relates to a winning pull tab that has not been bought; and
 - f. If a player attempts to falsify or falsifies a record of win, the prize is forfeited.
4. An organization shall maintain custody of all keys to a device. However, an organization may provide an authorized employee of a bar with a key to the cash compartment to withdraw currency or a drop box if:
 - a. A device's cash compartment is separate from its pull tab and accounting meter compartments. However, if access to a device's accounting meters is controlled by a security code, the cash and accounting meters may be in the same compartment;
 - b. The organization authorizes a specific employee of a bar to withdraw cash and complies with section 99-01.3-02-02 regarding a criminal history record check on the employee; and
 - c. If a drop box is not used, an authorized employee of a bar shall count the cash, record the amount, sign and date the record, and secure the cash and record in a keyless locking bank bag. If a drop box is used, an organization may not provide the authorized employee of a bar the key to access the contents of the drop box.

5. An organization shall withdraw currency from a device within a seven-calendar-day interim period.
6. An organization shall use the current recordkeeping system unless approval is obtained from the attorney general for use of another system.
7. An organization shall have a rental agreement conforming to section 99-01.3-02-06.
8. An organization shall maintain an access log prescribed by the attorney general. A person who accesses a device for any reason shall record the access and initial the log. When a person does a test vend which affects the accounting meters or a test validation of currency, the person shall record the value of pull tabs and currency validated. An organization shall retain the log in a device during the quarter of activity.
9. An organization may provide a bar with a temporary loan to enable a bar employee to redeem winning pull tabs and pay prize board cash prizes. The loan and any increase must be made by check payable to the bar and be interest-free. An organization may not access, count, or take custody of the loaned money. The duration of the loan must be until an organization discontinues conducting prize boards at a site through a device. An organization may also supply the bar with a separate temporary loan equal to the total amount of cash prizes on a prize board. If a separate temporary loan is used, all remaining cash from unredeemed winning pull tabs and the redeemed winning pull tabs must be returned to the organization following final distribution of the seal prize. When the bar repays any loan, the organization shall deposit the funds in its gaming account and the deposit slip or receipt must reference the site, source of funds, and amount. The amount reimbursed to a bar must equal the value of redeemed winning pull tabs which the bar provides an organization. An organization employee may not use a bar's cash on hand for redeeming a winning pull tab.
10. An organization may not provide an independent service technician a key to access a device regardless if the device is leased.
11. If a theft of currency occurs, an organization shall record the currency and pull tab accounting meters or print a cash withdrawal report and audit the game. The organization shall provide a copy of all of this information to a local law enforcement agency and the attorney general.
12. When a prize board is closed:
 - a. The prize board must be reported on a tax return for the site at which it was closed;

- b. An employee shall buy back all remaining redeemed winning pull tabs from a bar;
 - c. If the game has unsold pull tabs, these cannot be put back into play;
or
 - d. If a coin is not awarded, an organization shall determine the prizes to report on a tax return by prorating the total cost of the coins, according to their face value, of the coins that were awarded to the total face value of all the coins. An organization may use an unawarded prize in another game, sell the prize, or deposit the coin in the gaming account.
13. An organization or employee may not:
- a. Modify the assembly or operational functions of a device;
 - b. Use or continue to conduct a deal of pull tabs after being notified by a distributor of a ban or recall of the deal;
 - c. Designate a pull tab to entitle a player who buys it with a prize provided by a bar or distributor; or
 - d. Intentionally test vend currency or pull tabs to synchronize nonresettable accounting meters.
14. A prize board dispensing device must be conducted and played as follows:
- a. An employee shall place all pull tabs from a deal evenly among the columns used.
 - b. An organization may transfer a device from a site to another site or rotate a device among sites. If an organization discontinues gaming at a site, it may close a prize board or transfer the prize board to a device at another site. If a prize board is in the process of being conducted through a device, an organization may not transfer the prize board to a jar bar.

History: Effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12.1-03. Requirements of a bar.

1. A bar shall:

- a. Place a device in a location where alcoholic beverages are dispensed and consumed and where a bar employee will regularly observe the device;
 - b. Prohibit a person from tampering or interfering with the operation or play of a device;
 - c. Have the electrical current to a device turned off unless alcoholic beverages may be dispensed, a bar employee or an employee is available to redeem a winning pull tab, and a bar has cash on hand to redeem a winning pull tab or cash seal prize;
 - d. Absorb a loss related to a counterfeited or lost pull tab, redeemed pull tab that was not bought at the site, and loss or theft of the temporary loan of fund;
 - e. Repay an organization's temporary loan of funds within fourteen days of when the organization discontinues conducting prize boards through a device at a site;
 - f. If a malfunction of a device is known by the bar or its employee, turn the device off and promptly notify the organization. Otherwise, the bar or its employee is responsible for any cash shortage; and
 - g. Use an organization's loan of money only to redeem a winning pull tab or cash seal prize. If the bar violates this rule, the attorney general may suspend any or all games at the site for up to six months.
2. A bar employee may not access, attempt to access, or permit a person, other than an employee of an organization, to access the interior of a device for any reason, except to withdraw currency or a drop box according to subsection 4 of section 99-01.3-12.1-02.
 3. If a bar employee believes that a deal is defective or there is a problem with a redeemed pull tab, the bar employee shall contact an organization and may turn a device off.
 4. A bar may accept or not accept a gaming-related check from a player. A player's check must be payable to a bar. A bar is responsible for a player's check returned by a financial institution as uncollectible. A bar may allow a player to buy back the player's check with cash and may return a player's check to the player as part of a prize payout.
 5. Only a bar employee who is authorized by a bar may redeem a winning pull tab or pay a cash or merchandise prize.

6. A bar employee may not summarize or audit a prize board for an organization.

History: Effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12.1-04. Requirements of a bar and an organization.

1. A bar or organization employee may pay a winning player a cash or merchandise prize won on a prize board.
2. A bar employee or an employee shall deface a winning number or symbol of a pull tab when it is redeemed.
3. A bar or organization employee must display the prize board while the board is in play.
4. A bar employee or an employee may not:
 - a. Assist a player in opening a pull tab except to assist a disabled player;
 - b. Knowingly pay a prize to a player who is redeeming a pull tab that has been defaced, tampered with, counterfeited, or has a game serial number different from the serial number of the deal in play;
 - c. Knowingly pay a prize to a player who is redeeming a pull tab when the player with the pull tab has left the gaming area of a site;
 - d. Publicly display a redeemed pull tab;
 - e. Knowingly pay a prize for a pull tab after fifteen minutes has elapsed since it was bought. If a player attempts to redeem a pull tab after the allowed time limit, a bar employee or an employee shall, if possible, retain and void the pull tab;
 - f. Pay, from gaming funds or any other source, a prize to a player unless the player redeems an actual winning pull tab that has a game serial number from a game conducted at the site; or
 - g. Reimburse, from any source of funds, an amount to a player for play of a game that has a manufacturing defect, unless the attorney general approves.
5. If a device malfunctions, is inoperable, and a player has a credit, a bar employee or an employee shall pay the player for the player's unplayed credits and record the refund on a credit redemption register. A bar shall provide this form to an organization to claim a reimbursement.

If a player's currency jams in a currency validator and a device does not show a credit, a bar employee may not reimburse a player, and shall record the jam on a credit redemption register and notify an organization. If an organization determines that a device is cash long, the organization shall reimburse a player by cash or check.

6. A bar employee and an employee shall document and attest to the total cash prizes of redeemed winning pull tabs that are exchanged for cash or check. These pull tabs must be grouped, banded, and retained separate from other pull tabs that an organization employee may have redeemed and separately from any other dispensing device pull tabs redeemed at the site.
7. An organization shall provide a bar employee, and a bar shall maintain, a current copy of subsection 7 of section 99-01.3-02-03, sections 99-01.3-02-05, 99-01.3-02-09, 99-01.3-03-08, and 99-01.3-12.1-03, and this section regarding the bar employee's and bar's duties and restrictions.
8. When applicable, a bar employee or an employee shall provide a prize board or a numbered line sheet to a player to sign on a winning number line. Only one player's name may be signed on a specific line. When all tickets from a prize board have been sold, a bar employee or an employee may remove the seal revealing the winning prize number, obtain the winner's information for a record of win form, and award the prize to the winning player. If the bar employee cannot locate the winning player, the employee shall contact the organization.

History: Effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

99-01.3-12.1-05. Recordkeeping. Records must include and be retained for three years from the end of the quarter in which the activity was reported, unless otherwise provided by rule:

1. All redeemed and unsold pull tabs for a game, including column sold out indicators, and these must be retained as documentation for gross proceeds and prizes for one year from the end of the quarter in which the activity was reported on a tax return;
2. The deal's game information sheet, flare with the state gaming stamp affixed, and supplemental sign-up sheet if applicable;
3. Purchase invoice or receipt documenting the cost of merchandise prizes;
4. Record of win according to section 99-01.3-03-08;

5. Credit redemption register, including the date, amount, if credits were still on the device, player's name and signature, signature or initials of person who paid the player, bar reimbursement information if applicable, and date paid;
6. If an employee redeems winning pull tabs at a site, a daily employee report documenting the starting and ending cash on hand, IOU records according to section 99-01.3-03-06, change in cash bank, total cash prizes, credits paid, and cash long or short;
7. Interim period site summary, including gaming stamp number and game serial number, date placed and date removed, meter readings, test vends, currency withdrawn, total cash prizes redeemed by bar and organization employees, credit redemption register refunds, cash profit or loss, and bank deposit;
8. A summary that includes the following:
 - a. Cumulative cash profit, bank deposits, and prizes;
 - b. Reconciliation of nonresettable meters for currency and the number of pull tabs dispensed to the currency in the device and to the value of the pull tabs dispensed; and
 - c. Ideal gross proceeds, value of unsold pull tabs, gross proceeds, total cash prizes, total prizes paid by check, cost of coins, total prizes, adjusted gross proceeds, cash profit, and cash long or short. The summaries of all prize boards for a quarter must reconcile to the tax return;
9. Inventory records according to subsection 1 of section 99-01.3-03-09;
10. Ideal cash bank master records according to subsection 4 of section 99-01.3-03-09;
11. Access log, including the date, time, nonresettable currency meter reading, reason for entry, and initials of the employee;
12. The cash profit defined in subdivision g of subsection 6 of section 99-01.3-02-01, verification of the amount deposited according to a bank statement, and an audit of the game's activity according to section 99-01.3-03-10; and
13. The count and reconciliation of deals and cash banks according to subsection 6 of section 99-01.3-03-09.

History: Effective July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-06

**CHAPTER 99-01.3-13
BINGO CARD DISPENSING DEVICES**

[Repealed effective July 1, 2010]

CHAPTER 99-01.3-14

99-01.3-14-01. Restrictions and requirements.

1. An organization may not accept, and a recipient or potential recipient of net proceeds may not give or offer to give, a payment, gift, service, loan, personal or real property, or other thing of material value, for disbursing or receiving net proceeds. However, a recipient or potential recipient of net proceeds that is an organization or group of people may initiate and transact a formal agreement with a donor organization to voluntarily provide a gaming or nongaming related service to the donor organization in exchange for receiving net proceeds; provided, the agreement is first approved by the attorney general or complies with guidelines prescribed by the attorney general. If the attorney general approves the service, the donor organization shall document the service by recording the location, names of volunteers, description of service, number of hours volunteered, and value of the service based on a reasonable hourly rate. The donor organization shall offset the value of these services against the amount of net proceeds disbursed to the recipient during a quarter by reporting the value of these services as an adjustment on a tax return.
2. A disbursement of net proceeds must be specific as to recipient and use. After an organization disburses net proceeds, it may not interfere with a recipient's control of the funds or attempt to own or influence the use or sale of personal or real property bought by or for a recipient of the funds.
3. Use of net proceeds for economic development or tourism programs may not directly benefit a member, employee, or board of directors' member of a donor or donee organization nor may this person have a financial interest in a funded economic development or tourism program.
4. No private athletic, social, hobby, trade, business, professional, or similar clubs or associations may receive net proceeds, unless the use of the funds complies with subsection 2 of North Dakota Century Code section 53-06.1-11.1 or section 99-01.3-14-02. An expense related directly or indirectly with gaming is not an eligible use.
5. Restrictions on fundraising activities are:
 - a. An organization or recipient may not use net proceeds for a fundraising activity that relates directly to the conduct of gaming, including purchase of equipment or consumable goods for a cafe for a site or for direct or indirect expenses and capital costs for a retail business involving material unrelated business income;

to a program or service that qualifies as an eligible use and which is supported directly by the organization.

10. If an organization conducts or enables a nonprofit corporation, community or school club, or other similar entity to conduct a fundraising event at the organization's facility, the organization may not exchange the gross or net receipts of the fundraising event for net proceeds.
11. An organization may not disburse net proceeds to a recipient on the condition that the recipient hold a meal or banquet at the donor's facility.
12. No disbursement of net proceeds can be used partly for services or fees that do not qualify as an eligible use. No disbursement of net proceeds to a recipient can be designed to circumvent the allowable expense limits.
13. If an organization is involved in any of the following types of transactions, it shall deposit the net proceeds or income directly into its trust account or, if it is exempt from having a trust account, deposit the net proceeds or income in its gaming account, and make a proper adjustment on a tax return:
 - a. The organization receives net proceeds from another organization and the net proceeds have been designated for a specific eligible use which the recipient has paid for or will pay for with net proceeds, or the net proceeds have not been designated for a specific eligible use;
 - b. The organization loans net proceeds and receives interest or repayment of principal, or both; or
 - c. A recipient returns net proceeds to or reimburses the organization; or
 - d. The organization disburses net proceeds, which qualify as an eligible use, and receives back funds that are directly associated with the disbursements or receives back income that is directly derived from the disbursement of the net proceeds.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-11

CHAPTER 99-01.3-15

99-01.3-15-01. License. ~~Except as provided by subsection 1 of section 99-01.3-02-04,~~ a A person may not sell, lease, solicit business, or provide gaming equipment to a licensed organization, distributor, or organization that has a permit without a license, except as provided by subsection 1 of section 99-01.3-02-04. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. A license must be displayed at the business office.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-15-02. Restrictions and requirements.

1. A licensed organization, organization that has a permit, or licensed manufacturer may not be a distributor. A person who is an officer, manager, gaming manager, or member of a governing board of a licensed organization or organization that has a permit may not be an officer, director, shareholder, proprietor, independent contractor, consultant, or employee of a distributor, nor have a financial interest in that distributor. A person having a financial interest in a distributor may not be a lessor of a site to an organization that is an active customer of that distributor. A change in ownership of a distributor must be immediately reported to the attorney general.
2. A distributor shall have an office in North Dakota where records must be kept.
3. An officer, director, shareholder, agent, or employee of a distributor may not:
 - a. Play a game of pull tabs, club special, tip board, prize board, seal board, sports-pool board, or punchboard at any site, or provide bookkeeping services, including summarizing or auditing games, to an organization; or
 - b. Interfere with or attempt to influence a lessor's relationship with an organization involving a lease agreement, interfere with or attempt to influence an organization's management, employment practices, policy, gaming operation, disbursement of net proceeds, or procure a site for an organization. A distributor may notify an organization of an available site.
4. A distributor may not have an expressed or implied agreement with another distributor to restrict the sales of either of them to a specific geographic area or organization.

5. A distributor may not sell or provide a drop box unless it is a double-locking removable metal container and has:
 - a. One lock that secures a drop box to the underside of a table, and one or two separate locks that secure the contents placed into the drop box. The key to each of the locks must be different; and
 - b. A slot opening through which currency and forms can be inserted into a drop box. The slot of a drop box may not exceed three and one-half inches [88.90 millimeters] in length and one-half inch [38.10 millimeters] in width. Inside a drop box there must be a spring-loaded mechanism that automatically closes and locks the slot opening when the drop box is removed from a table.
6. A distributor may not sell or provide twenty-one and paddlewheel (betting and casino) chips to an organization if those chips are identical in physical characteristic to chips previously sold or provided by that distributor to a different organization.
7. A distributor may not give a gift, trip, prize, or other gratuity valued singly or in the aggregate in excess of one hundred dollars per employee per calendar year related to a licensed organization or organization that has a permit. A distributor may not loan money (excluding credit) to a licensed organization or organization that has a permit, or to an employee of such an organization.
8. An employee of a distributor who is an owner or salesperson shall, within thirty days of starting business or employment, request training from the attorney general. The training must include the gaming law, rules, and recordkeeping. An employee shall read and acknowledge in writing, within thirty days of employment and the effective date of new gaming laws or rules, that the person has read and understands the provisions of the gaming law and rules which relate to the person's job duties. The attorney general shall designate the provisions to be read. The acknowledgment must be dated, reference the provisions, and be part of the person's personnel file.
9. A distributor may not share an office or warehouse facility with an organization.
10. A distributor shall file a copy of each sales invoice related to a licensed organization and record of voided gaming stamps with the attorney general by the fifth business day following the month of the transaction.
11. A distributor may not buy or be provided gaming equipment from an affiliated company unless the company is a wholly owned subsidiary of the distributor. An affiliated company must have originally bought the equipment directly from a licensed manufacturer.

12. A distributor may not buy or be provided gaming equipment from an out-of-state distributor unless the out-of-state distributor has the manufacturer ship the equipment directly to the licensed distributor and the manufacturer is licensed.
13. A distributor may not knowingly possess, display, sell, or provide an organization a deal of pull tabs ~~or bingo cards~~, club special, tip board, prize board, or punchboard that:
 - a. Does not conform to the quality standards of ~~section~~ sections 99-01.3-16-04, and 99-01.3-16-05, ~~or 99-01.3-16-06~~;
 - b. Has a manufacturer's or distributor's seal broken on the manufacturer's container or has been prohibited by the attorney general from sale or play within North Dakota; or
 - c. Contains pull tabs or punches that have winner protection features although they are not winning pull tabs or punches.
14. A distributor may not temporarily store any game that has a state gaming stamp affixed to its flare which has been sold. A sale occurs when a distributor issues a sales invoice. If a distributor sells or provides gaming equipment to another distributor, the distributor shall ship the equipment directly to the other distributor's address.
15. A distributor shall direct a manufacturer to ship gaming equipment directly to the distributor and the distributor shall have it unloaded at its warehouse. However, if a distributor buys equipment from a manufacturer for sale to another distributor or buys a flashboard, blower, jar bar, paddlewheel, or twenty-one, poker, or paddlewheel table for sale to an organization, the distributor may direct the manufacturer to ship the equipment directly to the other distributor or organization, including the organization's site.
16. A distributor may not separate a paper bingo card when there are two or more faces on a sheet.
17. A distributor may not:
 - a. Sell or provide a dispensing device or bingo card marking device to an organization unless a model of the device has first been approved by the attorney general;
 - b. Modify an approved dispensing device model or electronic currency validator unless authorized by the attorney general; or
 - c. Rent a dispensing device to an organization unless the rent is for a fixed dollar rate per month or other duration. For a bingo card marking device, a distributor may rent a bingo card marking device

to an organization for a fixed dollar rate per month or other duration, or for a percentage or fixed dollar amount of rental income derived from a player who uses the device. Rent may not be based on gross proceeds of bingo. If a distributor rents a bingo card marking device to an organization, the distributor may have a manufacturer, on behalf of the distributor, issue an invoice to an organization; however, the organization shall remit all rent payments directly to the distributor.

18. A distributor may arrange for an organization to acquire a dispensing device through a financing lease purchase agreement with a finance or lease company. Although an organization is deemed to own a device, a finance or lease company may have a security interest or ownership right in the device until the organization satisfies the lease.
19. If a distributor is an agent for another distributor in marketing a dispensing device, the agent is not required to complete a sales invoice. A distributor is an agent if it receives a commission and does not finance or take temporary possession or title to the device.
20. A distributor that sells or provides a new or used dispensing device to an organization or distributor, other than as an agent, or merely transacts a transfer of a device, for or without a fee, between two organizations, shall do the following unless that distributor contracts with another distributor to comply with this rule on its behalf:
 - a. Maintain an adequate inventory of electronic and mechanical parts in North Dakota, provide maintenance service, and provide technical assistance and training in the service and repair of a device;
 - b. Make available, upon request, electrical and mechanical parts to all other licensed distributors at the usual price for such parts; and
 - c. Notify the attorney general of any recurring electronic or mechanical malfunction of a device model.
21. A distributor that resells, transacts a transfer, rents, or provides a used dispensing device to an organization shall change or arrange to have changed all the keyed locks on the device.
22. A distributor that sells or provides a dispensing device to an organization shall record this information on a sales invoice:
 - a. Name, address, and license number of an organization and name and location, if known, of the site where the device will be placed; and
 - b. Name of device and its serial number.

23. A distributor shall initially set up a dispensing device at a site and conduct and document one training session on the operation and service of the device for an employee of an organization that acquires a device for the first time.
24. A service technician may not access a dispensing device unless accompanied by an organization employee.
25. A distributor may not possess, in inventory, a processing chip encoded with proprietary software that was duplicated by the distributor for a dispensing device usable in North Dakota.
26. A distributor may not sell or provide new video surveillance equipment or install video surveillance equipment for an organization unless the distributor is a regular an approved vendor of this the equipment or is approved by the attorney general.
27. If a distributor receives an administrative or criminal complaint or a citation from another state, it shall notify the attorney general in writing within thirty days of the date of the complaint or citation.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-15-03. Inventory records and reconciliation.

1. A distributor shall maintain a quantity-based perpetual inventory system for deals of pull tabs ~~and bingo cards~~ used in a dispensing device, club specials, tip boards, prize boards, and punchboards that are bought or received from any source. A system must account for the sale or disposition of each item. The system must separately account for the quantity of items acquired, sold, and remaining in inventory by:
 - a. Name of manufacturer or other source, and purchase invoice number and date;
 - b. Name of game and manufacturer's game form number, excluding deals of jar tickets; and
 - c. Distributor's sales invoice number and date.
2. A distributor shall maintain a quantity-based perpetual inventory system for paper bingo cards that are bought or received from any source. A system must account for the sale and disposition of each card. The system must separately account for the quantity of cards acquired, sold, and remaining in inventory by:

- a. Name of manufacturer or source, and supplier's sales invoice number and date;
 - b. Type of card or booklet;
 - c. Primary color of card;
 - d. Size of the series;
 - e. Quantity received; and
 - f. Distributor's sales invoice number and date.
3. A distributor shall semiannually reconcile its inventory of deals of pull tabs ~~and bingo cards~~ used in a dispensing device, paper bingo cards, club specials, prize boards, tip boards, and punchboards that are recorded as being in inventory to these items that are actually in inventory. A person shall count these items in inventory, compare this count to the inventory records, and resolve any difference. The count must be done by a person who is not primarily responsible for safeguarding the physical inventory. A reconciliation must be documented, including the name and title of the person who does the reconciliation, date performed, result, corrective action taken, and initials of that person.

History: Effective May 1, 1998; amended effective July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-15-06. Distribution of gaming equipment.

1. A manufacturer's game serial number must be on a paddlewheel ticket described by subsection 1 of section 99-01.3-11-01, pull tabs, prize board, club special, seal board, tip board, sports-pool board, ~~bingo cards used in a dispensing device,~~ and calcutta board. No game serial number may be special ordered. A game serial number must be preprinted on a paddlewheel ticket card. If a game serial number is not preprinted on a seal board, prize board, sports-pool board, or calcutta board, a distributor shall assign and electronically or mechanically imprint it on the board. No serial number may be repeated within three years.
2. For a deal of pull tabs, ~~deal of bingo cards used in a dispensing device,~~ and jar ticket game, a distributor may open a manufacturer's cellophane shrink wrap to access a flare. A distributor shall affix a state gaming stamp on the front of the original flare, or a legible copy of the flare, of a deal of pull tabs ~~and bingo cards~~, club special, tip board, series of paddlewheel ticket cards, and on a punchboard, sports-pool board, seal board, prize board, and calcutta board that is sold or provided to a

customer. ~~If a case of bingo cards that is used in a dispensing device consists of two or more containers, each container is a separate deal, regardless of whether the game serial number is the same.~~ A gaming stamp must be affixed in North Dakota. A distributor shall legibly write a manufacturer's game serial number in ink on the stamp. If the written number is incorrect, the number cannot be changed or erased and the stamp must be voided. For a series of paddlewheel ticket cards, the game serial number written must be the lowest numbered paddlewheel ticket card. Then, a distributor shall replace, if applicable, a flare inside the cellophane shrink wrap and seal the opening. This rule does not apply to gaming equipment provided directly to an organization that has a permit, Indian tribe, United States military, out-of-state purchaser, or another licensed distributor.

3. If a manufacturer's security seal on a container is inadvertently broken but the integrity of a deal remains intact, a distributor may reseal the deal with an adhesive security seal identifying the distributor. The seal must be applied to all accessible sides of a container and ensure that a deal is secure. A distributor shall indicate on a sales invoice that the deal was resealed by the distributor and the reason.
4. A distributor shall provide a flare with a deal of pull tabs or jar tickets and series of paddlewheel ticket cards. The master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's numbers and symbols printed in matching colors. A flare, including a master flare, must indicate the name of the game, manufacturer's form number (~~excluding a flare for a deal of jar tickets~~), cost per play, and value and number of winning prizes. The front of a flare for a deal of jar tickets must indicate the number of jar tickets in the deal. The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and winning number or symbol. A symbol must be pictured on a flare, not described. A flare, including a master flare, may not display combinations of winning pull tabs, unless the phrase "prizes above are combinations of single prizes listed below" or a similar phrase is used and additional statements such as "multiple winners may not appear exactly as shown" or "may contain multiple winners", may be used in conjunction with this phrase. A last sale prize must be printed on a flare or be indicated by a permanently affixed sticker. The flare or sticker must contain the last sale feature, prize value, and distributor's name or license number. A distributor may not alter a flare except to add a last sale feature to a manufacturer's flare for a deal of pull tabs. A distributor may make a flare for a deal of jar tickets. This information must be mechanically or electronically printed on a flare.
5. ~~A distributor shall provide an organization with an adequate supply of bingo prize flares for use with a bingo card dispensing device.~~

- 6- A distributor may not sell or provide a multiple line or multiple square sports-pool board to a customer unless a special opaque tape covers the numbers on the board. If a tape is disturbed, any recovering of the numbers must be detectable. A tape must prevent the concealed numbers from being viewed from the outside when using a high-intensity lamp.
- 7- 6. For a deal of jar tickets, club special, tip board, and prize board, a distributor shall provide a game information sheet containing cost per play, ideal gross proceeds, ideal prizes, including any last sale prize, if known, and ideal adjusted gross proceeds, and the quantity, face value, and total face value of coins on a prize board or, in place of a separate sheet, the information may be printed on the front or back of the deal's flare.
- 8- 7. A distributor shall print these phrases on a sports-pool board:
- a. Professional sports pool;
 - b. Cost per play \$_____;
 - c. Date of sports event _____;
 - d. Ideal prizes \$_____; and
 - e. Method of prize payout _____.
- 9- 8. A distributor shall indicate this information on the flare of a series of paddlewheel ticket cards:
- a. Game serial numbers of the lowest and highest numbered paddlewheel ticket cards;
 - b. Quantity of cards; and
 - c. Type of paddlewheel ticket (for example, 40 x 3 x 120), if applicable.
- 10- 9. A distributor shall print the phrases "merchandise prize _____" and "retail price \$_____" on a flare and for each seal for a game that has a merchandise prize.
- 11- 10. A distributor shall sell a calcutta board that is cardboard or similar material on which is printed a matrix of horizontal lines and vertical columns sufficient to accommodate the information required by subsections 7, 10, and 12 of section 99-01.3-10-01. A distributor shall print "calcutta" at the top of a board and print the phrases "sporting event _____", "method of prize payout _____", and "date of sports event _____" on the board.

11. A distributor shall print the phrases "cost per play \$ _____", "merchandise prize _____" (if applicable), and "retail price \$ _____" on a seal board.
12. A distributor shall print "cost per play \$ _____", "retail price \$ _____", and "merchandise prize _____" (if applicable), and "retail price \$ _____" on a prize board.
13. If a distributor is notified by an organization that the game serial number of a deal of pull tabs or bingo cards, club special, tip board, seal board, punchboard, series of paddlewheel ticket cards, calcutta board, prize board, or sports-pool board is different from the number written on a state gaming stamp, the distributor shall follow procedures prescribed by the attorney general.
14. If a distributor is notified by a manufacturer or attorney general of a ban or recall of defective pull tabs or punchboards, the distributor shall comply with subsection 2 of section 99-01.3-16-07.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1.-01.1, 53-06.1-14

99-01.3-15-08. Promotional and sample bingo cards and pull tabs. A distributor may not sell or provide promotional paper bingo cards, ~~bingo cards used in a dispensing device~~, jar tickets, or pull tabs to an organization or any person unless the face of each paper bingo card, the outside of a jar ticket, or the game information side of each pull tab or bingo card contains the phrase "promotional use only", "happy hour", "no purchase necessary", or similar phrase. A distributor may not sell or provide sample paper bingo cards, ~~bingo cards used in a device~~, jar tickets, or pull tabs to an organization or any person unless the word "void" is on the face of each paper bingo card and jar ticket and on the game information side of each pull tab or bingo card. A distributor may sell other nongaming promotional items to any person.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-15-10. Recordkeeping. A distributor shall maintain complete, accurate, and legible accounting records in North Dakota. The records must be retained for three years and include, by month:

1. Purchase invoices for gaming equipment.

2. Sales of gaming and nongaming equipment, supplies, and services sold or provided on a distributor's invoice. A sales invoice must be prepared on a form approved by the attorney general and include:
 - a. License number of the distributor;
 - b. Business name and address of the buyer and business name and address where the gaming equipment or supplies were shipped to or where the service was performed;
 - c. License or permit number of the buyer, if applicable;
 - d. Invoice number and date;
 - e. Date shipped;
 - f. Indication for a credit memo;
 - g. Quantity, price, and description of each item of gaming equipment, supplies, and services. This includes the name of game and indication of the item as a deal of pull tabs ~~or bingo cards~~, club special, prize board, tip board, seal board, punchboard, sports-pool board, calcutta board, or series of paddlewheel ticket cards. For a deal of pull tabs (excluding jar tickets) ~~and bingo cards~~, it must include a manufacturer's form number. For a series of paddlewheel ticket cards, it must include the number of paddlewheel ticket cards and number of tickets on each card. For a prize board, it must include separate costs, including sales tax, for a merchandise prize (if any), coins, and board and pull tabs. For paper bingo cards, it must include the primary color of single cards or primary color of the top card of collated booklets, type (number of faces on a sheet) of collated booklets or single cards, number of cards in a collated booklet, and serial number and size of series. For a bingo card marking device, it must include the quantity;
 - h. Gaming stamp number;
 - i. Ideal gross proceeds, ideal adjusted gross proceeds, price of a merchandise prize, and value of a last sale prize; and
 - j. An indication that a deal was resealed and the reason, if applicable.
3. A sales invoice must be:
 - a. Prenumbered consecutively with a preprinted number of at least four characters;

- b. Prepared in three parts and issued as follows:
 - (1) One part to the customer;
 - (2) One part retained in an invoice file by customer name; and
 - (3) One part to the attorney general according to subsection 10 of section 99-01.3-15-02; and
 - c. A credit memo for a returned item must be prepared and issued like a sales invoice. A credit memo must represent only a returned item.
- 4. A sales journal must include the invoice date, number, total amount, and name of customer.
 - 5. A cash receipts journal must include cash sales, cash received from all sources, name of customer, date a payment is received, and amount.
 - 6. A cash payments journal must include checks issued, cash payments, date of check or payment, check number, name of payee, and type of expense.
 - 7. Record of voided gaming stamps on a form prescribed by the attorney general.
 - 8. Inventory records and reconciliation of inventories.
 - 9. A repair report for each service call on a dispensing device.
 - 10. Documentation of a training session conducted according to subsection 23 of section 99-01.3-15-02.
 - 11. A manufacturer's invoice that references a rental fee charged an organization for a bingo card marking device.
 - 12. A quantity-based perpetual inventory record of bingo card marking devices provided to or withdrawn from a site must include the organization name and model of device.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

CHAPTER 99-01.3-16

99-01.3-16-01. License. A manufacturer of deals of pull tabs ~~or bingo cards~~, paper bingo cards, bingo card marking device, or a pull tab dispensing device, or any other person may not sell, lease, solicit business, or provide these items to a distributor without a license. If two or more manufacturers are affiliated, each manufacturer shall apply for a license. A license is not transferable. The annual licensing period is April first through March thirty-first. An application must include information prescribed by the attorney general. The license fee for a manufacturer of pull tabs, bingo cards, or bingo card marking devices is four thousand dollars. The license fee for a manufacturer of only pull tab dispensing devices is one thousand dollars. If a person manufactures pull tabs and paper bingo cards, or, pull tab dispensing devices and either pull tabs or paper bingo cards, or both, only one license fee is required.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1, 53-06.1-14

99-01.3-16-03. Restrictions and requirements.

1. A manufacturer that sells, or provides, paper bingo cards to a distributor shall print its name or distinctive logo and the assigned serial number and series number (card number) on each card. A manufacturer shall have available for sale or provide to a distributor a master checkbook covering all card serial numbers. A manufacturer may not ship paper bingo cards directly to a licensed organization or organization that has a permit.
2. A manufacturer may only sell or provide gaming equipment to a licensed distributor. A manufacturer shall maintain accounting records of all sales of gaming equipment and retain them for three years. The records may be in electronic form.
3. A manufacturer may not modify the assembly or operational functions of an approved pull tab ~~or bingo card~~ dispensing device model unless requested by the attorney general or a written request is approved by the attorney general. The attorney general may apply section 99-01.3-16-10 for approving a modification to a device model.
4. A manufacturer may service a bingo card marking device used by an organization.
5. A manufacturer shall provide a master flare for a deal of jar tickets or pull tabs that contain:
 - a. Name of game;

- b. Manufacturer's form number:
- c. Cost per play:
- d. Value and number of winning prizes; and
- e. Number of pull tabs or jar tickets.

The number of prizes may be designated by a number or by a quantity of symbols that represent the number of winning prizes and the winning number or symbol. A symbol must be pictured on a flare, not described. A master flare for a game involving deals of jar tickets that contain winning tickets of the same prize value printed in differently colored numbers or symbols must have the flare's number and symbols printed in matching colors.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-06. Quality standards for bingo cards used in a dispensing device. ~~Repealed effective July 1, 2010. A manufacturer shall manufacture deals of bingo cards used in a dispensing device according to these standards:~~

~~1. **Construction:**~~

- ~~a. A case must consist of at least three thousand bingo cards with different faces and series numbers.~~
- ~~b. Deals of bingo cards that have a different cost per play must be differentiated.~~
- ~~c. A deal must be designed, constructed, glued, and assembled to prevent the determination of the card numbers without first removing the tab.~~
- ~~d. All the cards of a deal must have the same game serial number. A serial number of a case of two or more deals cannot be repeated on the same form number for three years.~~
- ~~e. A bingo card must be a two-ply card with one perforated break-open tab. The single tab slits on a card must be perforated on three sides. A card must be glued on all four edges. The glue must be of sufficient strength and type to prevent the separation of a card.~~

- f. ~~When a tab is removed, the bingo numbers must be fully visible in the window. The numbers can be displaced to the left or right in a window for increased security.~~
- 2. **Opacity.** ~~Concealed numbers cannot be viewed or determined from the outside of a bingo card using a high-intensity lamp.~~
- 3. **Randomization.** ~~Cards of a deal must be thoroughly mixed to eliminate any pattern among the deal's cards and between deals or portions of deals, based on the cards' series numbers.~~
- 4. **Printed information:**
 - a. ~~The game information side must contain the:~~
 - (1) ~~Name of game;~~
 - (2) ~~Unique minimum five character manufacturer's game serial number;~~
 - (3) ~~Manufacturer's form number and name of manufacturer or its distinctive logo;~~
 - (4) ~~Cost per bingo card;~~
 - (5) ~~Space for validation. See subsection 32 of section 99-01.3-16-08; and~~
 - (6) ~~Lines for name and address of winning player and prize amount.~~
 - b. ~~The tab side must contain instructions for the player to open the tab, mark the numbers posted, compare the marked numbers to the posted winning patterns, and, if a winning card, redeem for a prize.~~
 - c. ~~Inside the tab there must be a preprinted bingo face with twenty-five squares arranged in five vertical columns and five horizontal rows. The letters B, I, N, G, and O must be printed above the five vertical columns. The middle square may be a free space. The bingo face must indicate the manufacturer's series number for that face and the manufacturer's game serial number for that deal.~~
- 5. **Packaging:**
 - a. ~~A deal must contain a seal warning the purchaser that the deal may have been tampered with if the container was received with the seal broken. A seal must ensure a deal's bingo cards are not accessible from outside the container when sealed. A manufacturer shall seal~~

~~or tape every entry point into the container. The seal or tape must be tamper resistant and of such construction to guarantee that should a container be opened or tampered with, it would be easily noticed. The required seal cannot be a manufacturer's cellophane shrink wrap.~~

- ~~b. A deal's game serial number must be legibly placed on or be able to be viewed from the outside of the deal's container.~~
- ~~c. The prize flare for a deal must be located on the outside of the deal's sealed container so that the manufacturer's security seal will not be broken to access the prize flare.~~

6. **Prize flare.** A prize flare must accompany each deal and contain:

- ~~a. Separate lines for name of organization, name of site, control number, and device number;~~
- ~~b. Cost per bingo card;~~
- ~~c. Lines for time and date when the prize flare is placed in play and removed from play. The lines must be designated by the hour, minute, and a.m. or p.m.;~~
- ~~d. Lines for two initials for when the prize flare is placed in play and for one employee's initials for when the prize flare is removed from play;~~
- ~~e. Three lines for listing a winning pattern or patterns, as ways to win;~~
- ~~f. Three lines for listing a prize amount, corresponding to a winning pattern or patterns;~~
- ~~g. Examples of various patterns that may be selected for a winning pattern. Each example must specify the name of the pattern and whether it is an "any way" pattern;~~
- ~~h. At least two blank bingo cards with twenty-five squares arranged in five vertical columns and five horizontal rows. The letters B, I, N, G, and O must be printed above the five vertical columns. The blank cards may be completed by an organization for illustrating a winning pattern or patterns that are not shown as an example; and~~

- i. ~~The phrase "except for an 'any way' pattern, a winning pattern is based on a bingo card being in an upright position".~~

History: Effective May 1, 1998; amended effective October 1, 2006.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-07. Ban or recall of defective pull tabs or bingo cards punchboards.

1. If the attorney general determines that deals of pull tabs, ~~bingo cards,~~ or punchboards for sale in North Dakota do not meet the quality standards, the attorney general may order all defective deals and all similarly constructed or printed deals in North Dakota to be immediately recalled by the manufacturer or banned or prohibit a manufacturer from transacting business in North Dakota. If the attorney general orders a ban or recall, the manufacturer of the deal must first be notified of the reason, effective date, and specific requirements. Upon notification, a manufacturer shall cease sale of that deal and initiate compliance with a ban or recall. A manufacturer shall notify, in writing, all distributors within seventy-two hours of the notice, the effective date, and arrange for the prompt return of all the defective deals.
2. A distributor, when notified by a manufacturer or attorney general, shall immediately stop sales or delivery of the deals. Within seventy-two hours, a distributor shall notify the organizations that have bought the deal during the last ninety days, the effective date, and arrange for the prompt return of all the defective deals.
3. Before any reintroduction in North Dakota of a banned or recalled deal, a manufacturer shall submit the revised deal to the attorney general for approval. The attorney general shall notify the manufacturer of the approval or disapproval and the manufacturer shall send a copy of an approving letter to the distributor with the next shipment of the revised deal.
4. If a manufacturer initiates a recall of deals of pull tabs, ~~bingo cards,~~ or punchboards in any state regarding products that were sold in North Dakota, it shall immediately notify the attorney general and comply with this section.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-08. Manufacturing specifications - Dispensing device. A pull tab and a ~~bingo card~~ dispensing device must meet these specifications:

1. If a device is designed to accommodate two or more different games of pull tabs, each compartment must independently meet the specifications of this section;
2. Electrical and mechanical components and design principles may not subject a person to any physical hazard or cause electrical interference. The power cord must be ten feet [3.05 meters] in length and have a three-prong ground. A surge protector or in-line power filter must be installed in-line on the main powerline to a device. A device must safely and operatively withstand a static test of twenty thousand volts of electricity and maintain proper voltage during a low electrical current (brownout);
3. ~~A bingo card device must have an on and off keyed switch to control the electrical current or electronic currency validator;~~
4. A pull tab device must have at least four columns for stacking pull tabs and have capacity for two thousand four hundred pull tabs. ~~A bingo card device must have at least two columns for stacking bingo cards and have capacity for two thousand two hundred cards. A stacking column for bingo daubers is optional.~~ A dispensing device for prize board tickets may have less than four columns for stacking pull tabs;
5. ~~4.~~ A stacking column must be adjustable for varying lengths of pull tabs. However, as an option, a device may use replaceable stacking columns that accommodate varying lengths of pull tabs. The device must accommodate a minimum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by two and five-eighths inches [64.77 millimeters] in length, a maximum pull tab size of one and seven-eighths inches [47.6 millimeters] in width by four and one-fourth inches [107.95 millimeters] in length, or both sizes;
6. ~~5.~~ A device must be adjustable for varying thicknesses of pull tabs ~~or bingo cards;~~
7. ~~6.~~ Glass must be placed in the front of the device enabling an employee to see whether a device is low on pull tabs ~~or bingo cards;~~
8. ~~7.~~ A device must have a dispensing outlet or tray to catch a dispensed pull tab ~~or bingo card;~~
9. ~~8.~~ A device must have one currency validator. A coin acceptor is not allowed;
10. ~~9.~~ A pull tab device must accommodate pricing of twenty-five cents, fifty cents, one dollar, and two dollars per pull tab and dispense the correct number of pull tabs based on the amount of credit played. The standard price per pull tab must apply to all columns;

- ~~11.~~ 11. A bingo card device must accommodate pricing of twenty-five cents, fifty cents, one dollar, two dollars, and five dollars. The price at which each column is set may differ for dispensing differently priced cards and daubers. A device must dispense the correct number of bingo cards and daubers based on the amount of credit played;
- ~~12.~~ 10. An exterior door must have at least one keyed lock. The key must be different from all other keys used on other devices manufactured by the manufacturer;
- ~~13.~~ 11. A pull tab device may have an optional "all" player button that activates the device to dispense pull tabs equal to the value of the unplayed credits and randomly selected by a random number generator or player button sequencing concept. Devices that dispense pull tabs involving a prize board are not required to select tickets by use of a random number generator;
- ~~14.~~ 14. A bingo card device may have an optional "all" player button that activates the device to dispense bingo cards equal to the value of the unplayed credits from the column selected by a player. However, an "all" player button cannot apply to a bingo dauber column;
- ~~15.~~ 12. A device must have an interior mode switch, interior dipswitch, or an exterior mode switch activated by a key which enables a person to:
- a. Set the price per pull tab, bingo card, or dauber; and
 - b. Unless a device prints reports prescribed by subsection ~~48~~ 15, access the accounting information required by subsection ~~46~~ 13 and, if the device has nonresettable electronic accounting meters, subsection ~~47~~ 14;
- ~~16.~~ 13. Unless a device prints reports prescribed by subsection ~~48~~ 15, there must be at least two independent resettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least four digits in length and be capable of maintaining the accounting information for six months after electrical power to a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:
- a. Total value of currency validated; and
 - b. Total number of pull tabs or bingo cards dispensed;
- ~~17.~~ 14. Unless a device prints reports prescribed by subsection ~~48~~ 15, there must be at least two independent nonresettable electronic or mechanical accounting meters. The meters must maintain accounting information of at least six digits in length and be capable of maintaining the accounting information for six months after electrical power to

a device is disconnected or the electrical current used to operate a device is switched off. The meters must record the:

- a. Cumulative value of currency validated; and
- b. Cumulative number of pull tabs or bingo cards dispensed;

~~18.~~ 15. Unless a device has resettable and nonresettable accounting meters prescribed by subsections ~~46~~ 13 and ~~47~~ 14, the device must print a cash pickup and a lifetime activity report.

a. A cash pickup and a lifetime activity report must:

- (1) Be printed and accessible only from the interior of a device;
- (2) State the time and date of the present report and of the preceding report. The time must be expressed in numeric hours and minutes. The hour must be expressed as a.m. or p.m.;
- (3) State the unique device number; and
- (4) State a sequential report number, which must be at least three digits in length, starting with number one.

b. A cash pickup report, based on resettable electronic accounting meters, must include this information for activity since the preceding report:

- (1) For a pull tab device, number and value of pull tabs dispensed from all columns; and
- (2) ~~For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and~~
- (3) Value of currency validated.

c. A lifetime activity report, based on nonresettable electronic accounting meters, must include this information for activity since a device was manufactured:

- (1) For a pull tab device, cumulative number and value of pull tabs dispensed from all columns; and
- (2) ~~For a bingo card device, number and value of bingo cards and daubers dispensed from each column and from all columns; and~~

(3) Cumulative value of currency validated;

- 19: 16. To ensure a commingling of pull tabs, a random number generator or player button sequencing concept must be used to select a particular column from which a pull tab will be dispensed. A selection process is random if it does not produce a significant statistic of recurring patterns. A player button sequencing concept must field each button at least one hundred times a second. This subsection does not apply to a dispensing device used in the conduct of a prize board;
- 20: 17. Instructions for player operation must be permanently affixed or placed under glass or other transparent material on the front of a device;
- 21: 18. A pull tab device must have one or more player buttons located on the front to activate the dispensing of a pull tab. However, excluding an "all" player button, the number of player buttons may not exceed the number of columns. Regardless of which player button is pressed, the selection of a particular column from which a pull tab is dispensed must be done by a random number generator or player button sequencing concept. This subsection does not apply to a dispensing device used in the conduct of a prize board;
- 22: ~~A bingo card device must have a separate button located on the front for each column of bingo cards and bingo dauber column which activates the dispensing of a card or dauber from that column;~~
- 23: 19. A device must have an LED or LCD display screen of at least four digits in length. However, if a device uses two independent nonresettable electronic accounting meters, the device must have an LED or LCD display screen of at least six digits in length. The digits must be ~~one-half~~ one-quarter of one inch [~~42.70~~ 6.35 millimeters] in height. The value of currency validated must be displayed on the LED or LCD screen as a monetary credit which is reduced as a device vends a pull tab, bingo card, or dauber. Unless a device prints reports prescribed by subsection ~~48~~ 15, the LED or LCD display screen must also display the accounting information required by subsection ~~46~~ 13 and pricing information required by subdivision a of subsection ~~45~~ 12;
- 24: 20. A device must record every vend, including a test vend, of a pull tab; ~~bingo card, and dauber~~ when the door of the dispensing device is closed and every currency validation on the accounting meters required by subsections ~~46~~ 13 and ~~47~~ 14 or subsection ~~48~~ 15;
- 25: 21. If a device malfunction occurs or electrical power is interrupted, the value of credits previously displayed on an LED or LCD display screen must be correctly redisplayed immediately after the malfunction is cleared or electrical power is restored. However, this rule does not apply if a device is totally inoperable;

- ~~26.~~ 22. In a pull tab device a column of pull tabs must automatically discontinue operation, triggered by a micro, optical, or software controlled switch, when the column has fewer than fifty pull tabs remaining. However, this rule does not apply when an organization is closing a game at which time a micro, optical, or software controlled switch may be circumvented;
- ~~27.~~ 23. A device must automatically stop operating when there is only one column of pull tabs functioning. However, if this occurs and there are unplayed credits on the device, the device may dispense pull tabs equal to the value of the unplayed credits from the remaining column before the device automatically stops operating. ~~A device must automatically stop operating when all the columns of bingo cards are out of order~~ This subsection does not apply to a dispensing device used in the conduct of a prize board;
- ~~28.~~ 24. An identification plate must be affixed to an exterior side panel and contain the device's:
- a. Manufacturer;
 - b. Serial and model numbers; and
 - c. Date of manufacture which may be part of the model number;
- ~~29.~~ 25. No device may have an auxiliary remote control unit for posting credits;
- ~~30.~~ 26. A device must automatically stop operating when a nonresettable meter is disconnected; and
- ~~31.~~ 27. A device must have a maintenance and operations manual; and
- ~~32.~~ 28. A bingo card device must validate a dispensed bingo card by printing this information in a prescribed area on the card. The validation must be clearly printed in permanent ink and be electronically printed at least three-sixteenths of one inch [4.76 millimeters] in height:
- a. Unique machine number or validation control code of at least four characters in length;
 - b. Month and day. The month may be expressed alphabetically and may be abbreviated to three characters or it may be expressed in numeric digits. The day must be expressed in numeric digits; and
 - c. Time expressed in numeric hours and minutes. The hour must be designated as a.m. or p.m. Military time is not allowed;
- ~~33.~~ 29. A bingo card device's internal clock must be programmed to automatically adjust the time to change to and from daylight saving

~~time. A device must maintain the proper time for six months after electrical power to the device is turned off; and~~

- ~~34. A bingo card device must have an electronic LED flashboard for posting bingo numbers which, when lit, must be readable from a distance of ten feet [3.05 meters].~~

History: Effective May 1, 1998; amended effective July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-09.1. Manufacturing specifications - Bingo card marking devices. A site system, and bingo card marking device which displays a facsimile of a bingo card and allows a player to electronically mark the card, must meet these specifications:

1. A site system is computer hardware and software used at a site by an organization which generates and downloads electronic bingo card images to devices, accounts for gross proceeds, and provides accounting information on all activity for three years from the end of the quarter in which the activity occurred. It must:
 - a. Record a nonresettable electronic consecutive six-digit receipt number for each transaction;
 - b. Issue a receipt for each transaction containing:
 - (1) Name of a site or organization;
 - (2) Date and time of the transaction;
 - (3) Number of electronic bingo card images downloaded;
 - (4) Selling price of a card or package, rental fee, gross proceeds, and receipt number; and
 - (5) Serial number of device issued to a player;
 - c. Print a summary report for each session containing the date and time of the report, name of site, date of the session, sequential session number, number of transactions, number of voided transactions, number of electronic bingo card images downloaded, number of devices used, total gross proceeds, and, for each transaction, list:
 - (1) Sequential transaction number starting with one, for each device;

- (2) Device serial number;
 - (3) Type of transaction (sale or void);
 - (4) Time of transaction;
 - (5) Number of electronic bingo card images downloaded;
 - (6) Selling price of a card or package; and
 - (7) Receipt number;
- d. Must be remote-accessible by the manufacturer of the device and attorney general for monitoring the system operation and accounting information in real time; and
 - e. Must be capable of printing an electronic card image of any downloaded card;
2. A device must be a portable hand-held unit and cannot be wired directly to a site system;
 3. A device must be programmed for use at only the site where the site system is located;
 4. A device must have a unique serial number permanently encoded in the software;
 5. No device can allow more than seventy-two single-faced cards per game;
 6. A device may require a player to manually enter each bingo number by using an input function key or may use a radio frequency or Wi-Fi transmission to automatically daub the bingo numbers called;
 7. A device can display a player's best card or a winning card and alert the player through an audio or video method, or both, that the player has a winning card;
 8. A device must automatically erase all stored cards at the end of the last game of a session or when the device is turned off; and
 9. A device must be downloaded with new cards at the time of the sales transaction.

History: Effective July 1, 2000; amended effective July 1, 2002; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-10. Testing, approval, and recall.

1. A manufacturer of a pull tab ~~or bingo card~~ dispensing device or bingo card marking device may not sell or provide a device to a distributor unless a model of the device has been approved by the attorney general.
2. A manufacturer of a dispensing device shall provide a device model, a copy of its construction blueprint, wiring schematics, circuit analysis, technical and operation manuals, random number generator or player button sequencing concept source and object code computer programs, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a bingo card marking device shall provide a device model site system, technical and operations manual, proprietary operating software source and object code computer programs, and other information requested by the attorney general. A manufacturer of a currency validator or credit redemption device for pull tab dispensing devices shall provide a copy of the source and object code computer programs and other information requested by the attorney general. A manufacturer may provide a copy of letters of approval and test reports of the dispensing device, bingo card marking device, or currency validator from other states, federal jurisdictions, or independent testing laboratories.
3. The attorney general may require a manufacturer of a dispensing device, bingo card marking device, or currency validator to transport a working model, and the information required by subsection 2 to the attorney general or designee for analysis, testing, and evaluation. A manufacturer shall pay all the costs and provide special equipment for the testing. The attorney general may require a manufacturer to pay the estimated costs, in advance. After the analysis, testing, and evaluation is done, the designee shall provide the results to the attorney general. An overpayment of costs must be refunded to a manufacturer or the manufacturer shall pay any underpayment of costs. The attorney general shall provide the manufacturer with the results. Before approving a device's model, the attorney general may require a trial period.
4. If a manufacturer of a dispensing device knows or determines that a model of device is defective or can be manipulated, the manufacturer shall immediately notify the attorney general and cease selling the device. The attorney general may require the manufacturer to recall

or modify the device. Upon notification, a manufacturer shall initiate compliance with a recall or modification at the manufacturer's expense.

History: Effective May 1, 1998; amended effective July 1, 2000; July 1, 2002; July 1, 2004; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

99-01.3-16-11. Sales invoice. A manufacturer may not sell or provide to or accept from a distributor deals of pull tabs ~~or bingo cards~~, paper bingo cards, bingo card marking devices, or pull tab dispensing devices without recording the transaction on a sales or credit invoice. The invoice must include:

1. License number, business name, and address of the distributor;
2. Business name and address to which the gaming equipment is shipped;
3. Invoice number and date;
4. Date shipped;
5. Indication for a credit invoice;
6. Quantity of deals of pull tabs and ~~bingo cards~~ and paper bingo cards;
7. Description of each deal of pull tabs and bingo cards and paper bingo cards sold, including the name of the game and game serial number which may be listed on an addendum to a sales invoice. For a deal of pull tabs ~~and bingo cards~~ involving two-ply or three-ply cards with perforated break-open tabs, the description must include the manufacturer's form number;
8. For paper bingo cards, quantity, primary color, type of collated booklet, serial number, size of series, and number of faces on a card; and
9. Name, model, and serial number of a bingo card marking device or pull tab dispensing device.

History: Effective May 1, 1998; amended effective July 1, 2000; October 1, 2006; July 1, 2010.

General Authority: NDCC 53-06.1-01.1

Law Implemented: NDCC 53-06.1-01.1

TITLE 110

CRIMINAL JUSTICE INFORMATION SHARING BOARD

JULY 2010

ARTICLE 110-01

GENERAL ADMINISTRATION

| | |
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| <u>Chapter</u> | |
| <u>110-01-01</u> | <u>Organization</u> |
| <u>110-01-02</u> | <u>Access</u> |

CHAPTER 110-01-01
ORGANIZATION

| | |
|---------------------|---|
| <u>Section</u> | |
| <u>110-01-01-01</u> | <u>Organization of the Criminal Justice Information Sharing Board</u> |
| <u>110-01-01-02</u> | <u>Criminal Justice Information Sharing Staff</u> |

110-01-01-01. Organization of the criminal justice information sharing board.

- 1. History and function.** The 2003 legislative assembly created the criminal justice information sharing board, codified at North Dakota Century Code section 54-59-21. The board is required to set policy relating to the collection, storage, and sharing of criminal justice information and the systems necessary to perform those functions. The board further provides operational oversight for criminal justice information sharing activities and approves and provides oversight of related budgets. The board may appoint such committees as it deems necessary.
- 2. Board membership.** The board consists of the chief justice of the supreme court or the chief justice's designee, the attorney general or the attorney general's designee, the chief information officer of the state, the director of the department of emergency services or the director's designee, the director of the department of corrections and rehabilitation or the director's designee, the superintendent of the state highway patrol or the superintendent's designee, the chief

of the bureau of criminal investigation, the director of the department of transportation or the director's designee, a representative of a city police department, a representative of a county sheriff's office, a state's attorney from the North Dakota state's attorneys association, and one at-large member appointed by the governor.

3. Inquiries. Inquiries regarding the board may be addressed to:

Criminal Justice Information Sharing Director
North Dakota Criminal Justice Information Sharing Board
Information Technology Department
600 East Boulevard, Dept. 112
Bismarck, ND 58505-0100

History: Effective July 1, 2010.

General Authority: NDCC 54-59-21

Law Implemented: NDCC 54-59-21

110-01-01-02. Criminal justice information sharing staff. The director is hired by the board and serves at the pleasure of the board and is under the direct supervision of the board. The director is authorized to hire additional staff and is responsible for the daily supervision and direction of all criminal justice information sharing staff. The criminal justice information sharing staff, when authorized, may act on behalf of the board.

History: Effective July 1, 2010.

General Authority: NDCC 54-59-21

Law Implemented: NDCC 54-59-21

CHAPTER 110-01-02
ACCESS

| | |
|---------------------|---|
| <u>Section</u> | |
| <u>110-01-02-01</u> | <u>Criminal Justice Information Sharing Portal Access</u> |
| <u>110-01-02-02</u> | <u>Confidentiality</u> |

110-01-02-01. Criminal justice information sharing portal access.

1. Criminal justice agencies and any other person designated by the board may be authorized to access the criminal justice information sharing (CJIS) system. Criminal justice agency means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of crime. The criminal justice agency must cooperate with the CJIS board and is responsible for providing its own technological infrastructure. The board is responsible for establishing security standards for access and may audit or monitor the CJIS system for abuse by users.
2. In order for users to access the CJIS system, the employing criminal justice agency must sign the CJIS agency agreement, agreeing to abide by the policies and procedures governing access to and use of the CJIS system.
3. Individual users must apply for access to the CJIS system by signing the application and submitting to a background check. In addition to their hiring agency agreement, individual users must agree to the policies and procedures governing use of the CJIS system. The board is responsible for reviewing all applications and determining approval of the application. The board may delegate this responsibility to the director.
 - a. The policy for approval of user access or termination or suspension of user access to the CJIS system will be based on an arrest, deferred imposition, or conviction as follows:
 - (1) Felony: access denied;
 - (2) Misrepresentation on user access application form: access denied;
 - (3) Misdemeanor class A: access will be allowed five years from the date of last conviction, release from incarceration, or expiration of probation, whichever is the latest; and
 - (4) Misdemeanor class B: access will be allowed two years from the date of last conviction, release from incarceration, or

expiration of probation, whichever is the latest; excluding first-time offenders convicted of issuing checks without funds or account and first offense class B misdemeanor criminal traffic offense violations.

- b. In reviewing the applications, the board may take into account other factors in determining whether to approve an individual user's application. A decision to deny access must be in writing and must set forth the basis for the decision.
4. Access to the CJIS system may be terminated at any time for violation of the CJIS agency agreement or for a qualifying arrest or conviction specified under the provisions of subsection 3, or for other reasons that are determined by the board necessary to ensure the security or integrity of the CJIS system.
5. Any criminal justice agency whose agency application, agency access, or individual user application or access has been denied, terminated, or suspended may file a written appeal of the decision to the board. The decision of the board is final.

History: Effective July 1, 2010.

General Authority: NDCC 54-59-21

Law Implemented: NDCC 54-59-21

110-01-02-02. Confidentiality.

1. The CJIS system has been designated as a critical infrastructure as defined in North Dakota Century Code section 44-04-24. The CJIS system's design and standards to access the system could be compromised if its design or standards for access were to be made public. Accordingly, all such information is deemed to be part of a security system plan under North Dakota Century Code section 44-04-24 and is exempt from the open records law under that statute.
2. Any criminal justice agency or individual authorized user who has been granted access to the CJIS system must keep the information contained in CJIS, passwords, structure, and qualifications for access confidential. Any breach of confidentiality may result in revocation of access to the CJIS system for both the individual found in violation of the confidentiality provisions and the individual's employing agency.

History: Effective July 1, 2010.

General Authority: NDCC 54-59-21

Law Implemented: NDCC 54-59-21

TITLE 111

MARRIAGE AND FAMILY THERAPY LICENSURE BOARD

JULY 2010

ARTICLE 111-01

ADMINISTRATION

Chapter
111-01-01 Organization of Board

CHAPTER 111-01-01
ORGANIZATION OF BOARD

Section
111-01-01-01 Organization of Marriage and Family Therapy Licensure Board

111-01-01-01. Organization of marriage and family therapy licensure board.

1. **History and function.** The 2005 legislative assembly passed the Marriage and Family Therapy Practice Act, codified as North Dakota Century Code chapter 43-53. This chapter requires the governor to appoint the board. The board, generally speaking, monitors the relationship and interaction between the licenseholder and the public. It is the responsibility of the board to protect the public against poorly trained marriage and family therapists.
2. **Board membership.** The board consists of five members, of which at least three must be licensed practicing marriage and family therapists and at least one must represent the general public. Board members are appointed by the governor. The members serve four-year terms.
3. **Inquiries.** Inquiries regarding the board may be addressed to:

Reverend Larry J. Giese
3910 Lewis Road NW

Mandan, ND 58554-1361

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02, 43-53-04, 43-53-05

ARTICLE 111-02

LICENSURE AND FEES

Chapter

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| <u>111-02-01</u> | <u>General Provisions</u> |
| <u>111-02-02</u> | <u>Preliminary Licensing Requirements</u> |
| <u>111-02-03</u> | <u>Licensure Process for Licensed Marriage and Family Therapists</u> |
| <u>111-02-04</u> | <u>Licensee - Renewal of License and Fees</u> |

CHAPTER 111-02-01
GENERAL PROVISIONS

Section

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| <u>111-02-01-02</u> | <u>Representation to the Public</u> |
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| <u>111-02-01-04</u> | <u>Criminal Background Checks</u> |
| <u>111-02-01-05</u> | <u>Code of Ethics</u> |
| <u>111-02-01-06</u> | <u>Continuing Education</u> |

111-02-01-01. Definitions. Unless the context otherwise requires, the following terms have the meanings given:

1. "Applicant" means an individual seeking licensure by the marriage and family therapy licensure board as a marriage and family therapist.
2. "Certified professions or occupations" means those professions or occupations that have a certification process based upon specific criteria identified as necessary for effective performance of the profession or occupation. The certification process must include:
 - a. Eligibility requirements established through education or experience, or both;
 - b. Successful completion of a competency-based written examination;
 - c. Successful demonstration of competent clinical skills; and
 - d. Assurance of practitioner competencies through mandatory recertification and continuing education requirements.
3. "Dual relationship" means a relationship between a therapist and another person with whom such relationships are prohibited by law or rule that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for therapeutic services rendered.

4. "Emeritus" means retired from active practice but retaining one's license and title.
5. "Family system" means an open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality, and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health, and temperament) and its sociocultural and historic position in its larger environment.
6. "Fee splitting" means the practice of paying commissions to colleagues for referrals.
7. "LAMFT" are the initials permitted to be used by an associate marriage and family therapist licensee to designate that the individual has completed the educational requirements for a marriage and family therapy license, has successfully passed the licensing examination, and is in the process of completing postgraduate supervision for the licensing requirements.
8. "Licensee" means a licensed marriage and family therapist.
9. "LMFT" are the initials permitted to be used by a licensed marriage and family therapist to designate that the individual is licensed by the marriage and family therapy licensure board.
10. "Postgraduate supervised experience" means supervised experience occurring after the accredited educational institution grants the degree for licensure as shown on the applicant's transcript and all educational requirements specified in section 111-02-02-02.
11. "Regionally accredited" means that an educational institution has been accredited by the north central association of schools and colleges, middle states association of colleges and schools, New England association of schools and colleges, northwest association of schools and colleges, southern association of colleges and schools, western association of schools and colleges, or a postgraduate academic program in marriage and family therapy accredited by the commission on accreditation of the American association for marriage and family therapy.
12. "Sexual contact" means any of the following, whether or not occurring with the consent of a person with whom such conduct is prohibited by law or rule:

- a. Sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into the genital or anal openings of the body by any part of the therapist's body or by any object used by the therapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the therapist's body by any part of another person's body or by any object used by another person for this purpose, if agreed to by the therapist;
- b. Kissing of, or the intentional touching by the therapist of another person's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts; or
- c. Kissing of, or the intentional touching by another person of the therapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the therapist agrees to the kissing or intentional touching.

Sexual contact includes requests by the therapist for conduct described in subdivisions a to c.

Sexual contact does not include conduct described in subdivision a or b that is a part of standard medical treatment of a patient.

- 13. "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature when:
 - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;
 - b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
 - c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.
- 14. "Supervisee" means an individual who is engaged in postgraduate, supervised experience under the direction of a supervisor.

15. "Supervision" means taking full professional responsibility for training, work experience, and performance in the practice of marriage and family therapy of a supervisee, including planning for and evaluation of the work product of the supervisee, and including face-to-face contact between the supervisor and supervisee.
16. "Supervisor" means an individual who has met the requirements in section 111-02-02-04 and takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.
17. "Therapeutic deception" means a representation by a therapist that sexual contact or unethical conduct with the therapist is consistent with or part of the professional work with a client, student, or supervisee or former client, student, or supervisee.
18. "Therapist" means a licensee of the board.
19. "Variance" means permission from the board to comply with a rule in a manner other than that generally specified.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-01, 43-53-02

111-02-01-02. Representation to the public.

1. No person other than those individuals exempt in North Dakota Century Code section 43-53-03 shall engage in marriage and family therapy practice, advertise the performance of such services, or use a title or description denoting marriage and family therapist without obtaining a license issued under North Dakota Century Code chapter 43-53.
2. An individual engages in marriage and family therapy practice if the individual performs or offers to perform marriage and family therapy or if the individual is held out as able to perform such a service.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-02, 43-53-03, 43-53-06, 43-53-12

111-02-01-03. Exemptions. Those qualified individuals of other licensed or certified professions or occupations who are performing services consistent with their training are exempt from licensure so long as they do not represent themselves by a title denoting marriage and family therapist, such as marriage and family therapist, marriage therapist, family therapist, marriage and family counselor, marriage counselor, or family counselor unless specifically allowed to do so under law. Those qualified individuals listed in North Dakota Century Code

section 43-43-03 may advertise the performance of marriage and family therapy services.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-03

111-02-01-04. Criminal background checks. The purpose of this section is to comply with North Dakota Century Code section 12-60-24 by establishing background checks for persons applying for license or renewal of license as a licensed marriage and family therapist under North Dakota Century Code chapter 43-53, except that criminal history record checks need not be made unless required by the board. The required fees of a background check are the full responsibility of the applicant or licensee. Furthermore:

1. The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee or if the crime involves moral turpitude.
2. In considering whether a criminal conviction directly relates to the occupation of a licensee, the board shall consider:
 - a. The nature and seriousness of the crime;
 - b. The relationship of the crime to the purposes for requiring a license to be a licensed marriage and family therapist or an associate marriage and family therapist. The following felonies and misdemeanors relate to the license of a licensed marriage and family therapist or associate marriage and family therapist because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a licensed marriage and family therapist or licensed marriage and family therapist associate:
 - (1) The misdemeanor of knowingly or intentionally acting as a therapist without a license;
 - (2) A misdemeanor or a felony offense under various chapters of North Dakota Century Code which relates to offenses against:
 - (a) The person;
 - (b) Property;
 - (c) Public order and decency; or

- (d) Public health, safety, and morals;
- c. Other misdemeanors and felonies that the board may consider in order to promote the intent of North Dakota Century Code chapter 43-53 and this title;
- d. The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- e. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed marriage and family therapist or associate marriage and family therapist. In making this determination, the board will apply the criteria outlined in North Dakota Century Code chapter 43-53 and this title.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 12-60-24, 43-53-06

111-02-01-05. Code of ethics.

1. The code of ethics applies to all licensees and applicants who practice marriage and family therapy and applies to their conduct during the period of education and training required for licensure.
2. The code of ethics constitutes the standards by which the professional conduct of a marriage and family therapist is measured.
3. A violation of the code of ethics is unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure.
4. A marriage and family therapist must act in accordance with the highest standards of professional integrity and competence. A marriage and family therapist must be honest in dealing with clients, students, trainees, colleagues, and the public.
 - a. A therapist must not perform, nor pretend to be able to perform, professional services beyond the therapist's field or fields of competence.
 - b. A therapist must not permit a trainee or intern under the therapist's supervision to perform, nor pretend to be competent to perform, professional services beyond the trainee's or intern's level of training.
 - c. A therapist must recognize the potentially influential position the therapist may have with respect to students, interns,

employees, and supervisees, and must avoid exploiting the trust and dependency of these persons. A therapist must make every effort to avoid dual relationships that could impair the therapist's professional judgment or increase the risk of exploitation. Sexual contact between the therapist and students, employees, independent contractors, colleagues, or supervisees is prohibited for two years after the date that the relationship is terminated, whether or not the party is informed that the relationship is terminated. Sexual contact after two years with a former student, intern, employee, or supervisee is prohibited:

- (1) If the former student, intern, employee, or supervisee was emotionally dependent upon the therapist; or
 - (2) If the sexual contact occurred by means of therapeutic deception.
- d. A therapist must not engage in sexual contact or other harassment, therapeutic deception, or exploitation of students, trainees, interns, employees, independent contractors, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.
- e. A therapist must not use or exploit the professional relationship with a student, trainee, intern, employee, independent contractor, colleague, research subject, or actual or potential witness or complainant in ethical proceedings in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
- f. A therapist must recognize that there are other professional, technical, and administrative resources available to clients. The therapist must make referrals to those resources when it is in the best interest of clients to be provided with alternative or complementary services. The therapist must make a reasonably prompt referral when requested to do so by the client, without consideration of limitation of third-party payers.
- g. A therapist must not offer, nor accept, payment for referrals.
- h. A therapist must not knowingly offer services to a client who is in treatment with another professional without consultation among the parties involved. If a client refuses to allow consultation, the therapist should delay the administration of service until the client gives consent to consultation. The exception to the consultation requirement would be if the client reports ethical violations by the other professional.

- i. A therapist must understand the areas of competence of related professions and act with due regard for the need, special competencies, and obligations of their colleagues in other allied professions, and must not disparage the qualifications of any colleague.
- j. A therapist must seek appropriate professional assistance for the therapist's own personal problems or conflicts that are likely to impair the therapist's work performance and clinical judgment.
- k. A therapist must not practice under the influence of alcohol or any controlled substance not lawfully prescribed.
- l. A therapist must not allow an individual or agency that is paying for the professional services of a client to exert undue influence over the therapist's evaluation or treatment of the client.
- m. A therapist must file a complaint with the board when the therapist has reason to believe that another therapist is or has been engaged in conduct which violates this section, North Dakota criminal statutes, or which is grounds for disciplinary proceedings in North Dakota Century Code section 43 53 10.
- n. A therapist must not engage in any conduct likely to deceive or defraud the public or the board.
- o. A therapist must not advertise in a way that is false, fraudulent, or misleading to the public.
- p. A therapist shall use only academic degrees from regionally accredited institutions that are related to the practice of marriage and family therapy in any situation or circumstance related to the practice of marriage and family therapy. Those therapists holding current North Dakota mental health professional licenses issued by other North Dakota licensing boards may also use degrees and titles directly related to these licenses as permitted by the other boards when the other licensure is cited with the marriage and family licensure.
- q. A therapist must correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the therapist's qualifications, services, or products.
- r. A therapist must make certain that the qualifications of a person in a therapist's employ as a student, independent contractor, or an intern are represented in a manner that is not false, misleading, or deceptive.

- s. A therapist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating this section or violating those standards of professional behavior that have become established by consensus of the expert opinion of marriage and family therapists as reasonably necessary for the protection of the public interest.
5. A marriage and family therapist's primary professional responsibility is to the client. A marriage and family therapist must make every reasonable effort to advance the welfare and best interests of families and individuals. A marriage and family therapist must respect the rights of those persons seeking assistance and make reasonable efforts to ensure that the therapist's services are used appropriately. A marriage therapist is bound by these ethics primarily. These ethics supersede any policies of an employer or contractor that may be contrary.
- a. Once a client has been accepted into therapy, a therapist must not discriminate on the basis of age, sex, race, national origin, religion, physical disability, political affiliation, or social or economic status. In addition, a therapist must not discriminate on the basis of affectional preference, or choice of lifestyle. When unable to offer services for any reason, a therapist shall make an appropriate referral.
- b. A therapist must recognize the potentially influential position the therapist may have with respect to clients, and must avoid exploiting the trust and dependency of clients. A therapist must make every effort to avoid dual relationships with clients that could impair the therapist's professional judgment or increase the risk of exploitation.
- c. A therapist must be careful to truthfully represent to clients facts regarding services rendered.
- d. A therapist must recognize the importance of clear understandings on financial matters with clients. Arrangements for fees and payments must be made at the beginning of the therapeutic relationship.
- e. A therapist must not engage in sexual contact or other physical intimacies with a client. Sexual contact with a former client is prohibited for two years after termination of services whether informed or not that the relationship is terminated. Sexual contact after two years with a former client is prohibited:
- (1) If the former client was emotionally dependent upon the therapist; or

- (2) If the sexual contact occurred by means of therapeutic deception.
- f. A therapist must not engage in sexual or other harassment of a client, nor in any verbal or physical behavior that is sexually seductive or sexually demeaning to the client. For purposes of this item, sexual harassment has the meaning given it in subsection 15 of section 111-02-01-01.
 - g. A therapist must not use or exploit the professional relationship with a client in any manner for the therapist's emotional, financial, sexual, religious, political, or personal advantage or benefit.
 - h. A therapist must not use any confidence of a client to the client's disadvantage.
 - i. A therapist must terminate a client relationship when it is reasonably clear that the treatment no longer serves the client's needs or interests.
 - j. A therapist must not provide services to a client when the therapist's objectivity or effectiveness is impaired. Whenever a therapist's objectivity or effectiveness becomes impaired during a professional relationship with a client, the therapist must notify the client orally and in writing that the therapist can no longer see the client professionally and must assist the client in obtaining services from another professional.
 - k. A therapist must respect the right of a client to make decisions and must help the client understand the consequences of the decisions. A therapist must advise a client that a decision on marital status is the responsibility of the client.
 - l. A therapist must inform a client of a divergence of interests, values, attitudes, or biases between a client and the therapist that is sufficient to impair their professional relationship. Either the client or the therapist may terminate the relationship.
 - m. In the course of professional practice, a therapist must not violate any law concerning the reporting of abuse of children under North Dakota Century Code chapter 50-25 and vulnerable adults under North Dakota Century Code chapter 50-25.2.
 - n. A therapist must display prominently on the premises of the therapist's professional practice or make available as a handout the bill of rights of clients, including a statement that consumers of marriage and family therapy services offered by marriage and family therapists licensed by the state of North Dakota have the right to:

- (1) Expect that a therapist has met the minimal qualifications of training and experience required by state law;
 - (2) Examine public records maintained by the marriage and family therapy licensure board which contain the credentials of a therapist;
 - (3) Obtain a copy of the code of ethics from the marriage and family therapy licensure board;
 - (4) Report complaints to the marriage and family therapy licensure board;
 - (5) Be informed of the cost of professional services before receiving the services;
 - (6) Privacy as defined by rule and law;
 - (7) Be free from being the object of discrimination on the basis of race, religion, gender, or other unlawful category while receiving services;
 - (8) Have access to their records; and
 - (9) Be free from exploitation for the benefit or advantage of a therapist.
9. A therapist must, upon request from the client, provide information regarding the procedure for filing a complaint with the board.
6. A marriage and family therapist must hold in confidence all information obtained in the course of professional services. A marriage and family therapist must safeguard client confidences as required by law.
- a. A therapist, and employees and professional associates of the therapist, must not disclose any private information that the therapist, employee, or associate may have acquired in rendering services except as provided by law. All other private information must be disclosed only with the informed consent of the client.
 - b. A therapist must be responsible for informing clients of the limits of confidentiality.
 - c. For purposes of safeguarding confidentiality, when seeing a couple or a family, a therapist must define who the "client" is as soon as it is possible to determine the client. For example, a therapist must define whether the couple or family, as a unit, is the client or whether the individuals who make up the couple or family are the clients.

- d. When seeing a couple or a family, a therapist must inform the client, at the beginning of the relationship, what the therapist's procedures are for handling confidences from individual members of the family and for protecting individuals' privacy while safeguarding the integrity of the therapy process.
- e. Whenever marriage and family therapy services are requested or paid for by one client for another, the therapist must inform both clients of the therapist's responsibility to treat any information gained in the course of rendering the services as private information.
- f. A therapist must limit access to client records and must inform every individual associated with the agency or facility of the therapist, such as a staff member, student, or volunteer, that access to client records must be limited to only the therapist with whom the client has a professional relationship, an individual associated with the agency or facility whose duties require access, and an individual authorized to have access by the informed written consent of the client.
- g. A therapist must continue to maintain as private information the records of a client for ten years after the professional relationship between the therapist and the client has ceased. The therapist must store and dispose of records in ways that maintain confidentiality.
- h. A therapist must disclose to the board and its agents client records that the board and its agents consider to be germane to a disciplinary proceeding.
- i. A therapist must obtain written, informed consent from each client before electronically recording sessions with that client or before permitting third-party supervisory observation of their sessions. The consent form should specify the purpose and proposed audience for the recording.
- j. A therapist must disguise adequately the identity of a client when using material derived from a counseling relationship for purposes of training, research, professional meetings, or publications.
- k. A client who is the recipient of marriage and family therapy services has the right to access the records related to the service maintained by the licensee on that client, provided the records are not classified as confidential by North Dakota law.
- l. A marriage and family therapist must maintain an accurate record for each client. Each record must minimally contain:

- (1) A client personal data record which shall include the presenting problem;
 - (2) A treatment plan with a diagnosis and justification for it and treatment goals;
 - (3) An accurate chronological listing of all client contacts and a summary of each;
 - (4) Records of any consultation or supervision received in relation to the client;
 - (5) A termination statement indicating the date and reason for termination, the client's condition at the time, and any recommendations made to the client;
 - (6) Copies of all client authorization for release of information and any other legal forms pertaining to the client; and
 - (7) A chronological listing of all fees or charges for services related to the client and to whom the fees were charged. This record may be kept separate from the client's clinical file.
7. A marriage and family therapist must conduct research activities with full respect for the rights and dignity of participants and with full concern for their welfare according to the requirements of the "Ethical Principles of Psychologists, General Principle 9: Research With Human Participants", American psychological association, as amended June 2, 1989. These requirements are incorporated by reference. The requirements were published in "American Psychologist", March 1990, volume 45, number 3, pages 390-395. Participation in research is voluntary.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-10, 43-53-11

111-02-01-06. Continuing education.

1. A licensee must regularly engage in continuing education related to the practice of marriage and family therapy as defined in this section.
2. Licensees must complete a minimum of thirty hours of continuing education every two years, of which six hours must be ethics. Licensed associates must complete fifteen hours of continuing education every two years, of which six hours must be ethics. The required number of hours shall be prorated for persons who are initially licensed during a given reporting period. Proof of completion of the required hours

must be submitted to the board by December thirty-first of each odd-numbered year. The initial two-year period begins on January first of each even-numbered year.

3. When the licensee applies for renewal of the license, the licensee must submit documentation of the licensee's completion of the required hours of continuing education on an appropriate form furnished by the board. A receipt for payment of the fees for the course is not sufficient evidence of completion of the required hours of continuing education. Licensees shall keep attendance certificates for at least five years as the board may conduct random audits to verify compliance with subsection 2.
4. A course may not be counted toward a licensee's continuing education requirements unless it has been approved by the board according to the procedures in this subsection and subsections 5 to 9. Courses may be approved for all attendees when submitted by the sponsor as prescribed in subsection 6 or a licensee may request individual approval as prescribed in subsection 7. The board shall consider the following factors in determining whether a course should be approved:
 - a. The course's relevance to the therapeutic practices of marriage and family therapy.
 - b. Whether the course is structured on sound educational principles and fits into one of the following categories:
 - (1) Structured educational programs with an instructor as a part of conventions, workshops, seminars, lectures, interactive media, and graduate and postgraduate courses from regionally accredited institutions. All coursework must include the areas described in subdivision d; and
 - (2) Home study courses related to marriage and family therapy as described in subdivision d. Programs must have an independently graded test component. No more than one-fourth of the required thirty continuing education hours may be earned by this method.
 - c. Whether the course is at least one hour in length. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format. Time for home study courses shall be based on developer's research on average time to complete.
 - d. Whether the subject of the course is related to marriage and family therapy with an emphasis upon systemic approaches or the theory, research, or practice of psychotherapeutic work with couples or families. Continuing education for marriage and family therapy generally evolves from the following areas:

- (1) Historical, theoretical foundations, and contemporary conceptual directions of the field of marriage and family therapy;
 - (2) Assessment, diagnosis, and treatment in marriage and family therapy including both dysfunctional relationship patterns and nervous and mental disorders, whether cognitive, affective, or behavioral;
 - (3) Family studies including the life cycle of the family, the process and modification of family structures over time, and issues related to ethnicity, race, socioeconomic status, culture, gender, and sexuality;
 - (4) Human development including human behavior, personality theory, sexuality, psychopathology, behavior pathology, and physical and mental impairments and disabilities that affect normal development;
 - (5) Ethics and professional studies covering legal responsibilities and liabilities of licensure, clinical practice, research, family law, and confidentiality issues; and
 - (6) Supervision in marriage and family therapy including theories and practices.
- e. Whether the course's instructors or developers are qualified by practical or academic experience to teach, lecture, make presentations, or develop courses.
5. The board may use a committee, which may include nonboard members, to evaluate applications for course approval.
6. Individuals, organizations, associations, corporations, educational institutions, or groups intending to offer courses for approval must submit to the board a completed application on a form provided by the board. The course sponsor must meet the requirements in subdivisions a to d to receive and maintain course approval.
- a. The application for course approval must be submitted at least sixty days before the course is scheduled to begin and must include the sponsor's application and an annual nonrefundable continuing education course fee of seventy-five dollars.
 - b. The application for course approval must include the following information to enable the board to determine whether the course meets the standards for board approval specified in subsection 4:

- (1) A statement of the objectives of the course and the knowledge the participants will have gained upon completion of the course;
- (2) A description of the content and methodology of the course which will allow the participants to meet the objectives;
- (3) A description of the method to be used by the participants to evaluate the course;
- (4) A listing of the qualifications of each instructor or developer which shows the instructor's or developer's current knowledge and skill in the course's subject; and
- (5) A description of the certificate or other form of verification of attendance distributed to each participant upon successful completion of the course.

c. If the board approves a course, it shall assign a number to the course. The approval remains in effect for one year from the date of initial approval. The board shall compile a list of approved courses at least once per calendar year. To retain course approval, a course sponsor must submit to the board a new application for course approval required in subdivisions a and b and the application fee for approval of a continuing education course required before the expiration of the one-year period.

- (1) Each sponsor of an approved course may announce, as to a course that has been approved by the board, that: "This course has been approved by the North Dakota Marriage and Family Therapy Licensure Board for _____ hours of credit".
- (2) The course sponsor must submit proposed changes in an approved course to the board for its approval.

d. The board shall approve or disapprove a sponsor's application for course approval.

e. The board shall deny approval of a course if it does not meet the standards in subsection 4. The board shall notify the course sponsor in writing of its reasons for denying approval of a course.

f. The board shall revoke its approval of a course if a course sponsor fails to comply with subdivision c and any part of subsection 4, or if a course sponsor falsifies information requested by the board in the application for approval of a course.

7. A licensee's application for course approval:

- a. A licensee must apply individually for approval of continuing education courses that have not been approved by the board in subsection 6. The licensee must submit information required in subdivision b, as well as other information the board reasonably requires to evaluate the course for approval.
 - b. The following information must be submitted to the board, in addition to the form required in subsection 3, by the licensee:
 - (1) The name and address of the organization sponsoring the course;
 - (2) A detailed description of the course content;
 - (3) The name of each instructor or presenter and the instructor's or presenter's credentials; and
 - (4) The location, including the name and address of the facility, at which the course will be conducted.
 - c. Licensees seeking approval for a course not previously approved by the board are strongly encouraged to seek board approval before attending the course. Licensees have sixty days to seek approval for a course not preapproved in advance by the board.
 - d. The board shall deny approval for a course if it does not meet the standards in subsection 4. The board shall notify the applicant in writing of its reasons for denying approval of a course under this subsection.
8. Continuing education credit may not be applied for marketing the business aspects of one's practice, time management, supervisory sessions, staff orientation, agency activities that address procedural issues, personal therapy, or other methods not structured on sound education principles or contrary to the code of ethics. Continuing education credit may be applied for the following programs that comply with the requirements of subsection 4:
- a. Programs specifically listed in paragraphs 1 and 2 of subdivision b of subsection 4;
 - b. Teaching a marriage and family course in an institution accredited by a regional accrediting association. Continuing education hours may be earned only for the first time the licensee teaches the course. The course must be related to marriage and family therapy as described in subdivision d of subsection 4. Ten continuing education hours may be earned for each semester credit-hour taught;

- c. Research of an original nature directly related to marriage and family therapy as described in paragraphs 1 to 6 of subdivision d of subsection 4. This activity must be preapproved by the board. Hours of credit for this activity shall be negotiated based on the nature of the project. Contact the board for appropriate preapproval forms;
- d. Authoring, editing, or reviewing in an area of marriage and family therapy as described in subdivision d of subsection 4. Continuing education hours may be earned only in the year of publication. The maximum hours earned are as follows:
- (1) Author of a professional book, thirty hours;
 - (2) Author of a professional book chapter or journal article, fifteen hours;
 - (3) Editor of a professional book or journal, twenty-five hours; and
 - (4) Journal article review, one hour per manuscript;
- e. Presentations at workshops, seminars, symposia, meetings of professional organizations, or postgraduate institutes. The presentation must be related to marriage and family therapy as described in subdivision d of subsection 4. One hour of development time equals one continuing education hour and up to three hours of development time may be claimed for each hour of presentation. Continuing education hours may be earned only for the licensee's first presentation on the subject developed; and
- f. Individually designed continuing education activity. Licensees may submit proposals for continuing education activities which do not meet other guidelines established within this section. The proposal request must include the following:
- (1) The rationale for pursuing an individually designed activity;
 - (2) Specific goals and objectives, and an explanation of how the goals and objectives are related to the enhancement of the licensee's professional skills;
 - (3) An outline of the topics to be covered;
 - (4) A description of related resources and activities;
 - (5) The proposed documentation of completion of activity; and
 - (6) The estimate of time to be expended on the activity and the number of continuing education hours requested. The

board shall have final say in the number of hours credited for completion of such activity. Subdivisions d to f require preapproval. The applicant must obtain preapproval forms from the board.

9. Continuing education shall be credited on an hour-for-hour basis except as noted in subsection 8. "One hour" means at least fifty minutes spent as a student in direct participation in a structured educational format.
10. A licensee whose license has not expired and who meets any of the following conditions is exempt from continuing education requirements in this section if the licensee files with the board an affidavit specifying that the licensee:
 - a. Is retired from practice and does not perform marriage and family therapy services on a volunteer or free basis;
 - b. Is permanently disabled and unable to practice marriage and family therapy, accompanied by a statement from the licensee's physician;
 - c. Has been granted emeritus status as specified in section 111-02-04-05; or
 - d. Has been called to active duty in the armed forces of the United States.
11. A licensee claiming exemption under subsection 10 who later decides to resume practice must submit to the board, before resuming practice, a written notice that the licensee intends to resume practice. The licensee must also submit evidence that the licensee has completed continuing education requirements that are equivalent to what the requirements would have been without the exemption for the five years or any portion of the five years immediately preceding the date of the notice of intent to resume practice.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-05, 43-53-09

CHAPTER 111-02-02
PRELIMINARY LICENSING REQUIREMENTS

Section

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111-02-02-01. Licenses.

1. To be eligible for licensure, an applicant must meet the following requirements:
 - a. Complete the education requirements in subsection 2 or 3 of North Dakota Century Code section 43-53-06.
 - b. Complete the experience requirements in subsection 2 or 3 of North Dakota Century Code section 43-53-06.
 - c. Provide evidence of meeting the requirements of North Dakota Century Code section 43-53-06 through endorsements from another jurisdiction.
 - d. Agree to conduct all professional activities as a licensed marriage and family therapist in accordance with the code of ethics for marriage and family therapists in section 111-02-02-02.
 - e. Pass both parts of the examination listed in North Dakota Century Code section 43-53-07.
2. An applicant who fails to meet all requirements in this section shall be denied a license.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-02. Educational requirements - Determination of equivalent degree.

1. In determining whether an applicant holds a master's or doctoral degree that is equivalent to degrees described in North Dakota Century Code section 43-53-06, the board shall evaluate the applicant's transcripts, documentation from the educational institution that describes the substance and purpose of the applicant's academic training, accreditation and other professional recognition of the

educational institution by regional accrediting bodies, and other necessary information as determined by the board. All requested documentation must be sent directly from the educational institution to the board.

2. A master's or doctoral degree is equivalent to a master's or doctoral degree in marriage and family therapy if the degree is from a regionally accredited institution, if the degree is in a related subject field, and if the degree contains the following coursework:
 - a. Nine semester hours in human development covering human development, human behavior, personality theory, human sexuality, psychopathology including the diagnosis of mental illness, and behavior pathology;
 - b. Six semester hours in marital and family studies covering theories of family development, theories of family functioning, the family life cycle, sociology of the family, families under stress, contemporary family forms, family subsystems, theories of marital and family interaction, theories of child development, lifespan, and theories of gerontology;
 - c. Twelve semester hours in marital and family therapy covering marital and family communication, family psychology, family therapy, methods of intervention, family assessment, treatment planning, sex therapy, major theories of marital and family therapy such as structural, strategic, transgenerational, experiential, object relations, contextual, systemic therapy, solution-focused therapy, narrative, and biofeedback methodologies;
 - d. Three semester hours in research covering research design, methods, statistics, and special issues research in marital and family studies or a related field;
 - e. Three semester hours in professional studies covering professional socialization, professional organizations, legal issues, interprofessional cooperation, professional ethics, and family law;
 - f. Applicants are required to demonstrate courses which include content on issues of diversity (race, gender, sexual orientation, spirituality, class, etc.); and
 - g. A clinical practicum in marriage and family therapy of at least five hundred hours or twelve months or nine semester hours of clinical client contact with individuals, couples, and families for the purpose of assessment and intervention. Of the five hundred hours, no more than two hundred fifty hours may be with individuals. This clinical experience must be supervised onsite or at the academic institution

by a licensed and family therapist or an American association for marriage and family therapy-approved supervisor.

3. Four quarter credit-hours shall be equivalent to three semester hours in meeting the requirements in subdivisions a to e of subsection 2. This curriculum may be completed during the qualifying master's or doctoral degree programs; or additional coursework may be taken at a college or university accredited by a regionally accredited educational institution after receiving the graduate degree in order to fulfill the requirements for each of the areas described in subdivisions a to f of subsection 2. An applicant may not use a course for more than one area described in subdivisions a to f of subsection 2.
4. A professional track may give credit for experience with a minimum of five years providing the applicant had a valid equivalent degree as described in subsection 1 during the time of working with couples and families. The applicant will take twelve semester hours from coursework requirements described in subdivision c of subsection 2 and three semester hours in subdivision e of subsection 2. The clinical client contact requirements will remain the same.
5. The burden is on the applicant to prove by a preponderance of the evidence that the coursework is equivalent to the requirements in subsection 2.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-03. Experience requirements. The two years of supervised, postgraduate experience required by subsection 3 of North Dakota Century Code section 43-53-06 must meet the following:

1. In calculating two years of supervised postgraduate experience in marriage and family therapy, the board shall accept a minimum of one thousand five hundred hours of clinical client contact including the assessment, diagnosis, and treatment of mental illness as specified in subsection 3 with two hundred hours of postgraduate supervision by a North Dakota or other approved jurisdiction licensed marriage and family therapist supervisor over a period of not less than twenty-four months and no more than forty-eight months. All additional work used to complete this two-year experience may be supervised in a legal and ethical manner by a licensed mental health professional listed in North Dakota Century Code title 43.
2. The applicant must demonstrate at least five hundred hours of the clinical client contact required in each of the following categories of cases:

- a. Unmarried couples, married couples, and separating and divorcing couples;
- b. Family groups, including children; and
- c. Individual services.

This contact shall include experience in the assessment, diagnosis, and treatment of mental illness. The board may consider waiving part of this requirement for good cause shown.

- 3. The supervision by a North Dakota or other jurisdiction licensed marriage and family therapist shall take place in individual and group settings, according to the following:

- a. The individual supervision shall take place in a setting in which a supervisor and not more than two supervisees are present.
- b. The group supervision shall take place in a setting in which a supervisor and not more than six supervisees, but not less than three supervisees, are present.

- 4. Supervision must involve:

- a. At least two hundred hours of face-to-face contact between the supervisor and supervisee of which at least one hundred hours must be in individual settings.
- b. One hundred hours of supervision per year.
- c. A focus on the raw data from the supervisee's clinical work that is made directly available to the supervisor through means of written clinical materials, direct observation, and audio or video recordings.
- d. During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.
- e. During the postgraduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the act or administrative rules.
- f. Supervision must be conducted under a supervision agreement, which must be submitted to the board on the official form within sixty days of the initiation of supervision.

- g. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is forty-five minutes. Up to fifty hours of the two hundred hours of face-to-face supervision may occur via telephonic or other electronic media, as approved by the supervisor.
 - h. An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.
 - i. The associate may receive credit for up to two hundred fifty clock-hours toward the required two thousand hours of supervised clinical services by providing services via telephonic or other electronic media, as approved by the supervisor.
5. A supervisee must verify the required supervised experience by completing a form supplied by the board. The form must be signed by the applicant's supervisor and be deemed truthful subject to penalties for making a false statement under North Dakota Century Code section 12.1-11-02. The form must include the setting, nature, and extent of the supervised experience, the time period involved, the number of hours of clinical client contact, the number of hours of supervision, and the name and qualifications of each supervisor.

History: Effective July 1, 2010.

General Authority: NDCC 23-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-04. Requirements for supervisor.

- 1. Supervisors are recognized by the board when subsection 1 or 2 is met by submitting an application which includes the following four documents:
 - a. A graduate degree in marriage and family therapy or a graduate degree in a related mental health field, such as counseling and guidance, psychology, psychiatry, or clinical social work, from a recognized educational institution;
 - b. A license, which is not a provisional or an associate license, issued by the board or a license as a marriage and family therapist in another jurisdiction;
 - c. One of the following:
 - (1) Successful completion of a one semester graduate course in marriage and family therapy supervision from an accredited institution; or

- (2) A forty-hour continuing education course in clinical supervision offered by a board-approved provider; and
- d. At least three thousand hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.
2. In lieu of meeting the qualifications set forth in subdivision a of subsection 1, a person is an acceptable supervisor if the person has been designated as an approved supervisor or supervisor-in-training by the American association for marriage and family therapy before the person provides any supervision.
3. A supervisor may not be employed by the person whom the supervisor is supervising.
4. A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to the person whom the supervisor is supervising.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-02-05. Responsibilities of supervisor. A supervisor must:

1. Be knowledgeable of the clinical skills required for effective delivery of marriage and family therapy services;
2. Be knowledgeable of the important literature in the field of marriage and family therapy and professional ethics, and the supervisor must be knowledgeable about the basic skills and service delivery of supervision;
3. That all supervised work is conducted in appropriate professional settings, with adequate administrative and clerical controls; and
4. Devote at least ten percent of the required continuing education hours to supervision.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

CHAPTER 111-02-03
LICENSURE PROCESS FOR LICENSED MARRIAGE AND FAMILY
THERAPISTS

Section

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| <u>111-02-03-01</u> | <u>Process</u> |
| <u>111-02-03-02</u> | <u>Examination</u> |
| <u>111-02-03-03</u> | <u>Procedures for Admission to Licensure</u> |
| <u>111-02-03-04</u> | <u>Concurrent Applications for Examination and Licensure</u> |
| <u>111-02-03-05</u> | <u>Examination Methods - Subjects and Procedures</u> |
| <u>111-02-03-06</u> | <u>License by Endorsement</u> |

111-02-03-01. Process. The process of licensure by the board as a marriage and family therapist is divided into two separate parts, admission to written examination and admission to licensure.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07

111-02-03-02. Examination.

1. To be admitted to written examination, an applicant must submit to the board the following information:
 - a. The applicant must submit a completed application for admission to written examination on a form provided by the board. The application must include an affirmation by the applicant that the statements made in the application are true and correct to the best knowledge of the applicant.
 - b. The applicant must submit the required nonrefundable fee for application for admission to written examination specified in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06 made payable to the North Dakota marriage and family therapy licensure board.
 - c. The applicant must submit official transcripts of all graduate education of the applicant, including verification of the degree granted. The transcripts must be sent directly to the board from the institution granting the degree.
 - (1) The applicant must demonstrate to the board, by a preponderance of the evidence, that the degreed program documented by the applicant's transcripts meets the requirements of subdivisions a and b of subsection 3 of North Dakota Century Code section 43-53-06.

- (2) The institution granting the degree must be regionally accredited at the time the degree is granted.
- d. An applicant for licensure must inform the board within thirty days of any changes in name, residential address, or cell, business, and residential telephone numbers.
- 2. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for admission to written examination and to require the applicant to provide verification.
- 3. An applicant's file shall be closed if the applicant fails to complete the application for admission to written examination and provide all information required within six months from the date the board receives the application.
- 4. An applicant shall be admitted to the first regularly scheduled written, objective part of the examination that occurs sixty days or more after the applicant has met the requirements of subsection 1, unless admission is denied under subsection 5. Admission to the examination shall be complete only after receipt of the examination fee by the board from the applicant.
- 5. The board shall deny an applicant admission to written examination if the applicant has not met the education requirements of subdivision a of subsection 3 of North Dakota Century Code section 43-53-06. The board shall notify the applicant of the denial in writing and state the reasons for the denial. Any applicant who fails an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.
- 6. An application for admission to written examination submitted after denial shall be considered a new application for admission to written examination which must be accompanied by the fee for application for admission to written examination.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07, 43-53-09

111-02-03-03. Procedures for admission to licensure.

- 1. To be eligible for admission to licensure, an applicant must submit to the board the following information:
 - a. The applicant must submit evidence of having passed the written part of the examination in subdivision c of subsection 3 of North Dakota Century Code section 43-53-06.

- b. The applicant must submit a completed application for licensure on a form provided by the board. The application must include an affirmation by the applicant that the statements in the application are true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant will conduct all professional activities as a licensed marriage and family therapist according to the code of ethics in section 111-02-03-02.
 - c. The applicant must submit the required, nonrefundable application for initial licensure fee specified in subsection 4 of section 111-02-04-01, payable to the North Dakota marriage and family therapy licensure board.
 - d. The applicant must submit a completed form provided by the board, verifying the applicant's postgraduate, supervised experience, conforming to the requirements of subsection 3 of North Dakota Century Code section 43-53-06
 - e. The applicant must submit two endorsements attesting to the applicant's good moral character. The endorsements must be completed and signed by individuals who meet the requirements for endorsers under subsection 2. The endorsements must be truthful, and are subject to the penalties of perjury.
2. Requirements for endorsement.
- a. For an endorsement to meet the requirements of subdivision e of subsection 1, the endorser must:
 - (1) Be licensed by the board; or
 - (2) Be licensed to practice marriage and family therapy by another jurisdiction whose licensure standards are at least equivalent to or exceed the requirements for licensure in North Dakota.
 - b. An endorser must not be an employee, independent contractor, patient, or former patient, or be related in any way to the applicant.
3. The board has authority to investigate or contact persons to verify the authenticity of the information in the application for licensure and to require the applicant to provide verification.
4. An applicant who fails to meet all the requirements in subsection 1 shall be denied licensure. An applicant who is denied licensure shall be informed in writing of the denial and the reasons for it. An application for licensure submitted following denial is a new application for licensure which must be accompanied by the fee for application

for licensure specified in subsection 3 of North Dakota Century Code section 43-53-06.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07, 43-53-08, 43-53-09

111-02-03-04. Concurrent applications for examination and licensure.

An applicant may file both the application for admission to written examination and the application for licensure at the same time if the experience requirements in subdivision b of subsection 3 of North Dakota Century Code section 43-53-06 have been met.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-07

111-02-03-05. Examination methods - Subjects and procedures.

1. Examination of an applicant for a license as a marriage and family therapist shall be composed of:
 - a. A written, objective part designed and scored by a professional examination service approved by the Association of marriage and family therapy regulatory boards; and
 - b. A state part conducted by members of the board.
2. An applicant who is admitted to written examination must pay the written examination fee to the North Dakota marriage and family therapy licensure board or its designee before taking the examination.
3. The written examination is the examination approved by the association of marriage and family therapy regulatory boards. The written examination shall be offered on dates established by the association of marriage and family therapy regulatory boards.
4. The state examination of an applicant shall be held according to those methods determined by the board to be the most practical and expeditious in testing the applicant's qualifications for licensure. The state examination of an applicant shall take place after the applicant's application for licensure has been accepted by the board and before the applicant is approved for licensure. The state examination of an applicant shall cover:
 - a. The applicant's knowledge of the laws governing marriage and family therapists;
 - b. The applicant's knowledge of the code of ethics;

- c. The applicant's awareness of the responsibilities to the board and to the public; and
 - d. Other practice-related areas.
5. The board shall notify an applicant in writing of admission to either part of the examination at least thirty days before either part of the examination is scheduled to take place. The notice shall state the date, time, and place where the applicant is scheduled to be examined.
 6. The passing score of the written part of the examination is the passing score determined by the association of marriage and family therapy regulatory boards. The passing score for the state examination shall be determined by the board. An applicant must pass both parts of the examination to qualify for licensure as a marriage and family therapist.
 7. An applicant who has failed a part of the examination may be reexamined on the part the applicant failed, but not more than five times without a variance. An applicant who is reexamined on the written part of the examination must pay the written examination fee.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-04, 43-53-07

111-02-03-06. License by endorsement.

1. The board shall issue a marriage and family therapist license to an applicant who holds a current license as a marriage and family therapist from another state or country if the board determines that the standards for licensure in effect when the individual was licensed in the other state or country are at least equivalent to or exceed the current requirements for licensure in North Dakota. If an applicant for licensure by endorsement was licensed in another state or country without passing the written examination specified in section 111-02-03-02, but meets all other North Dakota requirements, the applicant may submit an application for licensure by endorsement after passing the examination under subsections 1 through 3 of section 111-02-03-05. All applicants for licensure by endorsement must pass the state examination specified in subsection 4 of section 111-02-03-05.
2. An individual who holds a current license as a marriage and family therapist from another state or country must file a completed application for licensure by endorsement and must pay the fee for an original license in North Dakota. The application must be on a form provided by the board. The application must include a statement that the information in the application is true and correct to the best knowledge of the applicant and an agreement by the applicant that the applicant

will conduct all professional activities according to the code of ethics in section 111-02-01-05.

3. The applicant must direct the board of examiners of the state or country in which the license is held to send to the board directly a statement that the license is in effect and in good standing on a form provided by the board, and a copy of the state's current licensing law and rules.
4. The board may refuse to grant a license or may impose disciplinary action for:
 - a. Revocation, suspension, restriction, limitation, or other disciplinary action against the applicant's license in another state or jurisdiction;
 - b. Failure to report to the board that charges regarding the applicant's license have been brought in another state or jurisdiction; or
 - c. Having been refused a license by another state or jurisdiction.
5. The burden is on the applicant to establish, by a preponderance of the evidence, that the standards for licensing in effect when the individual was licensed in the other state or jurisdiction are at least equivalent to or exceed the current licensing requirements in North Dakota.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-08

CHAPTER 111-02-04
LICENSEE - RENEWAL OF LICENSE AND FEES

Section

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| <u>111-02-04-01</u> | <u>Renewal of License and Fees</u> |
| <u>111-02-04-02</u> | <u>Term of License</u> |
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| <u>111-02-04-04</u> | <u>Voluntary Termination of License</u> |
| <u>111-02-04-05</u> | <u>Emeritus License Status</u> |

111-02-04-01. Renewal of license and fees.

1. Licenses issued by the board must be renewed biennially upon the payment of the renewal fee required in subsection 4, completion of a renewal application, and the fulfilled reporting of continuing education requirements in section 111-02-01-06. Licensed associates renew on an annual basis up to forty-eight months.
2. The board shall send the licensee a written renewal notice identifying the amount of the renewal fee. The notice shall be sent to the licensee's last-known address on record with the board. A licensee must notify the board in writing of any change of name, address, and cell, residential, or business telephone numbers within thirty days after any change. Failure to receive the renewal notice does not relieve the licensee of the obligation to renew the license.
3. The licensee must submit to the board a completed renewal application on a form provided by the board. The licensee must submit the renewal application so that the application is postmarked on or before December thirty-first. If the postmark is illegible, the renewal application is timely if received in the board office by mail on the first workday after December thirty-first.
4. The original license fee is one hundred ninety dollars. The renewal license fee is one hundred forty dollars. These fees must accompany the original and renewal applications to be complete. The licensed associate original fee is seventy-five dollars per year. The renewal associate fee is fifty dollars per year.

Other fees:

- a. Application for admission to the written examination fee shall be the current rate as established by the association of marriage and family therapy regulatory boards and a written examination fee in accordance with the current contracted examination fee.
- b. Application for original licensure by endorsement fee, three hundred dollars.

- c. Duplicate license fee, twenty-five dollars.
 - d. Sponsor's application for approval of a continuing education course fee, seventy-five dollars.
 - e. Late fee for renewal, two hundred fifty dollars postmarked one through ninety days late, three hundred fifty dollars postmarked ninety-one through three hundred sixty-five days late. Licensed associate late fee, one hundred dollars postmarked one through three hundred sixty-five days late.
 - f. Application for an associate marriage and family therapy license fee, seventy-five dollars, plus fifty dollar application fee.
 - g. Renewal of associate marriage and family therapy license annual fee, fifty dollars. May be renewed up to four years or three renewals.
 - h. The cost of background checks are the burden of the applicant.
5. Failure to renew.
- a. The following procedure applies if a licensee fails to submit the renewal application according to subsection 3 or fails to fulfill or report continuing education requirements in section 111-02-01-06.
 - b. If the licensee fails to submit to the board the renewal application, information about continuing education requirements, and the renewal fees specified in subsection 4, on or before December thirty-first, the license expires and the licensee's right to practice terminates on December thirty-first. The board shall mail to the former licensee a written notice that the licensee's license has expired and the licensee's right to practice has terminated. The board shall send the notice to the licensee's last-known address on record with the board. The board shall instruct the former licensee to promptly return the licensee's board-issued license certificate, written in calligraphy, to the board office.
 - c. A license that expired under this section may be reinstated under section 111-02-04-03.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-02. Term of license.

1. An original license is effective after:

- a. The board notifies the applicant in writing that the applicant has been approved for licensure;
 - b. The applicant has paid the original license fee in subsection 4 of section 111-02-04-01; and
 - c. The board assigns a license number to the applicant.
2. An original license granted by the board is valid for a two- year period beginning with the effective date in subsection 1 and ending on December thirty-first of the biennial year in which the license was initially granted. For example, an original license granted on May 6, 2008, is valid from May 6, 2008, to December 31, 2010. A subsequent renewal license is valid for a two-year period ending on December thirty-first, and shall prorate the fees per month which are not covered in the original license fee. For example, an original license which was granted on May 6, 2008, expires on December 31, 2010. The months not covered by the original license fees are seven, from May through December. The license must be renewed for a two-year period according to the procedures in section 111-02-04-01.
3. A licensed marriage and family therapist or an associate marriage and family therapist must display the therapist's license and evidence of current renewal in a conspicuous place in the therapist's office or place of business or employment. Evidence of current renewal will be provided by the board upon renewal of the license. A duplicate license shall be issued to a licensee after the licensee requests a duplicate license from the board and the fee is paid.

History: Effective July 1, 2010.

General Authority: NDCC 43-32-02, 43-53-05

Law Implemented: NDCC 43-53-06, 43-53-09

111-02-04-03. Reinstatement of license.

1. A license that has expired under subsection 5 of section 111-02-04-01 may be reinstated if:
 - a. No fact, circumstance, or condition exists which, if the license were reinstated, would justify its revocation or suspension;
 - b. The former licensee verifies that the former licensee has not engaged in the practice of marriage and family therapy in this state or any other jurisdiction, or used a title denoting marriage and family therapist since expiration of the license unless licensed by another jurisdiction. The verification must be accompanied by an affirmation that the statement is true and correct to the best knowledge and belief of the former licensee;

- c. The former licensee submits to the board a completed application for reinstatement on a form provided by the board;
 - d. The former licensee pays the late fee specified in subsection 4 of section 111-02-04-01;
 - e. The former licensee includes with the application for reinstatement a letter stating the reasons for applying for reinstatement; and
 - f. The former licensee complies with the applicable provisions of subsections 2 and 3.
- 2. A former licensee whose license expired under subsection 5 of section 111-02-04-01 less than five years previous to the application for reinstatement must:
 - a. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and
 - b. Pay the late fee specified in subsection 4 of section 111-02-04-01, for each of the years between the date the license expired and the date the former licensee submits a reinstatement application.
- 3. A former licensee whose license expired under subsection 5 of section 111-02-04-01 five years or more before the application for reinstatement must:
 - a. Retake the written examination required for licensure of marriage and family therapists given by the board according to section 111-02-03-02;
 - b. Submit evidence of meeting the continuing education requirements that would have applied to the former licensee if the license had not expired; and
 - c. Pay the late fee specified in subsection 4 of section 111-02-04-01 for each of the five years immediately preceding application for reinstatement.
- 4. A former licensee who has engaged in the practice of marriage and family therapy in this state or used a title denoting marriage and family therapist since the date of expiration of the license is subject to denial of reinstatement or disciplinary action at the time of reinstatement. Nothing in this subsection precludes the board from seeking injunctive relief under applicable law for the unauthorized practice of marriage and family therapy or from referring the matter to criminal law enforcement officials.

5. Upon reinstatement, the licensee shall be assigned the same license number which the licensee was assigned before expiration of the license.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-04-04. Voluntary termination of license. A license may be terminated at any time upon written request by the licensee to the board, unless a complaint is pending against the licensee. If a complaint is pending against a licensee, a license may not be voluntarily terminated until any indicated action relative to the complaint is concluded. The board must receive the request to terminate before expiration of the license for failure to renew under subsection 5 of section 111-02-04-01. A licensee who has voluntarily terminated the license may be relicensed by complying with the requirements for reinstatement of an expired license in section 111-02-04-03, except that payment of the renewal fees shall not be required.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

Law Implemented: NDCC 43-53-06

111-02-04-05. Emeritus license status.

1. A marriage and family therapist duly licensed to practice marriage and family therapy in the state under North Dakota Century Code chapter 43-53, who has reached the age of sixty-two and is retired from the active practice of marriage and family therapy, may apply to the board for emeritus status:
 - a. By indicating on the licensee's renewal form or by petitioning the board in writing; and
 - b. By indicating the licensee has not been the subject of disciplinary action resulting in the suspension, revocation, qualification, condition, or restriction to practice marriage and family therapy.
2. A licensee who has emeritus status shall not engage in marriage and family therapy practice or practice as a mental health professional as defined in North Dakota Century Code title 43.
3. Continuing education requirements are not applicable to emeritus status.
4. In the exceptional case that a marriage and family therapist issued an emeritus license should wish to resume practice, the board

shall reactivate the license according to the procedure in section 111-02-04-03.

History: Effective July 1, 2010.

General Authority: NDCC 28-32-02, 43-53-05

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