

**TITLE 85  
BOARD OF UNIVERSITY AND SCHOOL LANDS**

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**ARTICLE 85-01  
GENERAL ADMINISTRATION**

Chapter	
85-01-01	Definitions and General Provisions

**CHAPTER 85-01-01  
DEFINITIONS AND GENERAL PROVISIONS**

Section	
85-01-01-01	Definitions
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**85-01-01-01. Definitions.**

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 15-08, 15-08.1, 38-09, 47-06, 47-30.1, and 57-62, apply to this title:

1. “Arm’s length transaction” means a transaction between parties with adverse economic interests where each party to the transaction is in a position to distinguish its economic interest from that of the other party and does not mean a transaction made by a corporation or other entity with itself, or a parent, subsidiary, or interrelated corporation or entity, or between partners or co-joint venturers, or between corporations or other entities having interlocking directorships or close business relationships which may compromise their individual interests.
2. “Agricultural use” includes the use of trust lands for the purpose of grazing, cropping, haying, and honey bee pasture or meadow.
3. "Board" means the board of university and school lands.
4. “Bonus” means the monetary consideration paid by a lessee for the execution of a lease by the board.
5. “Coal” means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in both oxidized and nonoxidized forms, and leonardite, having less than eight thousand three hundred British thermal units per pound [453.59 grams], moist and mineral matter free, whether or not the material is enriched in radioactive materials.

6. "Coal lease" means a contract entered into between the board and a third party for a coal mining operation on trust lands.
7. "Coal leased premises" means the land subject to a given coal lease.
8. "Coal mining operation" means any type of activity conducted to discover, or prospect for, the presence of coal, or to remove the coal so discovered from its original position on or in the land by any means whatsoever.
9. "Commercial quantities" means whether (1) the well yields a profit exceeding operating costs over a reasonable period of time, and (2) a reasonably prudent operator would continue operating a well in the manner being operated under the facts and circumstances.
10. "Commissioner" means the commissioner of university and school lands.
11. "Construction aggregate" means gravel, sand, scoria, road material, building stone, colloidal or other clays, and cement materials.
12. "Construction aggregate lease" means a contract entered into between the board and a third party for mining of construction aggregate on trust lands.
13. "Construction aggregate leased premises" means the land area subject to a given construction aggregate lease.
14. "Construction aggregate mining operation" means any type of activity conducted to discover, or prospect for, the presence of construction aggregate, or to remove the construction aggregate so discovered from its original position on or in the land by any means whatsoever.
15. "Custodial agreement" means an agreement between the lessee and a third party in which the lessee agrees to take custody of livestock not owned by the lessee for a specified period of time and to provide day to day care for the livestock.
16. "Delay rental" means the annual minimum payment given to maintain a lease in the absence of production in commercial quantities during the primary term.
17. "Department" means the office of the commissioner and the department of trust lands.
18. "Disturbed" means any alteration of the surface or subsurface of any lands subject to a lease or encumbrance with the board.
19. "Encumbrance" means a right other than an ownership interest in real property. The term includes easements, permits, surface damage agreements and any other restrictions, encroachments, licenses, mortgages, and liens that relate to trust lands, and specifically excludes leases for agricultural use, construction aggregate, sodium sulfate, chemical

substances, metallic ores, uranium ores, and oil, gas, and coal which are administered separately.

20. “Fair market value” means the price set by the commissioner after an analysis of prices paid for similar products or services in the local area.

21. “F.O.B.” means free on board.

22. “Gas” means all natural gas and all other gaseous or fluid hydrocarbons not defined as oil, but shall not include coal, lignite, oil shale, or similar hydrocarbons.

23. “Gas well” means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota industrial commission, other than from coalbed methane.

24. “Gross proceeds” means the sum of all consideration in whatever form or forms, paid for the gas attributable to the lease.

25. “Invasive species” means a species that is non-native to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

26. “Market value” means the price a willing buyer would pay a willing seller in an arm’s length transaction in which the buyer is not compelled to buy or seller is not compelled to sell.

27. “Net construction aggregate interest” means the undivided portions of the total construction aggregate estate on a given tract of land.

28. “Oil” means crude petroleum oil and other hydrocarbons regardless of gravity produced in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

29. “Oil and gas lease” means a contract entered into between the board and a third party for oil and gas production.

30. “Oil and gas leased premises” means the land subject to a given oil and gas lease.

31. “Oil well” means a well capable of producing oil and which is not a gas well as defined herein.

32. “Payor” means either the lessee or an entity other than the lessee who assumes, or agrees to perform, any of the lessee’s rights and responsibilities under a lease.

33. “Pest” means any insect, rodent, nematode, fungus, weed, any form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms, except viruses,

bacteria, or other micro-organisms, whose presence causes or is likely to cause economic or environmental harm or harm to human health.

34. “Surface land lease” means a contract entered into between the board and a third party for agricultural use on trust lands.

35. “Surface land leased premises” means the land area subject to a given surface land lease.

36. “Terminate,” unless otherwise provided, has the same meaning as the word “cancel.”

37. “Trust lands” means any property owned by the state of North Dakota and managed by the board.

38. “Trusts” means permanent trusts and other funds managed or controlled by the board.

39. “Vehicle” means every device in, upon, or by which any person or property may be transported or drawn upon a public highway or trail, except devices moved by human power.

40. “When run” means that point in the time when the production from a well is removed or sold from the leased premises and delivered to the purchaser or user of such production; for purposes of computing royalties, that point in time shall be considered to be 7:00 a.m., on the day the production is delivered, using central standard time, to the purchaser or user regardless of the actual time delivered.

**History:** Effective January 1, 2019, Amended Effective

**General Authority:** NDCC 28-32-02, 15-05-05, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-01, 4.1-47-04, 15-04, 15-05, 15-07, 15-08, 15-08.1

#### **85-01-01-02. Exception.**

The board may grant an exception to articles 85-03, 85-04, and 85-06, when such exception is in the best interests of the trusts.

**History:** Effective January 1, 2019, Amended Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02

**ARTICLE 85-04**  
**SURFACE LAND MANAGEMENT**

<u>Chapter</u>	
<u>85-04-01</u>	<u>Leasing Trust Lands for Agricultural Use</u>
<u>85-04-02</u>	<u>Construction Aggregate</u>
<u>85-04-03</u>	<u>Permanent Improvements</u>
<u>85-04-04</u>	<u>Encumbrances of Trust Lands</u>
<u>85-04-05</u>	<u>Public Access and Use</u>

**CHAPTER 85-04-01**  
**LEASING TRUST LANDS FOR AGRICULTURAL USE**

<u>Section</u>	
<u>85-04-01-01</u>	<u>Failure to Pay or Nonsufficient Funds at Auction</u>
<u>85-04-01-02</u>	<u>Annual Surface Land Lease Rental Payment</u>
<u>85-04-01-03</u>	<u>Assignment and Use by a Third Party</u>
<u>85-04-01-04</u>	<u>Sale of Surface Land Lease for Agricultural Use Prohibited</u>
<u>85-04-01-05</u>	<u>Inspection by Prospective Lessee or Purchaser</u>
<u>85-04-01-06</u>	<u>Custodial Agreement</u>
<u>85-04-01-07</u>	<u>Right of Entry</u>
<u>85-04-01-08</u>	<u>Surface Land Lease Termination</u>
<u>85-04-01-09</u>	<u>Board Review</u>
<u>85-04-01-10</u>	<u>Cost Share on Surface Land Leased Premises</u>
<u>85-04-01-11</u>	<u>Cost Share Application</u>
<u>85-04-01-12</u>	<u>Cost Share on Cropland</u>
<u>85-04-01-13</u>	<u>Cost Share Payments</u>
<u>85-04-01-14</u>	<u>Biological Control Agents</u>
<u>85-04-01-15</u>	<u>Record Maintenance</u>

**85-04-01-01. Failure to pay or nonsufficient funds at auction.**

1. The commissioner will not issue a surface land lease for agricultural use until payment in full is received by the department.
2. A successful bidder who fails to pay for a surface land lease shall be deemed ineligible to bid at subsequent surface land lease auctions administered by the board for the remainder of the current calendar year plus three additional calendar years.
3. If a surface land lease payment made at auction is, for any reason, not paid by the bank on which it is drawn, the commissioner shall notify the bidder by mail addressed to the bidder's post office address on file with the department that payment by cashier's check or money order is required within ten business days from the date the letter is mailed.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-07-20, 54-30-17.1

**85-04-01-02. Annual surface land lease rental payment.**

1. The annual surface land lease rental payment for the second and succeeding years of a surface land lease must be received by the department no later than five p.m. central standard time on the last business day of January of the surface land lease year. If payment is not received, the surface land lease will automatically terminate without notice.
2. If the annual surface land lease rental payment is, for any reason, not paid by the bank on which it is drawn after five p.m. central standard time on the last business day of January of the surface land lease year, the surface land lease will automatically terminate and the commissioner may designate the lessee ineligible to bid at subsequent surface land lease auctions for the remainder of the current calendar year plus three additional calendar years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-03. Assignment and use by a third party.**

1. A surface land lease or any part thereof shall not be assigned, nor shall the lessee allow the surface land leased premises or any part thereof to be used in any manner by anyone other than the lessee without the written consent of the commissioner. A grazing permit issued by a grazing association to a member-permittee is authorized.
2. A lessee may request an assignment of a surface land lease from the department. The commissioner shall approve or deny an assignment based on the best interests of the trusts. The following assignments may be approved:
  - a. An assignment without restriction to a close relative including the spouse, father, mother, son, daughter, brother, or sister for the same terms and conditions as the original surface land lease.
  - b. An assignment of less than the full surface land lease term to a third party if the lessee is temporarily out of the livestock business or unable to properly stock the surface land leased premises. Being temporarily out of the livestock business means no longer owning or leasing the livestock and personally providing for their day to day care, with the intent to return to the livestock business within two years or less. The assignment must be for two years or less. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.
  - c. An assignment to a third party with the surface land lease expiring at the end of the current surface land lease year. The rent payable by the assignee shall be at a rate consistent with the current year's fair market value minimum rent or the current surface land lease price, whichever is greater.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-04. Sale of surface land lease for agricultural use prohibited.** A lessee is prohibited from selling a board issued surface land lease for agricultural use and any attempt to do so may result in surface land lease termination in accordance with this chapter.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-05. Inspection by prospective lessee or purchaser.** The surface land leased premises must be made available for inspection to a prospective lessee or purchaser. If the surface land leased premises contains an occupied farmstead, a prospective lessee or purchaser must provide the current resident with at least two days advance notice of the intended time and date to inspect the property.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-06. Custodial agreement.** A custodial agreement may be permitted if a lessee does not own livestock or is understocked. The custodial agreement must be in writing and a copy furnished to the department or the arrangement will be treated as third party use. Unless approval is given by the commissioner, a custodial agreement is not permitted for more than three years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-07. Right of entry.** The department may enter the land subject to the surface land lease at any time without notice for the purpose of inspecting the land and improvements.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-08. Surface land lease termination.**

1. Failure to comply with the surface land lease terms, board rules and policies, and applicable laws may result in surface land lease termination by the commissioner. Before a surface land lease is terminated, the department shall personally serve lessee with the notice of intent to terminate the surface land lease specifying the reason for termination.
2. A lessee may file with the department a written request for waiver of the notice of intent to terminate the surface land lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after

service on lessee of the notice of intent to terminate the surface land lease. A request for a waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except those terms required under applicable laws, or the commissioner may allow the lessee time to cure the breach.

3. Not less than ten business days after the notice of intent to terminate the surface land lease is served on lessee, the commissioner may terminate the surface land lease. Surface land lease termination is effective upon actual delivery of a notice of termination by the department. The notice of termination of the surface land lease must be served personally, by mail requiring a signed receipt, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service. Termination of the surface land lease does not release the lessee from liability for any sum due the board or from any damages due.
4. When a surface land lease is terminated, the former lessee shall be ineligible to bid at a surface land lease auction administered by the department for a minimum of the remainder of the current calendar year plus three additional calendar years.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 15-07-21, 54-30-17.1

**85-04-01-09. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**85-04-01-10. Cost share on surface land leased premises.** The lessee is responsible for noxious weed and invasive species and pest control on the surface land leased premises. The department may participate in cost share reimbursement, as follows:

1. Payments for state-listed noxious weed control costs;
2. Payments for county-listed noxious weed control costs; or
3. Payments for other invasive species and pests as allowed by the department.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-11. Cost share application.** A lessee shall submit a request for cost share using the electronic cost share application available on the department's website or a paper application provided upon request. A lessee shall provide all information specifically required by the application and any supplemental information requested by the department. The



amount of the cost share shall be determined by the department consistent with the department's cost share policy.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-12. Cost share on cropland.** Noxious weeds and invasive species on cropland are not eligible for cost share.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-13. Cost share payments.** Cost share payments may be made upon receipt of an invoice for allowable expenses.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-14. Biological control agents.** Use of biological control agents to control noxious weeds is authorized in addition to the chemical control.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-04-24

**85-04-01-15. Record maintenance.** A lessee shall furnish complete and accurate information concerning cultivated acres, hayland acres, noxious weed control, grazing, improvements, or any other information concerning the surface land leased premises when requested by the department.

**History:** Effective

**General Authority:** NDCC 28-32-02, 15-07-20

**Law Implemented:** NDCC 15-04-01, 15-07-20, 54-30-17.1

**CHAPTER 85-04-02**  
**CONSTRUCTION AGGREGATE**

<u>Section</u>	
<u>85-04-02-01</u>	<u>Application</u>
<u>85-04-02-02</u>	<u>Construction Aggregate Lease Term</u>
<u>85-04-02-03</u>	<u>Commissioner Authorization</u>
<u>85-04-02-04</u>	<u>Notice of Construction Aggregate Leasing</u>
<u>85-04-02-05</u>	<u>Auctioned Construction Aggregate Leases</u>
<u>85-04-02-06</u>	<u>Use of Construction Aggregate Leased Premises</u>
<u>85-04-02-07</u>	<u>Advance Royalties</u>
<u>85-04-02-08</u>	<u>Royalties</u>
<u>85-04-02-09</u>	<u>Testing</u>
<u>85-04-02-10</u>	<u>Mining and Reclamation Plan</u>
<u>85-04-02-11</u>	<u>Bond</u>
<u>85-04-02-12</u>	<u>Theft of Construction Aggregate</u>
<u>85-04-02-13</u>	<u>Records and Inspections</u>
<u>85-04-02-14</u>	<u>Construction Aggregate Mining Operations</u>
<u>85-04-02-15</u>	<u>Reserved Rights and Termination</u>
<u>85-04-02-16</u>	<u>Board Review</u>
<u>85-04-02-17</u>	<u>Surrender by Lessee</u>
<u>85-04-02-18</u>	<u>Conditions on Expiration, Termination or Surrender</u>
<u>85-04-02-19</u>	<u>Surface Owner Consent</u>
<u>85-04-02-20</u>	<u>Surface Lessee Protection</u>
<u>85-04-02-21</u>	<u>Protection of Cultural Resources</u>

**85-04-02-01. Application.** An applicant shall submit a request for a construction aggregate lease, amendment, assignment, or extension using the electronic application available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for a construction aggregate lease, amendment, assignment, or extension. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. Each application and construction aggregate lease is limited to a maximum of one hundred sixty contiguous acres (about sixty-five hectares) of like net construction aggregate interest. An application must be made as follows:

1. Construction aggregate lease. An applicant shall provide all information required by the application and any supplemental information requested by the department. An application must designate the type of construction aggregate desired. An application is deemed filed and complete when the department receives an application, the application fee, and any supplemental information requested by the department.
2. Amendment. A lessee may submit a request for an amendment to a construction aggregate lease for a specific purpose. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. A construction aggregate lease may be assigned upon written consent of the commissioner. Assignments will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign a construction aggregate lease for good cause. The assignor shall remain responsible for compliance of all construction aggregate lease terms and this chapter until the assignment is approved by the commissioner. Upon approval, the assignee shall be responsible for compliance with all construction aggregate lease terms and this chapter. If the request

for an assignment is granted, the department will mail the assignment to the applicant for signature.

4. Extension. A lessee may submit a request for an extension of a construction aggregate lease for up to an additional five year term to be granted at the discretion of the commissioner. The department may adjust the royalty rate if an additional term is granted. If the request for a construction aggregate lease extension is granted, the department will mail the construction aggregate lease extension to the applicant for signature.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-02. Construction aggregate lease term.**

1. A construction aggregate lease term may not exceed five years.
2. When the lessee is a state agency or a political subdivision, the royalty rate shall be fixed for a construction aggregate lease term of one year or less. For a construction aggregate lease term greater than one year, the royalty rate shall be based on fair market value with an annual adjustment based on the current fair market value.
3. When the lessee is a private entity requesting less than five thousand cubic yards of construction aggregate, the term of the construction aggregate lease shall be for one year or less.
4. A construction aggregate lease to any entity other than a state agency or a political subdivision for a term greater than one year must be offered at public auction.
5. When construction aggregate is requested for an emergency, the term of the construction aggregate lease shall not exceed one year.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-03. Commissioner authorization.**

1. The commissioner is authorized to approve and issue a construction aggregate lease on the board's behalf in accordance with this chapter.
2. If an application does not comply with this chapter, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-04. Notice of construction aggregate leasing.** Upon receipt of an application for a construction aggregate lease and a determination that the application covers a tract the commissioner is willing to lease, the department shall post on the department's website a

notice of the application for construction aggregate lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a construction aggregate lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed construction aggregate leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the construction aggregate lease.

Those comments will be brought to the board along with the department's recommendations.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-05. Auctioned construction aggregate leases.** Notice of an auction must be published in the official newspaper of the county where the proposed construction aggregate leased premises is located and in the Bismarck Tribune. The notice must be published once at least ten days prior to the day of the auction. The notice must contain the legal description of the proposed construction aggregate leased premises, the construction aggregate lease term, and the time and place where the auction will be held. Bidding must be on a royalty per yard basis. Immediately after the bidding session, comments as to whether a construction aggregate lease should be issued can be presented to the department.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-06. Use of construction aggregate leased premises.** Lessee may use as much of the construction aggregate leased premises as necessary for prospecting, mining, removal of construction aggregate, and reclamation subject to the requirements of this chapter.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-07. Advance royalties.**

1. As consideration for a construction aggregate lease with a term greater than one year, lessee shall pay on the date a construction aggregate lease is issued an advance on the yearly royalty, as determined by the commissioner, but not less than one thousand dollars.
  - a. The advance payment is due each year in which the construction aggregate lease is in force and is due prior to the construction aggregate lease anniversary date.

- b. The advance payment may be credited against construction aggregate mined during the term of the construction aggregate lease. Advance royalty payments for which a credit is not claimed must be forfeited.
  - c. The commissioner may adjust the advance royalty payment amount. Any adjustment takes effect on the anniversary date of the construction aggregate lease following notice to lessee.
2. The commissioner may require an advance royalty deposit for a construction aggregate lease with a term of one year or less. The deposit will be credited against construction aggregate mined during the term of the construction aggregate lease.
3. If payment is not timely received, a notice of intent to terminate construction aggregate lease will be issued by the department.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-08. Royalties.** Royalties must be received by the department by five p.m. central standard time on the last business day of the calendar month following sale, utilization, stockpiling, or removal from the construction aggregate leased premises of the construction aggregate mined. If payment is not timely received, a notice of intent to terminate construction aggregate lease will be issued. Royalties must be paid in full on any stockpiled construction aggregate remaining on the construction aggregate leased premises ninety days prior to the expiration of the construction aggregate lease.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-09. Testing.** The department may require a lessee to conduct drilling tests on the construction aggregate leased premises prior to mining. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the construction aggregate deposit and estimate the quality, quantity, and type of construction aggregate located on the construction aggregate leased premises. Lessee shall furnish the department a map of the construction aggregate leased premises showing the boundaries of the construction aggregate deposit and furnish the department a written report estimating the thickness, depth, quality, quantity, and type of construction aggregate. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct test drilling when required or failure to furnish the required information will result in a notice of intent to terminate construction aggregate lease being issued.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-10. Mining and reclamation plan.**

1. Prior to issuance of a construction aggregate lease, the department, in consultation with the lessee, will develop a mining and reclamation plan for the commissioner's approval. Mining must not begin on the construction aggregate leased premises unless the mining and reclamation plan is approved by the commissioner.
2. The intent of the reclamation plan is to reclaim the construction aggregate leased premises to its previous potential use and productivity. The reclamation plan may be modified by the commissioner and the lessee shall comply with any modifications to the plan. In the event the lessee does not comply with the modified reclamation plan, the construction aggregate lease may be terminated.
3. The reclamation plan must indicate the location of the construction aggregate mining operation in relation to the construction aggregate deposit and a plan for the reclamation once the construction aggregate has been removed. The reclamation plan must include the leveling of the disturbed surface at the close of construction aggregate mining operations to as close to its original contour as is reasonably possible taking into consideration the amount of construction aggregate removed, the preservation and re-spreading of topsoil, and the revegetation of the surface with appropriate flora.
4. Special reclamation plans for the propagation of wildlife habitat, the creation of a nature preserve, or other alternate land use may be required by the commissioner, provided the costs of such reclamation do not unreasonably increase the cost of reclamation.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

#### **85-04-02-11. Bond.**

1. Payment of all royalties and reclamation of any portion of the construction aggregate leased premises disturbed by lessee is the responsibility of lessee. To assure payment of royalties and satisfactory reclamation, lessee must obtain and retain in force a surety bond, in an amount determined by the commissioner.
2. Lessee may, in-lieu of a surety bond, file another form of security subject to the commissioner's approval.
3. The commissioner shall set the initial surety bond amount at a minimum of five thousand dollars per acre for the initial mine area, with no initial surety bond amount being less than ten thousand dollars.
4. The commissioner may adjust the amount of the surety bond annually, with the adjustment based on the estimated cost to reclaim the remaining disturbed site and the amount of stockpiled construction aggregate. If the commissioner determines that an additional surety bond or other security is required, lessee shall submit the additional surety bond or other security within thirty days after request by the commissioner as required by this section.

5. Lessee may submit a written request for a full or partial release of the surety bond to the commissioner. At the commissioner's discretion, the surety bond may be released in whole or in part.
6. Upon the payment of all outstanding royalties and satisfactory completion of the reclamation, the commissioner shall release the surety bond. The surety bond may be forfeited to pay outstanding royalties or to complete reclamation. The commissioner shall give final approval of the reclamation before the surety bond is released. The forfeiture of the surety bond by the lessee will not release the lessee of the duty and responsibility to reclaim the construction aggregate leased premises.
7. Upon written request, the commissioner may waive the bonding requirement for a political subdivision or other state agency.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-12. Theft of construction aggregate.** Lessee shall be responsible for the loss or theft of any construction aggregate from the construction aggregate leased premises and such loss or theft does not relieve the lessee from the responsibility to pay royalties for the construction aggregate.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-13. Records and inspections.** Lessee shall keep an accurate record of the quantity, quality, and type of construction aggregate mined. The department may audit, examine, and copy any records as may be necessary to assure lessee is complying with all provisions of the construction aggregate lease, board rules and policies, and applicable laws, and may examine all samples, logs, assays, or cores. All construction aggregate mining operations and reclamation operations may be inspected by the department.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-14. Construction aggregate mining operations.** Lessee shall conduct construction aggregate mining operations in a good and workmanlike manner and in accordance with the construction aggregate lease terms, board rules and policies, and applicable laws, and a construction aggregate lease may be terminated by lessor for a failure to comply. Lessee shall take reasonable steps to prevent construction aggregate mining operations from unnecessarily causing or increasing soil erosion or drainage and damage to crops, pasture, or trees.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

### **85-04-02-15. Reserved rights and termination.**

1. Failure to comply with construction aggregate lease terms, board rules and policies, and applicable laws may result in construction aggregate lease termination by the commissioner. Before a construction aggregate lease is terminated, the department shall personally serve lessee with the notice of intent to terminate construction aggregate lease specifying the reason for termination.
2. The lessee may file with the department a written request for waiver of the notice of intent to terminate the construction aggregate lease, which must include a statement of the specific grounds for the request. A request must be filed with the department within ten business days after service on lessee of the notice of intent to terminate the construction aggregate lease. A request for a written waiver is deemed filed when personally delivered to or when received by the department. The commissioner may waive any breach except a breach in violation of applicable laws, or the commissioner may allow the lessee time to cure the breach. Termination will not release lessee from liability for royalty owed the board, damages resulting from a breach of a construction aggregate lease term, or to reclaim the construction aggregate leased premises.
3. The board reserves the right to use, rent, lease, sell, or encumber the construction aggregate leased premises and reserves all historical, archaeological, and paleontological materials on or beneath the surface of the construction aggregate leased premises. Leases for the production of coal, oil and gas, uranium, potash or other valuable minerals have priority over any lease for the mining of construction aggregate.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-16. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-17. Surrender by lessee.** Lessee may surrender a construction aggregate lease upon payment of all outstanding royalties and other debts owed the board. Surrender of a construction aggregate lease does not release lessee from its responsibility to reclaim the construction aggregate leased premises.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-18. Conditions on expiration, termination or surrender.** At the expiration, termination, or surrender of a construction aggregate lease and, upon the completion of reclamation, unless otherwise waived, lessee shall remove its property from the construction aggregate leased premises within one hundred twenty days from the date of expiration, termination, surrender, or the date reclamation is completed. Lessee will be liable to the board



for the costs of removal of any property remaining on the construction aggregate leased premises after the deadline for removal. If lessee does not remove all stockpiled construction aggregate from the construction aggregate leased premises by the construction aggregate lease expiration, termination, or surrender date, it will be considered abandoned and will become the property of the board.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-19. Surface owner consent.** Where the surface of the construction aggregate leased premises is not managed or owned by the board, lessee shall give the surface owner a written description of the specific locations of any land disturbance contemplated by lessee, accompanied by a map, at least one hundred twenty days prior to the commencement of any construction aggregate mining. Lessee shall provide the department with proof of consent to mine from the surface owner. If there is a change in the nature of the land disturbance contemplated, an updated written description must be provided to the surface owner as soon as possible.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-20. Surface lessee protection.** Where the surface of the construction aggregate leased premises is managed or owned by the board and is leased to a person other than the construction aggregate lessee, the construction aggregate lessee shall restore all fences that have been damaged, moved, or removed as a result of construction aggregate mining operations and shall further compensate the surface lessee for any damage to or loss of other improvements owned by the surface lessee.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18

**85-04-02-21. Protection of cultural resources.** If any historical, archaeological, paleontological, or other cultural artifacts, vestiges, or remains are found prior to, during, or after any exploration, testing, production, mining, or reclamation operations on the construction aggregate leased premises, the director of the state historical board and the commissioner shall be notified immediately and the site and the materials must be protected by lessee from further disturbance until a professional examination can be made or until some other form of clearance to proceed is authorized by the commissioner. Upon written request, the commissioner may grant an extension of the construction aggregate lease term for delays in operations caused by the requirements of this section. In the event no further disturbance is allowed, the construction aggregate lease may be terminated and lessor will refund to lessee any advance royalties not already credited or forfeited as provided in this chapter. The department and the director of the state historical board shall have authority to inspect the construction aggregate leased premises at all times to determine compliance with this section.

**History:** Effective

**General Authority:** NDCC 15-05-18

**Law Implemented:** NDCC 15-05-18, 55-02-07

**CHAPTER 85-04-03**  
**PERMANENT IMPROVEMENTS**

Section

<u>85-04-03-01</u>	<u>Permanent and Nonpermanent Improvements</u>
<u>85-04-03-02</u>	<u>Application</u>
<u>85-04-03-03</u>	<u>Rent Credit, Cost Share and Depreciation</u>
<u>85-04-03-04</u>	<u>General Standards for a Permit for a Permanent Improvement</u>
<u>85-04-03-05</u>	<u>Issuance of a Permit for Permanent Improvement</u>

**85-04-03-01. Permanent and nonpermanent improvements.**

1. Permanent improvements may not be placed on, removed from, or applied to any surface land leased premises without the written consent of the commissioner. Permanent improvements placed on or implemented on any surface land leased premises are the property of the state of North Dakota.
2. A lessee may place nonpermanent improvements on any surface land leased premises without written consent of the commissioner. Upon expiration of the surface land lease, the lessee may remove the nonpermanent improvements within one hundred twenty days after the surface land lease expires. Any nonpermanent improvements not removed within one hundred twenty days become the property of the next lessee. The commissioner, upon written application from the lessee before the end of the one hundred twenty day period, may for good cause extend the period of time for removing nonpermanent improvements.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-08-26

**85-04-03-02. Application.** A lessee shall submit a request for a permanent improvement, using the electronic application available on the department's website or a paper application provided upon request. The lessee shall provide all information specifically required by the application and any supplemental information requested by the department.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-08-26

**85-04-03-03. Rent credit, cost share and depreciation.**

1. Rent credits, cost share, and depreciation of project costs may be authorized at the sole discretion of the commissioner.
2. Rent credits or cost share must not exceed the approved maximum project cost as determined by the commissioner or the actual project cost, less reimbursements from non-department sources, whichever is lower.
3. The commissioner may depreciate project costs less reimbursements to the lessee from non-department sources and rent credits or cost share from the department for a period not to exceed ten years.
4. Any unexpired depreciation amount will be available from the department before the surface land lease auction and will be announced at the surface land lease auction. If the

former lessee is not the successful bidder at auction, the new lessee will be required to compensate the former lessee for the undepreciated amount and the department will continue to depreciate through the original depreciation term. The commissioner may cancel any undepreciated cost of constructing a permanent improvement if the lessee fails to offer the minimum bid for the land and the land is not leased at the next auction at which the land is offered, or if the lessee fails to comply with the conditions of the surface land lease.

5. No rent credits, cost share, or depreciation for livestock water developments are allowed on surface land leased premises that receive an up-front livestock water deduction in determining the minimum bid for public auction.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-08-26, 15-04-24

**85-04-03-04. General standards for a permit for a permanent improvement.** In reviewing an application for a permit for a permanent improvement, the commissioner may consider the following:

1. Financial benefit to the trusts;
2. Availability of alternate site or route;
3. The least environmentally damaging site or route;
4. Physical stability of the landscape;
5. Whether technical assistance was sought in planning the proposed permanent improvement;
6. Potential for mineral development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts; and
13. Any other information relevant to the application which would assist in the commissioner's determination.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-08-26

**85-04-03-05. Issuance of a permit for permanent improvement.** The commissioner has authority to determine whether to issue a permit for a permanent improvement and to determine the maximum project cost, rent credit, cost share, and depreciation amounts. The commissioner may impose such terms on a permit as the commissioner deems necessary. A permit must be issued prior to site preparation or construction.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-08-26

**CHAPTER 85-04-04**  
**ENCUMBRANCES OF TRUST LANDS**

Section

<u>85-04-04-01</u>	<u>Application</u>
<u>85-04-04-02</u>	<u>Surveying and Planning Permit Requirements</u>
<u>85-04-04-03</u>	<u>General Standards for an Encumbrance</u>
<u>85-04-04-04</u>	<u>Issuance of an Encumbrance</u>
<u>85-04-04-05</u>	<u>Right of Entry</u>
<u>85-04-04-06</u>	<u>Expiration of an Encumbrance</u>

**85-04-04-01. Application.** An applicant shall submit a request for an encumbrance, amendment, assignment, extension, or renewal using the electronic application form available on the department's website or a paper application provided upon request. The application must clearly state whether the request is for an encumbrance, amendment, assignment, extension, or renewal. An application submitted on any other form will not be accepted. An application fee may be charged as determined by the board. An application must be made as follows:

1. Encumbrance. An applicant shall provide all information required by the application form and any supplemental information requested by the department. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Amendment. An applicant may request an amendment to an encumbrance for a specific purpose, including a request to change the site location or route of a previously issued encumbrance. If the request for an amendment is granted, the department will mail the amendment to the applicant for signature.
3. Assignment. An encumbrance may not be assigned unless specifically authorized by the terms of the encumbrance or upon written consent of the commissioner. An assignment will be granted by the commissioner through written notification to both the assignor and assignee. The commissioner may refuse to assign an encumbrance for good cause. The assignor shall remain responsible for compliance with all terms of the encumbrance and this chapter until the assignment is approved by the commissioner. If the commissioner's approval is not required, the assignor shall remain responsible for compliance with all terms of the encumbrance and this chapter until the department is notified of the assignment. Upon approval or notification, the assignee shall be responsible for compliance with all terms of the encumbrance and this chapter. If the request for an assignment is granted, the department will mail the assignment to the applicant for signature.
4. Extension or renewal. An applicant may request an extension or renewal of an encumbrance for an additional term. Additional compensation may be requested by the department. If the request for an extension or renewal is granted, the department will notify the applicant.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-05-01

**85-04-04-02. Surveying and planning permit requirements.**

1. Prior to accessing trust lands to conduct surveys, including metes-and-bounds, centerline, cadastral, ocular reconnaissance cultural resource surveys, and wetland delineations, an applicant shall obtain a surveying and planning permit from the department. The applicant shall complete an electronic application available on the department's website or a paper application provided upon request. An application is deemed filed and complete when the department receives an application form, the application fee, and any supplemental information requested by the department.
2. Upon issuance of the surveying and planning permit to the applicant, access to trust lands under the permit is only permissible if a third-party applicant has filed an application for an encumbrance. The surface tenant shall be notified by the third-party applicant of the required access to trust lands at least one calendar week prior to the date of access.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-05-01

**85-04-04-03. General standards for an encumbrance.** In reviewing an application for an encumbrance, the following may be considered:

1. Financial benefit to the trusts;
2. Availability of alternate encumbrance site or route;
3. The least environmentally damaging site or route regardless of property ownership;
4. Physical stability of the landscape;
5. Other potential future uses for the trust lands, including urban development;
6. Potential mineral and other material development including oil, gas, coal, construction aggregate, sodium sulfate, chemical substances, metallic ore, or uranium ore;
7. Feasibility for reclamation;
8. Maintenance of existing wetlands and water flows;
9. Any cultural, historical, archeological, and paleontological resources;
10. Habitat for federally listed threatened and endangered species;
11. Location of the proposed route or site in relation to section lines, quarter section lines, and corridors;
12. Potential liability to the trusts;
13. Applicant's past encumbrances on trust lands;
14. Applicant's financial stability; and

15. Any other information relevant to the application which would assist in the determination.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**85-04-04-04. Issuance of an encumbrance.**

1. The commissioner is authorized to approve and issue an encumbrance on the board's behalf in accordance with this chapter.
2. If an application does not comply with this chapter, or if the commissioner determines that board review is desirable, the application may be brought before the board for its consideration.
3. The commissioner may impose such terms as the commissioner deems necessary. An encumbrance must be issued prior to site preparation or construction.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**85-04-04-05. Right of Entry.** The department may enter the land at any time without notification for the purpose of inspecting the land, activity, or construction.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**85-04-04-06. Expiration of an encumbrance.** Unless otherwise stated in the encumbrance, the encumbrance expires two years from the date of issuance if the activity or construction is not fully completed. An encumbrance automatically terminates without notice at the end of its term or for failure to complete an activity or construction. Prior to the expiration of the encumbrance, the holder may apply for an amendment or extension in accordance with this chapter.

**History:** Effective

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-05-01

**CHAPTER 85-04-05**  
**PUBLIC ACCESS AND USE**

Section

<u>85-04-05-01</u>	<u>Vehicular Access</u>
<u>85-04-05-02</u>	<u>Public Access</u>
<u>85-04-05-03</u>	<u>Prohibited Activities</u>
<u>85-04-05-04</u>	<u>Organized Event</u>

**85-04-05-01. Vehicular access.** The use of vehicles on trust lands is prohibited, except:

1. Within thirty-three feet of section lines;
2. As allowed by the terms of a lease, permit, or easement issued by the board;
3. When used for travel on a public road easement issued by the board;
4. When used by government personnel in the performance of official duties; or
5. When hunting under a special permit issued by the director of the North Dakota game and fish department to shoot from a stationary vehicle and with written permission from the lessee and commissioner.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 20.1-02-05(10)

**85-04-05-02. Public access.**

1. Non-vehicular public access to leased and unleased trust lands is allowed, if in the best interests of the trusts, unless:
  - a. Specifically prohibited by the commissioner; or
  - b. Lessee posts the land with signage issued by the department, which:
    - (1) Requires notification to the lessee before entry by the public; or
    - (2) Closes the trust lands to all public access.
2. Lessee shall not lease, sell, or otherwise be compensated for access to, on, across or over leased trust lands.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05



**85-04-05-03. Prohibited activities.** The following activities and items are prohibited on trust lands:

1. Target shooting, explosives, and exploding targets;
2. Camping, picnicking, or camp fires;
3. Unattended hunting blinds, tree stands, and screw in steps;
4. Baiting to attract, lure, feed, or habituate wildlife for any purpose. Bait includes grains, screenings, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting;
5. Disturbing or removing artifacts or any cultural, historical, archeological, or paleontological resources found on trust lands without written permission from the board;
6. Disposing of refuse including garbage, bottles, cans, trees, branches, or other waste materials;
7. Dog training;
8. Metal detecting;
9. Guiding and outfitting;
10. Collecting plant parts for sale or other commercial purposes;
11. Trapping, unless authorized in writing by the commissioner;
12. Tree cutting and firewood gathering, unless authorized in writing by the commissioner; and
13. Beehives, unless specifically authorized in a surface land lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02, 15-02-05, 15-04-18, 15-04-20, 20.1-03-42, 55-02-07, 55-10-09

**85-04-05-04. Organized event.** Upon written request, the commissioner may allow by written agreement or permit, an organized event involving public access or activity on trust lands if the event:

1. Is an appropriate use of trust lands;
2. Does not damage trust lands;
3. Does not negatively impact the value or financial return of the trust lands in violation of the board's fiduciary duty to the applicable trusts as determined by the commissioner;

4. Protects the state of North Dakota from liability and other claims for damage; and
5. Has been approved by the current surface land lessee, if leased.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 15-01-02

**ARTICLE 85-05**  
**INVESTMENTS**

Chapter  
85-05-01      Investment of Fund Assets

**CHAPTER 85-05-01**  
**INVESTMENT OF FUND ASSETS**

Section  
85-05-01-01      Investment of Fund Assets

**85-05-01-01. Investment of fund assets.** The board shall invest the financial assets under its control in accordance with the prudent investor rule as defined in North Dakota Century Code section 21-10-07.

**History:** Effective \_\_\_\_\_  
**General Authority:** NDCC 28-32-02  
**Law Implemented:** NDCC 15-03-04

**ARTICLE 85-06**  
**MINERALS MANAGEMENT**

<u>Chapter</u>	
<u>85-06-01</u>	<u>Oil and Gas</u>
<u>85-06-02</u>	<u>Coal</u>

**CHAPTER 85-06-01**  
**OIL AND GAS**

<u>Section</u>	
<u>85-06-01-01</u>	<u>Oil and Gas Lease Nomination</u>
<u>85-06-01-02</u>	<u>Advertisement for Public Auction</u>
<u>85-06-01-03</u>	<u>Public Auction</u>
<u>85-06-01-04</u>	<u>Rejection of Nomination and Bids</u>
<u>85-06-01-05</u>	<u>Form and Term of Oil and Gas Lease</u>
<u>85-06-01-06</u>	<u>Assignment, Amendment, or Extension</u>
<u>85-06-01-07</u>	<u>Voluntary Release</u>
<u>85-06-01-08</u>	<u>Royalties</u>
<u>85-06-01-09</u>	<u>Disputed Title Royalty Escrow Account</u>
<u>85-06-01-10</u>	<u>Breach of Oil and Gas Lease</u>
<u>85-04-01-11</u>	<u>Board Review</u>
<u>85-06-01-12</u>	<u>Reports of Lessee – Delinquency Penalty</u>
<u>85-06-01-13</u>	<u>Audit and Examination</u>
<u>85-06-01-14</u>	<u>Request for Shut-In Status for Oil</u>

**85-06-01-01. Oil and gas lease nomination.** The department will accept an oil and gas lease nomination for a tract not already under oil and gas lease as reflected in department records and may accept a nomination for a tract under oil and gas lease which will expire prior to the date of the oil and gas lease sale. The first nomination received on a tract is considered an offer and determines the opening bid.

1. The department will accept a nomination for an oil or gas lease either electronically through the department’s website or in writing. The nomination period for an oil and gas lease shall be the period set by the commissioner during which the department will accept oil and gas lease nominations. A nomination must be accompanied by a nonrefundable nomination fee, in an amount set by the department, and the fee must be submitted to the department prior to the published deadline for each nomination period.
2. An oil and gas lease nomination must be limited to a maximum of one quarter section, unless otherwise authorized under subsection three, or by the board.
3. A nomination for a tract containing a body of water may include up to a section of land if the tract cannot reasonably be subdivided by quarter section or half section. The tract acreage, including islands, may be offered and described as “more or less” and may be adjusted by the board within each quarter section.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC15-05-09, 61-33-06, 61-33.1

**85-06-01-02. Advertisement for public auction.** The department shall publish notice of an oil and gas lease auction in the official newspaper of the county where the nominated tract is located and in the Bismarck Tribune. The notice must be published once, ten days prior to the day of the auction. The advertisement must specify the date, time, and place of the auction, and how an interested person may obtain a list of the tracts to be auctioned. Should publication of any notice be inadvertently omitted by any newspaper or should the notice contain typographical errors, the department may, in its discretion, proceed with the scheduled leasing if it appears that the omission or error is not prejudicial to the department's interest.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 38-09-15

**85-06-01-03. Public auction.** The board may issue an oil and gas lease by public auction. Public auctions may be hosted either live or online at the discretion of the commissioner. Bidding is based on a bonus of not less than one dollar per acre, and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued.

1. The successful bidder at an online auction shall pay the bonus, the rental payments for the primary term as defined by the oil and gas lease, the advertising fee, and any processing fees via Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board shall not issue an oil and gas lease until receipt of the bonus, rental payments, and fees.
2. The successful bidder at a live auction shall pay the bonus, at least one year of rental payments, and the advertising fee via Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time ten days after the date the auction closed. The board shall not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.
3. In the event no bids are received, the nominator shall be deemed the successful bidder and shall pay the bonus, at least one year of rental payments, the advertising fees, and any processing fee via cash, check, Automated Clearing House (ACH) or wire transfer, by five p.m. central standard time, ten days after the date the auction closed. The board shall not issue the oil and gas lease until receipt of the bonus, rental payments, and fees.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-04. Rejection of nomination and bids.** The commissioner may, in the best interests of the trusts, reject a nomination or a bid any time prior to the issuance of an oil and gas lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

**85-06-01-05. Form and term of oil and gas lease.** An oil and gas lease must be issued on a form approved by the board. An oil and gas lease must be made for a term of not less than five years and continue in effect under such term and for as long as oil or gas may be produced from the oil and gas leased premises in commercial quantities or unless otherwise extended. An oil and gas lease must provide for a bonus of not less than one dollar per acre and an annual delay rental of not less than one dollar per acre per year based on the acreage shown in the records of the department at the time the oil and gas lease is issued. An oil and gas lease may contain such other terms and conditions as the board deems appropriate.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-06. Assignment, amendment, or extension.** A lessee shall submit a written request to the department for an assignment, amendment, or extension of an oil and gas lease, or a portion of the oil and gas leased premises, utilizing the form available on the department's website. A request must include any documents requested by the department. Lessee shall submit a fee, in an amount set by the board, to the department with the request.

- 1. Assignments.** All oil and gas lease obligations must be current at the time the assignment is approved. The lessee shall remain bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the assignment is approved by the department. Upon approval of the assignment, the assignee shall be bound by all the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws. Assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.
- 2. Extensions.** If, at the expiration of the primary term, production of oil and/or gas has not been obtained in commercial quantities on the leased premises but drilling, testing, completion, recompletion, reworking, deepening, plugging back, or repairing operations are being conducted thereon in good faith, lessee may, on or before the expiration of the primary term, file a written application with the department for a one hundred eighty day extension of this oil and gas lease, such application to be accompanied by a payment of ten dollars per acre, and the commissioner shall, in writing, extend this oil and gas lease for a period of one hundred eighty days beyond the expiration of the primary term and as long as oil and/or gas is produced in commercial quantities; lessee may, as long as such drilling, testing, or completion operations are being conducted in good faith, make written application to the commissioner, on or before the expiration of the initial extended period of one hundred eighty days for an additional extension of one hundred eighty days, such application to be accompanied by a payment of twenty dollars per acre, and the commissioner shall, in writing, extend this oil and gas lease for an additional one hundred eighty day period from and after the expiration of the initial extended period of one hundred eighty days, and as long as oil and/or gas is produced in commercial quantities; this oil

and gas lease must not be extended for more than a total of three hundred sixty days from and after the expiration of the primary term unless production in commercial quantities has been obtained or unless extended by some other provision hereof.

3. Amendments. A lessee may request an amendment to an oil and gas lease for a specific purpose. A request for an amendment must state the specific grounds for the request. Approval of a request is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the request is approved.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-15

**85-06-01-07. Voluntary release.** To request a voluntary release of an oil and gas lease, a lessee shall submit a written request to the department for the voluntary release of an oil and gas lease, or portion of an oil and gas leased premises, utilizing the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the voluntary release is approved. All oil and gas lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the oil and gas lease, board rules and policies, and applicable laws until the voluntary release is approved by the commissioner.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09

**85-06-01-08. Royalties.** If a sale of gas, carbon black, sulfur, or any other products produced or manufactured from gas produced and marketed from the oil and gas leased premises, including liquid hydrocarbons recovered from such gas processed in a plant, does not constitute an arm's length transaction, the royalties due lessor shall be as follows:

1. On any gas produced and marketed (except as provided herein with respect to gas processed in a plant for the extraction of gasoline, liquid hydrocarbons or other products), the royalty, as determined by the board, shall be based on the gross production or the market value thereof, at the option of the lessor, such value to be based on the highest market price paid for gas of comparable quality and quantity under comparable conditions of sale for the area where produced and when run, or the gross proceeds of sale, whichever is greater; provided that the maximum pressure base in measuring the gas under an oil and gas lease shall not at any time exceed 14.73 pounds per square inch absolute, and the standard base temperature shall be sixty degrees Fahrenheit, correction to be made for pressure according to Boyle's Law, and for specific gravity according to a test made by the Balance Method or by the most approved method of testing being used by the industry at the time of testing.
2. On any gas processed in a gasoline plant or other plant for the recovery of gasoline or other liquid hydrocarbons, the royalty, as determined by the board, is based on the residue

gas and the liquid hydrocarbons extracted or the market value thereof, at the option of the lessor. All royalties due herein shall be based on eighty percent or that percent accruing to lessee, whichever is greater, of the total plant production of residue gas attributable to gas produced from the oil and gas leased premises, and on forty percent or that percent accruing to lessee, whichever is greater, of the total plant production of liquid hydrocarbons attributable to the gas produced from the oil and gas leased premises; provided that if a third party or parties are processing gas through the same plant pursuant to arm's length transaction and one such transaction accounts for an annual average of ten percent or more, or all such transactions collectively account for an annual average of thirty percent or more of the gas being processed in such plant, the royalty shall be based on the gross proceeds of sale that would accrue to lessee if the gas were processed under the terms of the most remunerative third party transaction for processing gas in such plant. Respective royalties on residue gas and on liquid hydrocarbons where the requirements for using third party transactions cannot be met shall be determined by:

- a. The highest market price paid for any gas (or liquid hydrocarbons) of comparable quality and quantity under comparable conditions of sale in the general area F.O.B. at the plant after processing;
  - b. The gross proceeds of sale for such residue gas (or the weighted average gross proceeds of sale for the respective grades of liquid hydrocarbons), F.O.B. at the plant after processing; or
  - c. The gross proceeds of sale paid to a third party processing gas through the plant, whichever is greater. Lessee shall furnish copies of any and all third party gas processing agreements pertaining to the plant upon lessor's request.
3. On carbon black, sulfur or any other products produced or manufactured from gas (excepting liquid hydrocarbons), whether said gas be "casinghead", "dry" or any other gas, by fractionating, burning or any other processing, is based on the gross production of such productions, or the market value thereof, at the option of lessor. Such market value is to be:
  - a. The highest market price paid for each of the products of comparable quality and quantity under comparable conditions of sale in the general area during the same month in which such products are produced; or
  - b. The average gross proceeds of sale for each of the products for the same month in which such productions are produced, whichever is greater; provided that if a third party transaction is used to determine royalty in accordance with subsection two, the royalty due under this subsection shall be determined in accordance with such transaction.
4. Lessee agrees that all royalties accruing to lessor under this rule shall be without deduction for the cost of producing, gathering, storing, separating, treating, dehydrating, vapor recovery, compressing, processing, transporting, conditioning, removing impurities,



depreciation, risk capital, and otherwise making the oil, gas and other products produced hereunder ready for sale or use.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-09. Disputed title royalty escrow account.** Any payor that proposes to withhold royalty payments based upon an ownership dispute shall establish an escrow deposit account and shall deposit the disputed payments into this account.

1. The account must be established at the Bank of North Dakota, or other state or national chartered insured financial institution approved by the commissioner, with the board as a party to the escrow agreement.
2. Prior to a final resolution of the dispute, a partial release of the disputed payments may be made upon written approval by the commissioner and the payor. Upon approval, the disputed payments must be distributed back to the payor for proper distribution to the rightful owner.
3. Upon final resolution of the ownership dispute, and with consent of the commissioner, the escrow agent shall be authorized to release all disputed payments held in the account to payor for proper distribution to the rightful owner. The board is entitled to any interest income earned on the account attributable to North Dakota's ownership interest.
4. This section applies to matters where the amount of the disputed payments is twenty-five thousand dollars or more over a twelve month period. The commissioner and the payor may agree that this section applies to oil and gas leases executed prior to the effective date of this section.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-10. Breach of oil and gas lease.**

1. Other than as provided in subsection seven, an oil and gas lease may be cancelled for:
  - a. Nonpayment of any sum due under the oil and gas lease;
  - b. Breach of any of the oil and gas lease terms or conditions provided that such cancellation must not release lessee from liability for any sum due lessor or from any damages due to the breach; or
  - c. A violation of the board rules and policies, and applicable laws.
2. Before an oil and gas lease is cancelled, the department shall mail a notice of intention to cancel the oil and gas lease specifying the reason for cancellation to the lessee by mail

requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the oil and gas leased premises is located.

3. A lessee may file with the commissioner a request for a waiver or a request for the commissioner to review the notice of intention to cancel the oil and gas lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within twenty days after the date of notice of intention to cancel the oil and gas lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The board may waive any breach except a breach of oil and gas lease terms required under North Dakota Century Code, or the board may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and must not limit the board's right to cancel the oil and gas lease for any other breach.
4. If lessee has not requested waiver or commissioner review or remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, the commissioner shall cancel the oil and gas lease.
5. Cancellation of the oil and gas lease does not release the lessee from liability for any sum due to the board, other than as provided in subsection seven, or from any damages from a breach of the oil and gas lease.
6. Upon cancellation of the oil and gas lease, the department shall file a satisfaction of oil and gas lease with the register of deeds' office in the county where the oil and gas leased premises is located.
7. An oil and gas lease will automatically terminate for failure to pay the annual delay rental by the date due without further notice by the department or opportunity for the lessee to remedy the default.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-04-01-11. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**85-06-01-12. Reports of lessee – delinquency penalty.** Royalty payment and reporting are due on forms prescribed by the department as follows:

1. For gas:

- a. Within one hundred twenty-three days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
  - b. Successive royalty payments and reporting are due within sixty-one days of the last day of the month in which production occurs.
2. For oil:
  - a. Within ninety-two days of the last day of the month in which initial production occurs, royalty payment and reporting are due for the first, second, and third months of production.
  - b. Successive royalty payments and reporting are due within thirty days of the last day of the month in which production occurs.
3. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
4. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver or board review is requested under subsection six.
5. Unpaid royalties bear interest under North Dakota Century Code section 47-16-39.1.
6. A lessee shall have thirty days from the date of the receipt of a notice of a penalty and interest assessment to pay the penalty and interest, request a waiver or reduction, or to request board review.
  - a. A request for a waiver or reduction of the penalty or interest or a request for board review must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive or reduce the penalty or interest: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
  - c. The commissioner may, for good cause, waive up to twenty-five thousand dollars of the penalty or reduce interest initially sought. A request for a waiver or reduction of penalty in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.
  - d. A waiver or reduction of penalty and interest does not constitute a waiver of the right to seek the full amount of both penalty and interest if the initial claim for royalty payment is not paid. If a claim for unpaid royalties, penalties, and interest is settled and payment received, the amount of penalties and interest not collected is deemed waived.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.1, 47-16-39.2

**85-06-01-13. Audit and examination.**

1. The department may audit and examine any records, including:
  - a. Books, accounts, and receipts; and
  - b. Contracts and other records pertaining to the production, transportation, sale, and marketing of the oil or gas or other products produced from the oil and gas leased premises.
2. The department shall serve by certified mail, a written request to payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection one, the department shall notify payor of the results, including the audit findings, the basis for that determination, and the date by which a response to the findings is due.
4. A payor shall have sixty days from the date of the receipt of the audit findings to comply, respond to the findings, or request commissioner review. A request for commissioner review must be made in writing and include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the oil and gas lease is subject to cancellation under section 85-06-01-10, Breach of oil and gas lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 47-16-39.1, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10, 47-16-39.2

**85-06-01-14. Request for shut-in status for oil.**

1. A lessee requesting shut-in status of an oil well, without cancelling the oil and gas lease, shall submit a written request to the department utilizing the form available on the department's website. The request must contain the following information:
  - a. The name and well file number assigned by the North Dakota department of mineral resources oil and gas division;
  - b. The township, range, and section of the surface location of the well;
  - c. The board's oil and gas lease number for the subject lease, the date of the oil and gas lease, the acreage covered by the oil and gas lease, and the current lessee;
  - d. The name and address of the operator of the well;
  - e. The cumulative oil production and the number of days of production for the three months immediately preceding the request;

- f. The written approval of the request from the operator;
  - g. The grounds for the request and the anticipated length of time the well will be shut-in; and
  - h. Any additional information requested by the department.
2. An application fee, in an amount set by the department, and the shut-in royalty payment must be submitted with the application. If the application is denied, the shut-in royalty payment will be refunded by the department.
  3. An application is deemed filed when the department receives the application form, application fee, shut-in royalty payment, and any additional information requested by the department.
  4. Within fifteen days of receipt of an application, the commissioner shall notify the applicant in writing, as follows:
    - a. The application is approved and the terms of the shut-in approval;
    - b. The application is denied;
    - c. An additional fifteen day period is necessary to consider the application; or
    - d. The application requires board approval.
  5. If an application is denied, a lessee may file with the department a written request for commissioner review, specifying the grounds for the request.
  6. A shut-in approval is effective for one year from the date of approval unless the commissioner determines a shorter amount of time is appropriate.
  7. The commissioner may revoke a shut-in approval if it determines the action is in the best interests of the trusts. If a shut-in approval is revoked prior to its expiration, the department will provide notice to the lessee by certified mail. Within sixty days from the date of receipt of the notice, the lessee shall re-establish production. If the lessee fails to re-establish production, the oil and gas lease is subject to cancellation under section 85-06-01-10, Breach of oil and gas lease.

**History:** Effective

**General Authority:** NDCC 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-09, 15-05-10

**CHAPTER 85-06-02**  
**COAL**

Section

<u>85-06-02-01</u>	<u>Prospecting Permits</u>
<u>85-06-02-02</u>	<u>Lands Subject to Coal Lease</u>
<u>85-06-02-03</u>	<u>Application for Coal Lease</u>
<u>85-06-02-04</u>	<u>Notice of Coal Leasing</u>
<u>85-06-02-05</u>	<u>Negotiation of Coal Lease</u>
<u>85-06-02-06</u>	<u>Testing</u>
<u>85-06-02-07</u>	<u>Voluntary Release</u>
<u>85-06-02-08</u>	<u>Breach of Coal Lease</u>
<u>85-06-02-09</u>	<u>Board Review</u>
<u>85-06-02-10</u>	<u>Minimum Delay Rentals</u>
<u>85-06-02-11</u>	<u>Royalty</u>
<u>85-06-02-12</u>	<u>Assignments</u>
<u>85-06-02-13</u>	<u>Surface Owner Protection</u>
<u>85-06-02-14</u>	<u>Financial Obligation to Reclaim</u>
<u>85-06-02-15</u>	<u>Reports of Lessee – Delinquency Penalty</u>
<u>85-06-02-16</u>	<u>Audit and Examination</u>

**85-06-02-01. Prospecting permits.** A request for a prospecting permit is issued in accordance with North Dakota Administrative Code chapter 85-04-04.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

**85-06-02-02. Lands subject to coal lease.** A coal lease may be issued upon acreage not already under coal lease as reflected in department records. A coal lease is limited to a maximum of one quarter section, unless otherwise authorized by the board.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

**85-06-02-03. Application for coal lease.** A written application for a coal lease must include:

1. Legal description of the lands to be leased;
2. Proposed terms for the coal lease including the bonus, length, delay rental, and royalty;
3. Documentation showing that the bonus, term, delay rental, and royalty being offered are consistent with market rates; and
4. Nonrefundable application fee in an amount set by the board.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-08, 15-05-09

**85-06-02-04. Notice of coal leasing.** Upon receipt of an application for a coal lease and a determination by the board that the application covers a tract the board is willing to lease, the department shall post on the department's website a notice of the application for coal lease, any supporting documentation, and instructions for submitting public comments. Comments must be received by the department no later than five p.m. central standard time fourteen days after posting the notice of the application for a coal lease to be considered. All comments must be in writing and contain the following:

1. Name and address of the interested person;
2. Applicant's name and address;
3. The legal description of the proposed coal leased premises as shown on the published notice; and
4. A detailed statement as to whether the interested person supports or opposes the issuance of the coal lease.

Those comments will be brought to the board along with the department's recommendations.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-05. Negotiation of coal lease.** The department may negotiate with the applicant the terms and conditions of a coal lease that it deems to be in the best interests of the trusts. If the board owns the surface estate of a coal leased premises, compensation for the surface damage must be negotiated separately. The applicant may propose modifications to the bonus, delay rental, royalty, or other terms of the coal lease application. The board may refuse to enter into a coal lease for any reason. The board shall not issue the coal lease until receipt of full payment of at least one year of delay rental, bonus payment, and any applicable fees.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-04, 15-05-09, 15-05-10, 15-05-13

**85-06-02-06. Testing.** The department may require a lessee to conduct drilling tests on the coal leased premises prior to the coal mining operations. If required, sufficient test holes must be drilled to outline the boundaries, thickness, and depth of the coal deposit and estimate the quality, quantity, and type of coal located on the coal leased premises. Lessee shall provide the department a map of the coal leased premises showing the boundaries of the coal deposit and a written report estimating the thickness, depth, quality, quantity, and type of coal. All test holes must be reclaimed to the satisfaction of the department at the conclusion of testing. Failure to conduct drilling tests when required or failure to provide the required documentation, may result in termination of the coal lease under section 85-06-02-08, Breach of coal lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-07. Voluntary release.** To request a voluntary release of a coal lease, or portion of a coal leased premises, a lessee shall submit a written request to the department utilizing

the form available on the department's website and all other documents requested by the department. Approval of a voluntary release is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the voluntary release is approved. All coal lease obligations must be current at the time the voluntary release is approved. The lessee shall remain bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the voluntary release is approved by the commissioner.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-08. Breach of coal lease.**

1. A coal lease may be cancelled for:
  - a. Nonpayment of any sum due under the coal lease;
  - b. Breach of any of the coal lease terms or conditions provided that the cancellation must not release lessee from liability for any sum due lessor or from any damages due to the breach; or
  - c. Violation of the board rules and policies, and applicable laws.
2. Prior to cancellation of a coal lease, the department must mail a notice of intention to cancel the coal lease specifying the reason for cancellation to the lessee by mail requiring a signed receipt at the address of the lessee as shown in the records of the department. If the notice of intention to cancel is returned undeliverable or refused, the notice must be published in the official newspaper of the county in which the coal leased premises is located.
3. A lessee may file with the commissioner a request for a waiver or a request for commissioner to review the notice of intention to cancel the coal lease, which must include a statement of the specific grounds for the request. A request must be in writing and filed with the commissioner within twenty days after the date of notice of intention to cancel the coal lease is received or the date of publication. A request for a waiver or review is deemed filed when personally delivered or when received by the department. The commissioner may waive any breach except a breach of coal lease terms required under North Dakota Century Code, or the commissioner may allow the lessee time to cure the breach. Any waiver must be limited to the particular breach waived and must not limit the board's right to cancel the coal lease for any other breach.
4. If lessee has not remedied the default within twenty days after receipt of a notice of intention to cancel or the date of publication, commissioner shall cancel the coal lease.
5. Cancellation of the coal lease does not release the lessee from liability for any sum due to the board or from any damages from a breach of the coal lease.
6. Upon cancellation of the coal lease, the department shall file a satisfaction of coal lease with the register of deeds' office in the county where the coal leased premises is located.

**History:** Effective \_\_\_\_\_



**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-04-01-09. Board review.** If the commissioner determines that any commissioner decision under these rules requires board review, said decision may be brought before the board for its consideration.

**History:** Effective

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-10. Minimum delay rentals.**

1. The minimum delay rental shall be five dollars (\$5.00) per acre per year payable for as long as the coal lease is in full force and effect.
2. The first year of delay rental must be paid upon the issuance of a coal lease. The delay rental for each subsequent year of the coal lease is due and payable before the anniversary date of the coal lease.

**History:** Effective

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

**85-06-02-11. Royalty.** Royalties are due to lessor for coal mined or saved from the coal leased premises. If any other valuable substance is found or discovered during exploration or coal mining operations, the operator must notify the department prior to extraction.

**History:** Effective

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

**85-06-02-12. Assignments.** A lessee shall submit a written request to the department for an assignment of coal lease utilizing the form available on the department's website. A request for assignment must include any documents requested by the department. Lessee shall submit a coal lease assignment fee, in an amount set by the board, to the department with the request. Approval of an assignment is at the discretion of the commissioner and the department shall notify lessee in writing whether or not the assignment is approved. All coal lease obligations must be current at the time the assignment is approved. The lessee shall remain bound by the terms and conditions of the coal lease, board rules and policies, and applicable laws, until the assignment is approved by the commissioner. Upon approval of the assignment, the assignee shall be bound by all the terms and conditions of the coal lease, board rules and policies, and applicable laws. Assignor shall provide the department with a copy of the fully executed assignment within thirty days from the approval.

**History:** Effective

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-15

**85-06-02-13. Surface owner protection.** For a coal lease or prospecting permit where the board is leasing or granting the right to explore for coal and has no interest in the surface estate, the lessee or permittee shall comply with North Dakota Century Code chapter 38-18.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-14. Financial obligation to reclaim.** The lessee shall pay the entire cost of reclamation necessitated by the coal mining operation.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09

**85-06-02-15. Reports of lessee – delinquency penalty.** A statement and payment of royalty must be received by the department on or before the last day of the month following the mining and removal of coal from the premises.

1. The royalty payment and reporting deadline may be extended by the commissioner upon written request. An extension, if granted, only applies to future royalty payments and reporting.
2. Any sum, other than delay rentals, not paid when due is delinquent and is subject to a delinquency penalty of one percent of the sum for each thirty day period of delinquency or fraction of delinquency period, unless a waiver is granted by the commissioner.
3. A lessee shall have thirty days from the date of the receipt of a notice of a penalty assessment to pay the penalty or request a waiver.
  - a. A request for a waiver of the penalty must be in writing and provide the grounds for the request.
  - b. The following factors may be considered when deciding to waive the penalty: the reason for the late payment; the degree of control the payor had over the late payment; any unusual or mitigating circumstances involved; the loss of interest earnings to the trust involved; and any other relevant factors.
  - c. The commissioner may, for good cause, waive up to twenty-five thousand dollars of the penalty initially sought. A request for penalty waiver in excess of twenty-five thousand dollars must be presented to the board, with the commissioner's recommendation, for review and decision.
  - d. A waiver of penalty does not constitute a waiver of the right to seek the full amount of the penalty if the initial claim for royalty payment is not paid. If a claim for unpaid royalties and penalties is settled and payment received, the amount of penalties not collected is deemed waived.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10

**85-06-02-16. Audit and examination.**

1. The department may audit and examine any records, including:
  - a. Cuttings, cores, logs, mine plans, and estimated tonnage in place from any coal leased premises;
  - b. Books, accounts, sales invoices, and receipts;
  - c. Contracts and other records pertaining to the production, transportation, sale, and marketing of the coal produced from the coal leased premises; and
  - d. Documents supporting the cost of the coal mining operation used for calculating the price per ton royalty.
2. The department shall serve by certified mail, a written request to payor specifying the documents requested.
3. After audit and examination of the records set forth in subsection one, the department shall notify payor of the results, including the audit findings, any additional royalties due, the basis for that determination, and the date by which a response to the findings is due. If an exact amount of any delinquent royalties cannot be determined from the documents provided, the department shall request the payor make appropriate adjustments.
4. A payor shall have sixty days from the date of the receipt of the audit findings to comply, respond to the findings, or request commissioner review. A request for commissioner review must be made in writing and include a statement of the reasons for disagreement with the audit findings. If a payor fails to comply with the audit findings, respond to the findings, or request commissioner review within sixty days, the coal lease is subject to cancellation under section 85-06-02-08, Breach of coal lease.

**History:** Effective \_\_\_\_\_

**General Authority:** NDCC 15-05-05, 15-05-09, 15-05-10, 15-07-20, 15-08.1-06, 61-33-06

**Law Implemented:** NDCC 15-05-01, 15-05-09, 15-05-10