# ADMINISTRATIVE RULES DRAFTING MANUAL

# 2008

# North Dakota Legislative Council

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#### **PREFACE**

North Dakota Century Code (NDCC) Section 28-32-19 requires an administrative agency's rules to be published in the North Dakota Administrative Code in the format, style, and arrangement prescribed by the office of the Legislative Council. This manual is published to aid agencies in submitting their rules for publication in the Administrative Code. If there are any questions concerning the form and style of rules, please contact the Legislative Council staff.

Rules not in substantial compliance with the requirements set forth in this manual will not be published in the Administrative Code and thus will not become effective as provided by NDCC Section 28-32-19. The following checklist reviews form and style requirements:

- 1. Have all words been written out? Avoid use of abbreviations.
- 2. Have all references to and/or been removed? The language should provide x or y or x or y or both.
- 3. Do all section breakdowns have more than one division? There should not be only one subsection, subdivision, paragraph, or subparagraph.
- 4. Has the singular or plural form of nouns and verbs been properly used? Do not use (s).
- 5. Is all underscored material newly created language? Do not use underlining for emphasis.
- 6. Are section numbers properly changed? Sections may be repealed or amended but not transferred.
- 7. Are all numbers, except citations and measurement equivalents, spelled out?
- 8. Do metric equivalents follow weight and measurement references?
- 9. Do references to federal laws include the proper citations?
- 10. Are all slashes removed? Do not use oil/gas.
- 11. Do all created sections contain a caption?
- 12. Do newly created titles, articles, and chapters contain the corresponding headings?
- 13. Have all tables and charts been provided in camera-ready form?
- 14. Are all rules referenced by number? Do not use terms such as rules above, below, or following.

#### PART 1

#### **GENERAL INSTRUCTIONS**

#### **GENERAL GUIDELINES**

#### **Agencies Subject to Administrative Code Requirements**

Every agency that qualifies as an administrative agency under NDCC Section 28-32-01 or which has specific statutory authority to adopt rules pursuant to the Administrative Agencies Practice Act (NDCC Chapter 28-32) is required to publish its rules in the Administrative Code.

North Dakota Century Code Chapter 28-32 applies to every board, bureau, commission, department, or other administrative unit of the executive branch of state government, except for specifically excepted agencies.

A statute that provides specific authority to adopt rules pursuant to NDCC Chapter 28-32 may be worded:

The \_\_\_\_\_ may adopt rules pursuant to North Dakota Century Code chapter 28-32 necessary to carry out the purposes and provisions of this chapter.

A state agency that is not an administrative agency under NDCC Chapter 28-32 or which is not otherwise required to adopt its rules under Chapter 28-32 may have its rules published in the Administrative Code for public information purposes. However, its rules must be in the style and format described in this manual.

#### **Rules Subject to Administrative Code Requirements**

A rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy, or the organization, procedure, or practice requirements of an agency. "Rule" is defined in NDCC Section 28-32-01.

#### **Drafting Rules**

Before drafting a rule, an agency should review its functions, powers, duties, and methods of operation. This review should be detailed enough to determine what the agency is, what it does, and how it works. There is little value in adopting a rule if it is not known how the rule fits into the overall administration of the agency.

North Dakota Century Code Section 28-32-14 requires an agency to obtain an Attorney General's opinion on the legality of a rule. However, the section prohibits the Attorney General from approving any rule as to legality when the rule repeats or paraphrases statutory text, when the rule is not concise or easily understandable, when the rule exceeds the statutory authority of the agency, or procedural requirements for adoption of the rule are not substantially met.

North Dakota Century Code Section 28-32-19 requires a uniform format for all agency rules. All rules must comply with the uniform format envisioned by that section and described in this manual.

#### **Organizational Rule Requirement**

North Dakota Century Code Section 28-32-02 requires every agency to include in its rules a description of that portion of its organization and functions subject to Chapter 28-32. The organizational rule must state the general course and method of the agency's operations and the methods whereby the public may obtain information or make submissions or requests. An organizational rule is considered nonsubstantive and may be changed by the agency at any time by notifying the Legislative Council.

#### STYLE AND GRAMMAR GUIDELINES

Style and grammar guidelines are largely the same as for drafting legislative bills. Refer to the most recent *North Dakota Legislative Drafting Manual*.

#### **Definitions**

Agency rules may contain definitions, if they are not the same definitions used in relevant sections of the North Dakota Century Code. The following two sections of the Administrative Code illustrate different methods of reference to definitions contained in the North Dakota Century Code:

**21-02-01. Statutory definitions.** Unless otherwise defined, or made inappropriate by context, all words used in this chapter have meanings given to them under North Dakota Century Code chapter 4-10.3.

**General Authority:** NDCC 4-10.3-08 **Law Implemented:** NDCC 4-10.3-02

**32-01-02-01. Definitions.** The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

- "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of hairdressers and cosmetologists pursuant to North Dakota Century Code chapter 43-11.
- 2. "Cosmetology salon" means the same as hairdresser and cosmetologist shop as defined in subsection 4 of North Dakota Century Code section 43-11-01.
- 3. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.

General Authority: NDCC 28-32-02, 43-11-13

Law Implemented: NDCC 43-11-01, 43-11-13, 43-11-15, 43-11-16

#### Consistency

Be consistent throughout the rule. For example, do not refer to the "state engineer" in one sentence and the "chief engineer" in another sentence when referring to the same official. Also be consistent in the use of ordinary words. For example, do not use "minor" in one sentence and "child" in another. Although the use of synonyms adds variety, it also causes confusion.

#### **Century Code References**

Examples of correct references to provisions of the North Dakota Century Code are:

subsection 2 of North Dakota Century Code section 28-32-03

North Dakota Century Code section 28-32-03 (not section 28-32-03 of the North Dakota Century Code)

North Dakota Century Code chapter 28-32 (not chapter 28-32 of the North Dakota Century Code)

#### **Federal Statute and Regulation References**

Reference to federal statutes and regulations should be as clear and complete as possible. References to federal laws should include citations to the Public law, the Statutes at Large, and the United States Code. With respect to federal laws, if one citation is referred to in the rule, the other parallel federal citations should be in brackets. References to federal regulations should cite the Code of Federal Regulations. Examples are:

under Public Law No. 92-75 [85 Stat. 213; 46 U.S.C. 1451 et seq.]

the Federal Boat Safety Act of 1971 [Pub. L. 92-75; 85 Stat. 213; 46 U.S.C. 1451 et seq.]

the Act of Congress entitled . . . [Pub. L. 75-415; 50 Stat. 917; 16 U.S.C. 669 et seq.]

under title 40, Code of Federal Regulations, part 61, section 1

[Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 161(1)7]

under 40 CFR 61.1

#### Illustrations

Draft rules so that they are understandable without drawings or photographs. If illustrations are to be included in rules, the agency must submit camera-ready copy of the illustrations to the Legislative Council office for inclusion as an appendix at the end of the appropriate chapter of the Administrative Code.

## Repetition

Avoid repetitious language. For example, instead of setting out similar licensing requirements in two very long, nearly identical rules, the two rules could be broken into three separate rules. One rule would contain the requirements applicable to both types of licenses and the dissimilar requirements would comprise the two separate smaller rules.

#### PART 2

#### **RULES**

#### PARTS OF A RULE

The five main parts to a rule are number, caption, text, historical source note, and statutory authority notes.

#### Number

A four-part numbering system is used for the Administrative Code. Basically, each agency is listed in alphabetical order and is assigned a title number, each division or major administrative area is assigned an article number, each subject area is assigned a chapter number, and each rule is assigned a section number. The numbering system is based upon these standards:

- The title number for each state agency is assigned by the office of the Legislative Council. The
  title number for every agency in existence on July 1, 1978, has been assigned. The title number
  for an agency established after July 1, 1978, will be assigned by the Legislative Council office
  upon request by the agency.
- 2. An article number is assigned to each major activity or major division within an agency which carries out or administers a separate activity within the agency.
- 3. A chapter number is assigned for each subject within the jurisdiction of the major activity or division.
- 4. A section number represents each rule.

A period must be used at the end of the number. An example of a complete number for a section of the Administrative Code is:

37-01-01-01.

#### Caption

Each section in a chapter must contain an appropriate caption (headnote or catchline) which follows the section number. The caption is a short phrase describing, or a brief notice of, the content of the section. A dash is used to separate subject headings in a caption. A period must be used at the end of a caption. An example of a caption (with a section number) is:

33-31-02-08. Milk fat - Butterfat.

#### Text

The text of a section follows the caption and is the body of the rule.

#### **Historical Source Note**

The North Dakota Administrative Code was published effective July 1, 1978. For rules contained in the Administrative Code as first published, there was no need to cite the historical background of the rule. All rules were considered to be effective July 1, 1978. However, for any rule amended, created, or repealed after July 1, 1978, there must be a historical source note indicating the effective date of any amendment, creation, or repeal. The historical source note is inserted between the text of the section and the statutory authority notes. If the agency does not provide a historical source note for a rule change, the Legislative Council office will insert the note, based upon the effective date of publication of the rule.

An example of a historical source note for a section contained in the Administrative Code when first published on July 1, 1978, and amended effective August 1, 1979, is:

History: Amended effective August 1, 1979.

An example of a historical source note for a section contained in the original publication of the Administrative Code and amended effective August 1, 1979, and then amended effective January 1, 1983, is:

History: Amended effective August 1, 1979; January 1, 1983.

An example of a historical source note for a section created after original publication of the Administrative Code and effective September 1, 1988, is:

History: Effective September 1, 1988.

To ensure the continuing accuracy and clarity of history notes in future editions of the Administrative Code, section numbers of repealed rules are not reassigned to rules subsequently adopted.

The historical source note for a repealed section takes the place of the repealed text of the section.

An example of a historical source note for a section repealed as the result of legislative action repealing or eliminating the statutory authority for the rule is:

**73-02-03. Approval of Pacific stock exchange.** Repealed as the result of S.L. 1979, ch. 151, § 2.

An example of a historical source note for a section repealed by an agency is:

**89-02-01-14.** Affidavit of mailing and affidavit of notice. Repealed effective December 1, 1979.

#### **Statutory Authority Notes**

Each section must be followed by the statutory references authorizing the agency to adopt the rule and describing the specific law implemented. These two types of statutory authority references are "general authority" and "law implemented". The general authority source note refers to the specific statute authorizing the agency to adopt the rule. The law implemented source note refers to the statutory section or sections implemented by the rule. In some cases, the general authority and the law implemented are the same.

These references must be to specific sections of the North Dakota Century Code. If more than one statute is involved, cite all of them.

Use of these citations is mandatory. Rules are not published without these source notes.

An example of general authority and law implemented source notes for North Dakota Administrative Code Section 50-02-05-01 is:

**General Authority:** NDCC 43-17-13 **Law Implemented:** NDCC 43-17-18

An example of general authority and law implemented source notes citing a North Dakota Century Code chapter is North Dakota Administrative Code Section 75-03-12-02:

**General Authority:** NDCC 50-11.2-02(5) **Law Implemented:** NDCC 50-11.2

In some cases, source references may be to the Session Laws, federal statutes or regulations, or to court cases. An example of a section of the Administrative Code citing a federal statute and a federal regulation as authority is:

**69-03-11-02. Operations within borders of state.** Whenever this chapter refers to operations "within the borders" of this state, the operations include interstate operations to, from, within, or traversing the state of North Dakota.

**General Authority:** NDCC 49-18-08, 49-18-19

Law Implemented: NDCC 49-18-05, 49-18-08, 49-18-19; 49 USC 302(b); 49 CFR 1023

## **RULE ADOPTION DEADLINES**

North Dakota Century Code Section 28-32-07 requires that any rule change made to implement a statutory change must be adopted and filed with the office of the Legislative Council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the Legislative Council. The Legislative Council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own.

## PART 3

## **EXAMPLES OF RULES**

- 1. A Title Page
- 2. An Organizational Rule
- 3. An Article Page
- 4. Repeal of a Section
- 5. An Amendment to a Section
- 6. An Amendment to a Subdivision of a Subsection of a Lengthy Section
- 7. A Creation of a New Section
- 8. An Amendment Omitting Subsections Not Affected
- 9. An Amendment Eliminating a Subdivision and Redesignating Remaining Material

# Example 1: A Title Page

# **TITLE 73**

# **SECURITIES COMMISSIONER**

Article	
73-01	General Administration
73-02	Securities Act of 1951
73-03	Franchise Investment Law
73-04	Pre-Need Funeral Services

**NOTE:** All articles are listed on the title page.

#### **ARTICLE 24-01**

#### **GENERAL ADMINISTRATION**

Chapter

24-01-01 Organization of Board

# CHAPTER 24-01-01 ORGANIZATION OF BOARD

Section

24-01-01 Organization of Electrical Board

#### 24-01-01-01. Organization of electrical board.

- 1. History and functions. In 1917 legislation was approved which created a state board of electricians. In 1949 the name of the board was changed to the state electrical board. The board is charged with the responsibility to examine applicants and issue licenses to those having the necessary qualifications and knowledge in the laws of electricity and electrical codes. The board has jurisdiction over all electrical installations. Electrical inspectors authorized by the board may condemn installations hazardous to life and property and order electric service to be discontinued.
- 2. Board membership. The board consists of five members appointed by the governor for terms of five years. Terms are arranged so that one term expires each year. To provide equal representation on the board, one member is selected from the master electricians, one from the journeymen electricians, another from the investor-owned utilities, the fourth shall be a consumer member of a rural electric cooperative, and the fifth member represents the public and cannot be directly associated with the electrical industry.
- 3. **Executive director.** The executive director has full responsibility for directing and supervising the operation of the department under the direction of the board.
- 4. **Director of inspections.** The director of inspections supervises electrical inspectors to carry out an effective inspection program. The director is responsible for reviewing plans and specifications that are submitted on various projects.
- 5. **Inspection districts.** The state is divided into eight districts. Each electrical inspector is assigned to a district. A map showing the eight districts is attached as an appendix to this chapter and by this reference is herein incorporated.
- 6. **Inquiries.** All inquiries and communication relating to licensing, electrical wiring, and inspections shall be directed to:

North Dakota State Electrical Board P.O. Box 7335 Bismarck, ND 58507-7335 Phone (701)328-9522 Fax (701)328-9524

E-mail: electric@state.nd.gov

Inquiries or proposals for amendments to the rules and wiring standards shall be directed to the executive director.

History: Amended effective November 1, 1981; January 1, 1984; October 1, 1987; January 1, 1992;

January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

**General Authority:** NDCC 28-32-02.1 **Law Implemented:** NDCC 28-32-02.1

# Example 3: An Article Page

# **ARTICLE 73-02**

# **SECURITIES ACT OF 1951**

Cnapter	
73-02-01	Registration of Securities
73-02-02	Exempt Securities [Repealed]
73-02-03	Exempt Transactions
73-02-04	Advertising Matter
73-02-05	Unlawful Representations Concerning Registration or Exemption
73-02-06	Registration of Dealers, Salesmen, and Investment Advisers

**NOTE:** All chapters in the article are listed on the article page.

#### Example 4: Repeal of a Section

Section 30-04-03-10 is repealed:

**30-04-03-10.** License revocation. The license of any licensed guide or outfitter shall be subject to revocation or refusal to renew, after due hearing pursuant to North Dakota Century Code chapter 28-32, in addition to any other penalties prescribed by law or rule for a violation, when the licensed guide or outfitter:

- 1. Is convicted of violating any game or fish law of the state of North Dakota;
- 2. Is convicted of violating any federal law pertaining to hunting, fishing, or trapping;
- 3. Fails to comply with this chapter; or
- 4. While carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry. Repealed effective \_\_\_\_\_\_\_, 2008.

History: Amended effective January 1, 1997.

**General Authority:** NDCC 20.1-02-05 **Law Implemented:** NDCC 20.1-02-05

#### Example 5: An Amendment to a Section

Section 81-02-02-01 is amended as follows:

**81-02-01.** Definition Definitions of mobile home tax and of mobile home. The mobile home tax is a property tax imposed upon the owners of the mobile homes (housetrailers) pursuant to North Dakota Century Code chapter 57-55. For the purposes of the mobile home tax law, the term "mobile home" means any non-self-propelled vehicular structure built on a chassis, having a length of twenty-seven feet [8.23 meters] or more, ordinarily designed for human living quarters, either on a temporary or permanent basis, and used as a residence or a place of business of the owner or occupant. The length of the mobile home is determined by measuring the outside of the mobile home and is exclusive of the hitch.

**History:** Amended effective September 1, 1979; , 2008.

**General Authority:** NDCC 57-55-09 **Law Implemented:** NDCC 57-55-01

**NOTE:** A historical source note is required for every change to a section.

Example 6: An Amendment to a Subdivision of a Subsection of a Lengthy Section

Subdivision b of subsection 3 of Section 75-02-01-03 is amended as follows:

b. One motor vehicle owned by an applicant or recipient of an aid to families with dependent children grant is exempt provided the market value (the price at which the motor vehicle could reasonably be sold) of such motor vehicle does not exceed the sum of three thousand dollars. The market value shall be arrived at without regard to encumbrances regardless of its value. The value of any other motor vehicle or vehicles beyond the exempt vehicle shall be considered pursuant to the limitations set forth in subdivision c.

Subdivision c of subsection 3 of Section 75-02-01-03 is amended as follows:

c. The applicant or recipient of an aid to families with dependent children grant is limited to the ownership of personal property other than the above exclusions to a market value an equity of one thousand dollars. The applicant or recipient is ineligible for an aid to families with dependent children grant when the applicant's or recipient's ownership of property other than the above-named exclusions exceeds an equity of one thousand dollars.

**History:** Amended effective November 1, 1979; , 2008.

**NOTE:** When only a portion of a section is submitted with the change, the historical source note should be placed after the last portion of the affected section as illustrated by this example.

#### Example 7: A Creation of a New Section

Section 81-02.1-01-05.1 is created as follows:

<u>81-02.1-01-05.1.</u> Form of tax permit. The tax permit that is recorded on the back of the receipt issued for payment in full must contain the following information:

- 1. Name of county that issues the permit.
- 2. A statement that the receipt for payment in full constitutes a mobile home tax permit for the mobile home described in this document.
- 3. Date of expiration of the permit.

The tax permit does not need to be displayed on the mobile home.

History: Effective November 1, 1987.

General Authority: NDCC 57-55-09

Law Implemented: NDCC 57-55-06

**NOTE:** All new material should be underscored.

#### Example 8. An Amendment Omitting Subsections Not Affected

Section 75-02-04.1-02 is amended as follows:

#### 75-02-04.1-02. Determination of support amount - General instructions.

Calculations Except as provided in section 75-02-04.1-08.2, calculations of child support
obligations provided for under this chapter consider and assume that one parent acts as a
primary caregiver and the other parent contributes a payment of child support to the child's care.

. . .

7. Income must be <u>sufficiently</u> documented through the use of tax returns, current wage statements, and other information <del>sufficiently</del> to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.

. . .

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12) 50-09-02(16); 42 USC 667

Example 9. An Amendment Eliminating a Subdivision and Redesignating Remaining Material

Section 45-06-06.1-02 is amended as follows:

#### 45-06-06.1-02. Applicability and scope.

- 1. a. Except as provided in subdivision b and section 45-06-06.1-13, this chapter applies to any health benefit plan, whether provided on a group or individual basis, which:
  - (1) <u>a.</u> Meets one or more of the conditions set forth in subdivisions a, b, and c of subsection 1 of North Dakota Century Code section 26.1-36.3-02; <u>and</u>
  - (2) <u>b.</u> Provides coverage to three <u>one</u> or more employees of a small employer located in this state, without regard to whether the policy or certificate was issued in this state; or
    - (3) Is in effect on or after August 1, 1994.
  - b. The provisions of the Act and this chapter do not apply to any individual health insurance policies delivered or issued for delivery prior to August 1, 1994. Subject to the applicability provisions of this rule and the provisions of North Dakota Century Code section 26.1-36.3-02, the provisions of the Act and this chapter apply to certain individual health insurance policies delivered or issued for delivery on or after August 1, 1994.
- 2. a. A carrier that provides individual health insurance policies to three one or more of the employees of a small employer shall be considered a small employer carrier and is subject to the provisions of the Act and this chapter with respect to such policies if the small employer contributes directly or indirectly to the premiums for the policies and the carrier is aware or should have been aware of such contribution.
  - b. In the case of a carrier that provides individual health insurance policies to three one or more employees of a small employer, the small employer shall be considered to be an eligible small employer as defined in subdivision c of subsection 1 of North Dakota Century Code section 26.1-36.3-06 and the small employer carrier is subject to subdivision b of subsection 1 of North Dakota Century Code section 26.1-36.3-06, relating to guaranteed issue of coverage, if:

. .

**NOTE:** Subdivision a of subsection 1 must be redesignated because there cannot be only one subdivision of a subsection.