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TITLE 3

Accountancy, Board of

SEPTEMBER 1997

CHAPTER 3-02-02

3-02-02-04. Certificate and license annual renewal fees - Annual permit fees. The annual renewal fee for every CPA and LPA shall be forty dollars. ~~A--CPA--or-LPA-who-fails-to-register-or-pay-the-annual renewal-fee-by-July-thirty-first-of--the--board's--current--fiscal--year shall-pay-a-late-filing-fee-of-twenty-dollars-in-addition-to-the-regular annual-fee.~~

The annual fee for issuance or renewal of an individual permit to practice public accounting shall be ten dollars. A CPA ~~of~~ or LPA who fails to register or pay the applicable annual certificate, license, or permit renewal ~~fee~~ fees by ~~July--thirty-first~~ June thirtieth of the board's current fiscal year shall pay a late filing fee of twenty dollars in addition to the regular annual permit fee.

History: Amended effective August 1, 1981; October 1, 1982; July 1, 1987; June 1, 1988; July 1, 1991; March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-03, 43-02.2-04, 43-02.2-05, 43-02.2-07

3-02-02-04.1. Fee for annual firm permit to practice. The annual fee for every firm engaged in public accounting is fifty dollars. A late filing fee of twenty dollars shall also be paid by a firm that fails to register or pay the annual firm permit fee by ~~July-thirty-first~~ June thirtieth of the board's current fiscal year. A firm commencing the practice of public accounting shall register and pay a firm permit fee before commencing such practice. Failure to register and pay the appropriate firm permit fees may result in the board proceeding to revoke, suspend, or refuse to renew the certificates, licenses, and

permits of each of the firm's partners, officers, directors, shareholders, or owners.

History: Effective June 1, 1988; amended effective March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-03, 43-02.2-06, 43-02.2-07

3-03-01-04. Exceptions. The board may make exceptions to the continuing professional education requirements for reasons including health, military service, foreign residency, and retirement. Nonresident licensees are exempt from the requirements of article 3-03, if they verify that they meet the continuing professional education requirements of their jurisdictions of residence, provided the board considers those continuing professional education requirements to be substantially equivalent to those of this state, and provided that state provides similar exemption to licensees resident in North Dakota. Those holding a North Dakota public practice permit must meet the public practice continuing professional education requirements of their jurisdictions of residence.

History: Amended effective March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-03, 43-02.2-05

CHAPTER 3-05-02

3-05-02-01. Submission of reports. When so directed by the board, each firm which performs compilation or review services but no audit services, shall furnish to the board, with respect to each office ~~maintained--by--the--applicant~~ which performs compilation or review services for clients in this state, one copy of each of the following kinds of reports issued by that office during the preceding twelve-month period, if any report of such kind was issued during such period:

1. A compilation report, including accompanying financial statements; if the firm has produced a compilation with full disclosures, then this type of compilation must be furnished~~,~~ and;

2. A review report, including accompanying financial statements~~.~~; and

3. Related workpapers, when requested by the board.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-06

3-05-02-01.1. ~~Onsite--practice~~ Peer review. ~~Beginning-July-1, 1992,-and-when~~ When directed by the board, a firm which performs audit services, is required to undergo ~~an--onsite--practice~~ a peer review conforming to the standards of the AICPA ~~quality-review-program-or~~ peer review program, or a program deemed comparable in the opinion of the board. A copy of the report of such review and the letter of acceptance, plus the letter of comments and letter of response, if any, are to be submitted to the board.

History: Effective July 1, 1991; amended effective March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-06

3-05-02-02. Exception to submission of report. The requirements of sections 3-05-02-01 and 3-05-02-01.1 may not apply with respect to any office which within the three years immediately preceding the registration had been subjected to a review under the AICPA ~~quality review-program-or~~ peer review program, or a program deemed comparable in the opinion of the board; provided, that a copy of the report of such

review and the letter of acceptance, and if applicable the letter of comments and letter of response are submitted with the registration renewal.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-06

3-05-03-02. Scope of review. The positive review program committee shall determine, with respect to each report:

1. Whether the report is in general conformity with applicable professional standards;

2. If not, in what respect the report is substandard (meaning materially inaccurate or misleading) or marginal (meaning containing serious deficiencies but not materially inaccurate or misleading); and

3. Any recommendations it may have concerning improvement of the quality of the report.

The positive review program committee shall report its determinations and recommendations to the board. The board shall review the determinations and recommendations of the positive review program committee.

History: Effective June 1, 1988; amended effective July 1, 1991; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-06

3-05-03-04. Board review of committee's determinations. ~~The board shall review the determinations and recommendations of the positive review program committee pursuant to section 3-05-03-02; and in any case where the positive review program committee has determined, and the board concurs, that a report is in general conformity with applicable professional standards, the board shall forward the positive review program committee's determination and recommendations, if any, to the person in charge of the office which submitted the report.~~ Repealed effective September 1, 1997.

History: ~~Effective June 1, 1988; amended effective July 1, 1991.~~
General Authority: ~~NDCC 43-02.2-03~~
Law Implemented: ~~NDCC 43-02.2-06~~

3-05-03-05. Review of onsite practice peer reviews. Reports and letters of comments submitted in accordance with section 3-05-02-01.1 and 3-05-02-02 must be reviewed, and resultant findings and

recommendations must be given to the board and the board shall take appropriate action, which may include similar actions to those in section 3-05-04-01.

History: Effective July 1, 1991; amended effective March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-06

CHAPTER 3-05-04

3-05-04-01. Deficient reports and board action. If the board determines that a report referred to the board by the positive review program committee is deficient or marginal with respect to applicable professional standards, the board may take any one of the following actions:

1. The board may submit a letter of comment to the firm detailing the deficiencies noted in connection with the review and requiring the firm to detail the steps which it will take to ensure that similar occurrences will not recur. A response will be required within thirty days of the mailing of the board's letter and may be subject to followup review.

2. The board may require any individual who had responsibility for issuance of the report or who substantially participated in preparation of the report or the related workpapers, or both, to successfully complete ~~specific courses or types of~~ continuing education as specified by the board. The cost of the course or courses must be borne by such registrant.

3. The board may require that the office responsible for the deficient report submit all or specified categories of its reports for a preissuance review in a manner and for a duration prescribed by the board.

4. If it appears that the professional conduct reflected in the deficient report is so serious as to warrant consideration of possible disciplinary action, the board may initiate an investigation pursuant to North Dakota Century Code sections 43-02.2-03, 43-02.2-09, and 43-02.2-10.

History: Effective June 1, 1988; amended effective July 1, 1991; March 1, 1995; September 1, 1997.
General Authority: NDCC 43-02.2-03
Law Implemented: NDCC 43-02.2-03, 43-02.2-06, 43-02.2-09

TITLE 13

Banking and Financial Institutions, Department of

OCTOBER 1, 1997

CHAPTER 13-03-02

13-03-02-07. Exceptions. A credit union may make an exception to the loan-to-value limits under section 13-03-02-03 for loans from creditworthy borrowers. However, a credit union may not make such an exception if the loan would exceed one hundred fifty percent of the credit union's total equity capital and reserves when the loan is aggregated with all other loans in excess of the loan-to-value limits.

History: Effective October 1, 1997.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-14-02. Field of membership expansion.

1. A North Dakota state-chartered credit union may expand its field of membership subject to approval of the state credit union board and in accordance with the provisions of this chapter and North Dakota Century Code chapter 6-06.

2. The state credit union board, when considering the expansion of a charter, shall consider the following:

   a. If the expansion is for an open charter, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the principal or branch office, must be clearly spelled out;

   b. The negative impact to any other state or federally chartered credit union in ~~North Dakota~~ the expanded area;

   c. The expressed need in the expansion area;

   d. Any expressed opposition to the expansion by any other credit union ~~in North Dakota~~;

   e. If the expansion is for an open charter, whether the area being considered is satisfactorily served by a currently operating credit union;

   f. The credit union must demonstrate the ability to succeed in expanding their field of membership; ~~and~~

   g. Relevant public comment in favor of or in opposition to expanding the field of membership; and

   h. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective October 1, 1997.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06, 6-06-07

13-03-14-03. Application to expand field of membership. A credit union wishing to expand its field of membership shall comply with the following:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board;

2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership. The necessary forms for "application for field of membership expansion", including the business plan and the financial impact to the credit union and as required in subsection 3, may be secured from the department of banking and financial institutions;

3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code section 6-06-04;

4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county or counties affected by the proposed charter expansion. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of a closed charter application, cause a notice of the proposed field of membership expansion to be published in the eight major newspapers in the state set forth in subdivisions a through h of subsection 1 of section 13-01.1-04-01. However, if a closed charter credit union intends to limit its expansion into specified geographical areas within the state, the notice must only be published in the official newspaper of the county or counties affected by the proposed expansion; and

5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. ~~Written--comments~~ Comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

History: Effective April 1, 1988; amended effective October 1, 1997.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06, 6-06-07

13-04-02-04. Prohibited practices. No debt collector may:

1. Perform legal services, furnish legal advice, or falsely represent, directly or by implication, that the debt collector is an attorney.

2. Solicit assignments of claims for the purpose of suit or at the instigation of an attorney.

3. Institute judicial proceedings on behalf of other persons except on an assigned claim.

4. Communicate with debtors in the name of an attorney or upon stationery or other written matter bearing an attorney's name.

5. Make any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

6. Violate sections 804 through 810 of the Federal Fair Debt Collection Practices Act [Pub. L. 90-321; 91 Stat. 876 through 880; 15 U.S.C. 1692b through 1692h].

History: Amended effective July 1, 1984; October 1, 1997.
General Authority: NDCC 13-05-06
Law Implemented: NDCC 13-05-06

13-04-02-08. Fraudulent, deceptive, or misleading representations prohibited. No debt collector may use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, no debt collector may:

1. Use any name while engaged in the collection of claims other than the debt collector's true name unless the assumed name is registered with the department as an alias for the debt collector.

2. Make misleading representations in any communication made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer.

3. Falsely represent that the debt collector has information in the debt collector's possession or something of value for the consumer in order to solicit or discover information about the consumer.

4. Fail to clearly disclose the name and full business address of the person to whom the claim has been assigned or is owed at the time of making any demand for money.

5. Falsely represent or imply that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent, or official of this state or any agency of federal, state, or local government.

6. Falsely represent the character, extent, or amount of a claim against a consumer, or of its status in any legal proceeding.

7. Use, distribute, or sell any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval.

8. Represent that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation.

9. Falsely represent, or give a false impression about the status or true nature of or the services rendered by the debt collector or the debt collector's business.

History: Amended effective July 1, 1984; October 1, 1997.
General Authority: NDCC 13-05-06
Law Implemented: NDCC 13-05-06

13-04-02-14. Statement furnished upon request. A collection agency, upon a written or oral request by the debtor, shall provide a written statement to the debtor indicating the current balance of the remaining debt, the total of all interest charged, and a record of all payments applied to that debt. The statement must include all activity since the debt was turned over to the collection agency or since the date of any previously furnished statement. A collection agency is not required to furnish a requested written statement more frequently than once every six months.

History: Effective October 1, 1997.
General Authority: NDCC 13-05-06
Law Implemented: NDCC 13-05-07

TITLE 33

State Department of Health

SEPTEMBER 1997

CHAPTER 33-15-01

33-15-01-03. Authority. The North Dakota state department of health ~~and consolidated laboratories~~ has been authorized to provide and administer this article under the provisions of North Dakota Century Code chapter 23-25.

History: Amended effective September 1, 1997.
General Authority: NDCC 23-25-02
Law Implemented: NDCC 23-25-02

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or where the context indicates otherwise, the following words shall have the meanings ascribed to them in this section:

1. "Act" means North Dakota Century Code chapter 23-25.
2. "Air contaminant" means any solid, liquid, gas, or odorous substance or any combination thereof.
3. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
4. "Ambient air" means the surrounding outside air.
5. "ASME" means the American society of mechanical engineers.

6. "Control equipment" means any device or contrivance which prevents or reduces emissions.

7. "Department" means the North Dakota state department of health ~~and consolidated laboratories~~.

8. "Emission" means a release of air contaminants into the ambient air.

9. "Existing" means equipment, machines, devices, articles, contrivances, or installations which are in being on or before July 1, 1970, unless specifically designated within this article; except that any existing equipment, machine, device, contrivance, or installation which is altered, repaired, or rebuilt after July 1, 1970, must be reclassified as "new" if such alternation, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.

10. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator of the United States environmental protection agency including those requirements developed pursuant to title 40, Code of Federal Regulations, parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to title 40, Code of Federal Regulations, 52.21 or under regulations approved pursuant to title 40, Code of Federal Regulations, part 51, subpart I, including operating permits issued under a United States environmental protection agency-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under such program.

11. "Fuel burning equipment" means any furnace, boiler apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

12. "Fugitive emissions" means solid airborne particulate matter, fumes, gases, mist, smoke, odorous matter, vapors, or any combination thereof generated incidental to an operation process procedure or emitted from any source other than through a well-defined stack or chimney.

13. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food, including wastes from markets, storage facilities, handling, and sale of produce and other food products.

14. "Hazardous waste" has the same meaning as given by chapter 33-24-02.

15. "Heat input" means the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater.

16. "Incinerator" means any article, machine, equipment, device, contrivance, structure, or part of a structure used for the destruction of garbage, rubbish, or other wastes by burning or to process salvageable material by burning.

17. "Industrial waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.

18. "Infectious waste" means waste that is listed in subdivisions a through g. Ash from incineration and residues from disinfection processes are not infectious waste once the incineration or the disinfection has been completed.

    a. Cultures and stocks. Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate, and mix cultures.

    b. Pathological waste. Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers.

    c. Human blood and blood products. Liquid waste human blood; products of blood; items saturated or dripping with human blood; or items that were saturated or dripping with human blood that are now caked with dried human blood, including serum, plasma, and other blood components, and their containers.

    d. Sharps. Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes, regardless of presence of infectious agents. Also included are other types of broken or unbroken glassware that were in contact

with infectious agents, such as used slides and cover slips.

e. Animal waste. Contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research including research in veterinary hospitals, production of biological, or testing of pharmaceuticals.

f. Isolation waste. Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretions from humans who are isolated to protect others from highly communicable diseases, or isolated animals known to be infected with highly communicable diseases.

g. Unused sharps. Unused, discarded sharps, hypodermic needles, suture needles, and scalpel blades.

19. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers. Also known as PM_{10}.

20. "Installation" means any property, real or personal, including, but not limited to, processing equipment, manufacturing equipment, fuel burning equipment, incinerators, or any other equipment, or construction, capable of creating or causing emissions.

21. "Multiple chamber incinerator" means any article, machine, equipment, contrivance, structure, or part of a structure used to burn combustible refuse, consisting of two or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

22. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities, by public and private facilities, and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.

23. "New" means equipment, machines, devices, articles, contrivances, or installations built or installed on or after July 1, 1970, unless specifically designated within this article, and installations existing at said stated time which are later altered, repaired, or rebuilt and result in the emission of an additional or greater amount of air contaminants.

24. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

25. "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through an adequate stack, duct, or chimney.

26. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

27. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.

28. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof and any legal successor, representative agent, or agency of the foregoing.

29. "Pesticide" includes (a) any agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals; (b) any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscacides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.

30. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

31. "PM_{10} emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air.

32. "Premises" means any property, piece of land or real estate, or building.

33. "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

34. "Process weight rate" means the rate established as follows:

a. For continuous or longrun steady state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

b. For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

35. "Public nuisance" means any condition of the ambient air beyond the property line of the offending person which is offensive to the senses, or which causes or constitutes an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

36. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.

37. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.

38. "Rubbish" means nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit [1144 degrees Kelvin to 1255 degrees Kelvin]).

39. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

40. "Smoke" means small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash, and other combustible material, that form a visible plume in the air.

41. "Source" means any property, real or personal, or person contributing to air pollution.

42. "Source operation" means the last operation preceding emission which operation (a) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of

combustion fuel; and (b) is not an air pollution abatement operation.

43. "Special waste" means solid waste that is not a hazardous waste regulated under North Dakota Century Code chapter 23-20.3 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and or mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

44. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.

45. "Submerged fill pipe" means any fill pipe the discharge opening of which is entirely submerged when the liquid level is six inches [15.24 centimeters] above the bottom of the tank; or when applied to a tank which is loaded from the side, means any fill pipe the discharge opening of which is entirely submerged when the liquid level is one and one-half times the fill pipe diameter in inches [centimeters] above the bottom of the tank.

46. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].

47. "Trade waste" means solid, liquid, or gaseous waste material resulting from construction or the conduct of any business, trade, or industry, or any demolition operation, including wood, wood containing preservatives, plastics, cartons, grease, oil, chemicals, and cinders.

48. "Trash" means refuse commonly generated by food warehouses, wholesalers, and retailers which is comprised only of nonrecyclable paper, paper products, cartons, cardboard, wood, wood scraps, and floor sweepings and other similar materials. Trash may not contain more than five percent by volume of each of the following: plastics, animal and vegetable materials, or rubber and rubber scraps. Trash must be free of grease, oil, pesticides, yard waste, scrap tires, infectious waste, and similar substances.

49. "Volatile organic compounds" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform);

1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro - 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); and perfluorocarbon compounds which fall into these classes:

a. Cyclic, branched, or linear, completely fluorinated alkanes;

b. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

c. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

d. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

For purposes of determining compliance with emission limits, volatile organic compounds will be measured by the test methods in title 40, Code of Federal Regulations, part 60, appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified, and such exclusion is approved by the department.

As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the enforcement authority, the amount of negligibly reactive compounds in the source's emissions.

50. "Waste classification" means the seven classifications of waste as defined by the incinerator institute of America and American society of mechanical engineers.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1990; June 1, 1992; March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-13. Shutdown and malfunction of an installation - Requirement for notification.

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

   a. Identification of the specific facility to be taken out of service as well as its location and permit number.

   b. The expected length of time that the air pollution control equipment will be out of service.

   c. The nature and estimated quantity of emissions of air pollutants likely to be emitted during the shutdown period.

   d. Measures such as the use of off-shift labor and equipment that will be taken to minimize the length of the shutdown period.

   e. The reasons that it would be impossible or impractical to shut down the source operation during the maintenance period.

2. **Malfunctions.**

   a. When a malfunction in any installation occurs that can be expected to last longer than twenty-four hours and cause the emission of air contaminants in violation of this article or other applicable rules and regulations, the person responsible for such installation shall notify the department of such malfunction as soon as possible during normal working hours. The notification must contain a statement giving all pertinent facts, including the estimated duration of the breakdown. On receipt of this notification, the department may permit the continuance of the operation for a period not to exceed ten days provided that written application is made to the department. Such application shall be made within twenty-four hours of the malfunction or within such other time period as the department may specify. In cases of major equipment

failure, additional time period may be granted by the department provided a corrective program has been submitted by the person and approved by the department. The department shall be notified when the condition causing the malfunction has been corrected.

b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at ~~701-221-5188~~ 701-328-5188. After hours the department can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is ~~701-224-2121~~ 701-328-2121.

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method, acceptable to the department, for measuring or estimating emissions must be undertaken as soon as possible. Timely repair of the emission monitoring system must be made.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-01-15. Prohibition of air pollution.

1. No person shall permit or cause air pollution, as defined in subsection 3 of section 33-15-01-04.

2. No person shall permit or cause a public nuisance, as defined in subsection ~~30~~ 35 of section 33-15-01-04.

3. No person shall cause or permit the discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance, or annoyance to any person or to the public or which endanger the comfort, repose, health, or safety of any such person or the public or which cause injury or damage to business or property.

4. Nothing in any other part of this article concerning emission of air contaminants or any other regulation relating to air pollution shall in any manner be construed as authorizing or legalizing the creation or maintenance of air pollution, a public nuisance, or a nuisance as described in subsection 3.

History: Amended effective June 1, 1990; September 1, 1997.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-01-17. Enforcement.

1. Enforcement action will be consistent with procedures as approved by the United States environmental protection agency.

2. Notwithstanding any other provision in this article, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of this article.

   a. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at a source:

      (1) An enhanced monitoring protocol approved for the source pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act [42 U.S.C. 7401, et seq.] or the regulations promulgated thereunder.

      (2) A monitoring method approved for the source pursuant to paragraph 3 of subdivision a of subsection 5 of section 33-15-14-06 and incorporated in a federally enforceable title V permit to operate.

      (3) Compliance test methods specified in this article.

   b. The following testing, monitoring, and information-gathering methods are presumptively credible testing, monitoring, or information-gathering methods:

      (1) Any federally enforceable monitoring or testing methods, including those under title 40, Code of Federal Regulations, parts 50, 51, 60, 61, and 75.

      (2) Other testing, monitoring, or information-gathering methods that produce information comparable to that produced by any method in paragraph 1 or in subdivision a of subsection 2 of section 33-15-01-17.

3. a. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this article.

   b. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring device or method required under this article.

History: Effective June 1, 1990; amended effective December 1, 1994; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC ~~23-25-10~~ 23-25-03

33-15-05-03.3. Other waste incinerators.

1. **Salvage incinerators.** The owner or operator of a new incinerator for salvage of materials of any design capacity shall comply with standards of subsections 2 and 3 of section 33-15-05-03.1. No industrial waste, radioactive waste, hazardous waste, or infectious waste may be burned in a salvage incinerator, unless specifically approved by the department. The department may impose one or more of the requirements of subsection 4 of section 33-15-05-03.1 on the owner or operator of a new incinerator for salvage of materials based on factors such as waste charging rate, quantity or type of emissions, material being salvaged, or site circumstances.

2. **Air curtain destructors.** The department may require construction, operational, and recordkeeping standards and procedures for air curtain destructors based upon factors such as characteristics and quantities of materials to be destroyed by burning and site location.

3. **Industrial waste and special waste incinerators.** The department may require construction, operational, emission, monitoring, recordkeeping, and reporting standards and procedures for incinerators of industrial waste based upon factors such as characteristics and quantities of the industrial waste and site location.

4. **Crematoriums.**

   a. No owner or operator of combustion units operated as a human or animal crematorium or in an animal farm operation for animal disposal may burn any other type or form of materials or solid waste unless specifically approved by the department.

   b. No owner or operator of a crematorium may allow to be discharged into the atmosphere any air contaminant, which exhibits an opacity greater than ten percent except that a maximum of twenty percent is permissible for not more than one 6-minute period per hour.

   c. A crematorium constructed and operated after August 1, 1995, must be equipped with two or more chambers and with auxiliary fuel burners, designed to assure a temperature in a secondary chamber of at least one thousand ~~eight~~ six hundred degrees Fahrenheit [~~982~~ 871 degrees Celsius] for a minimum of one-second retention time.

d. Monitoring. Each new crematorium must be equipped with a continuous temperature monitor, with readout, to monitor the temperature of the gases exiting the secondary combustion chamber or zone.

e. General. The department may establish additional construction, operational, emission, monitoring, recordkeeping, and reporting standards and procedures for crematoriums based upon factors such as quantities of material charged, emissions, and site location.

History: Effective August 1, 1995; amended effective September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-04, 23-25-04.1

CHAPTER 33-15-07

33-15-07-01. Requirements for construction of organic compounds facilities.

1. **Scope.** This section applies only to those facilities considered "new" as defined in subsection ~~18~~ 23 of section 33-15-01-04.

2. **Water separation from petroleum products.** No person may build or install any single or multiple compartment volatile organic compounds - water separator which normally receives effluent water containing two hundred gallons [757.08 liters] per day or more of any volatile organic liquid from any equipment processing, refining, treating, storing, or handling volatile organic compounds unless such compartment is equipped with a closed-vent system and control device as defined in 40 CFR, part 60, subpart QQQ, section 60.691, as adopted in chapter 33-15-12, or a floating roof as described in 40 CFR, part 60, subpart QQQ, section 60.693-2, as adopted in chapter 33-15-12, which is properly installed and in good working order. For the purposes of this section, a volatile organic compounds - water separator means a device used to separate an oil water mixture into its separate components, which include volatile organic compounds and water, by gravity separation and skimming.

3. **Submerged fill pipes required.** No person may build or install or permit the building or installation of a stationary volatile organic compounds storage tank with a capacity of one thousand gallons [3,785.41 liters] or more unless such tank is equipped with a submerged fill pipe during filling operations or is a pressure tank as described in 40 CFR, part 60, subpart K, subparagraph 60.111(a)(1), as adopted in chapter 33-15-12, or fitted with a vapor recovery system also defined in 40 CFR, part 60, subpart K, paragraph 60.111(k), as adopted in chapter 33-15-12.

4. **Volatile organic compounds loading facilities.** No person may build or install or permit the building or installation of volatile organic compounds tank car or tank truck loading facilities handling twenty thousand gallons [75,708.24 liters] per day or more unless such facilities are operated with a submerged filling arm or other vapor emission control system. Any emissions control system utilized must have a minimum control efficiency necessary to meet the requirements of chapters 33-15-02 and 33-15-16.

5. **Pumps and compressors.** All rotating pumps and compressors handling volatile organic compounds must be equipped and

operated with properly maintained seals designed for their specific product service and operating conditions.

History: Amended effective October 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12

33-15-12-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on ~~May 1, 1995~~ October 1, 1996, which are listed under section 33-15-12-02 are incorporated into this chapter by reference. Any changes to the standards of performance are listed below the title of the standard.

History: Effective June 1, 1992; amended effective December 1, 1994; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-12-02. Standards of performance.

Subpart A - General provisions.

*60.2. The definition of administrator is deleted and replaced with the following:

Administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

Subpart C - Emission guidelines and compliance times.

~~Subpart Ca------Emissions guidelines and compliance times for municipal waste combustors.~~

Subpart Cc - Emissions guidelines and compliance times for municipal solid waste landfills.

Designated facilities to which this subpart applies shall comply with the requirements for state plan approval in 40 CFR part 60.33c, 60.34c, and 60.35c, except that quarterly surface monitoring for methane under part 60.34c shall only be required during the second, third, and fourth quarters of the calendar year.

Designated facilities under this subpart shall:

1. Submit a final control plan for department review and approval within twelve months of the date of the United States environmental protection agency's approval of this rule, or within twelve months of becoming subject to this rule, whichever occurs later.

2. Award contracts for control systems/process modification within twenty-four months of the date of the United States environmental protection agency's approval of this rule, or within twenty-four months of becoming subject to the rule, whichever occurs later.

3. Initiate onsite construction or installation of the air pollution control device or process changes within twenty-seven months of the date of the United States environmental protection agency's approval of this rule, or within twenty-seven months of becoming subject to the rule, whichever occurs later.

4. Complete onsite construction or installation of the air pollution control device or devices or process changes within twenty-nine months of the United States environmental protection agency's approval of this rule, or within twenty-nine months of becoming subject to the rule, whichever is later.

5. Conduct the initial performance test within one hundred eighty days of the installation of the collection and control equipment. A notice of intent to conduct the performance test must be submitted to the department at least thirty days prior to the test.

6. Be in final compliance within thirty months of the United States environmental protection agency's approval of this rule, or within thirty months of becoming subject to the rule, whichever is later.

Subpart D - Standards of performance for fossil-fuel fired steam generators for which construction is commenced after August 17, 1971.

Subpart Da - Standards of performance for electric utility steam generating units for which construction is commenced after September 18, 1978.

Subpart Db - Standards of performance for industrial-commercial-institutional steam generating units.

Subpart Dc - Standards of performance for small industrial-commercial-institutional steam generating units.

Subpart E - Standards of performance for incinerators.

Subpart Ea - Standards of performance for municipal waste combustors.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Supbart H - Standards of performance for sulfuric acid plants.

Subpart I - Standards of performance for asphalt concrete plants.

Subpart J - Standards of performance for petroleum refineries.

Subpart K - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978.

*60.110(c) is deleted in its entirety and replaced with the following:

(c) Any facility under part 60.110(a) that commenced construction, reconstruction, or modification after July 1, 1970, and prior to May 19, 1978, is subject to the requirements of this subpart.

Subpart Ka - Standards of performance for storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and prior to July 23, 1984.

Subpart Kb - Standards of performance for volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984.

Subpart L - Standards of performance for secondary lead smelters.

Subpart M - Standards of performance for secondary brass and bronze production plants.

Subpart N - Standards of performance for primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973.

Subpart Na - Standards of performance for secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983.

Subpart O - Standards of performance for sewage treatment plants.

Subpart P - Standards of performance for primary copper smelters.

Subpart Q - Standards of performance for primary zinc smelters.

Subpart R - Standards of performance for primary lead smelters.

Subpart S - Standards of performance for primary aluminum reduction plants.

Subpart T - Standards of performance for the phosphate fertilizer industry: wet-process phosphoric acid plants.

Subpart U - Standards of performance for the phosphate fertilizer industry: superphosphoric acid plants.

Subpart V - Standards of performance for the phosphate fertilizer industry: diammonium phosphate plants.

Subpart W - Standards of performance for the phosphate fertilizer industry: triple superphosphate plants.

Subpart X - Standards of performance for the phosphate fertilizer industry: granular triple superphosphate storage facilities.

Subpart Y - Standards of performance for coal preparation plants.

Subpart Z - Standards of performance for ferroalloy production facilities.

Subpart AA - Standards of performance for steel plants: Electric arc furnaces: constructed after October 21, 1974, and before August 17, 1983.

Subpart AAa - Standards of performance for steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 17, 1983.

Subpart BB - Standards of performance for kraft pulp mills.

Subpart CC - Standards of performance for glass manufacturing plants.

Subpart DD - Standards of performance for grain elevators.

Subpart EE - Standards of performance for surface coatings of metal furniture.

Subpart FF - [Reserved]

Subpart GG - Standards of performance for stationary gas turbines.

Subpart HH - Standards of performance for lime manufacturing plants.

Subpart KK - Standards of performance for lead-acid battery manufacturing plants.

Subpart LL - Standards of performance for metallic mineral processing plants.

Subpart MM - Standards of performance for automobile and light-duty truck surface coating operations.

Subpart NN - Standards of performance for phosphate rock plants.

Subpart PP - Standards of performance for ammonium sulfate manufacture.

Subpart QQ - Standards of performance for the graphic arts industry: publication rotogravure printing.

Subpart RR - Standards of performance for pressure-sensitive tape and label surface coating operations.

Subpart SS - Standards of performance for industrial surface coating: large appliances.

Subpart TT - Standards of performance for metal coil surface coating.

Subpart UU - Standards of performance for asphalt processing and asphalt roofing manufacture.

Subpart VV - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry.

Subpart WW - Standards of performance for the beverage can surface coating industry.

Subpart XX - Standards of performance for bulk gasoline terminals.

Subpart AAA - Standards of performance for new residential wood heaters.

Subpart BBB - Standards of performance for the rubber tire manufacturing industry.

Subpart CCC - [Reserved]

Subpart DDD - Standards of performance for volatile organic compound (VOC) emissions for the polymer manufacturing industry.

Subpart EEE - [Reserved]

Subpart FFF - Standards of performance for flexible vinyl and urethane coating and printing.

Subpart GGG - Standards of performance for equipment leaks of VOC in petroleum refineries.

Subpart HHH - Standards of performance for synthetic fiber production facilities.

Subpart III - Standards of performance for volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes.

Subpart JJJ - Standards of performance for petroleum dry cleaners.

Subpart KKK - Standards of performance for equipment leaks of VOC from onshore natural gas processing plants.

Subpart LLL - Standards of performance for onshore natural gas processing; SO_2 emissions.

Subpart NNN - Standards of performance for volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations.

Subpart OOO - Standards of performance for nonmetallic mineral processing plants.

Subpart PPP - Standards of performance for wool fiberglass insulation manufacturing plants.

Subpart QQQ - Standards of performance for VOC emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes.

Subpart SSS - Standards of performance for magnetic tape coating facilities.

Subpart TTT - Standards of performance for industrial surface coating: surface coating of plastic parts for business machines.

Subpart UUU - Standards of performance for calciners and dryers in mineral industries.

Subpart VVV - Standards of performance for polymetric coating of supporting substrates facilities.

Subpart WWW - Standards of performance for municipal solid waste landfills.

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of emission rate changes.

Appendix D - Required emission inventory information.

Appendix E - [Reserved]

Appendix F - Quality assurance procedures.

Appendix I - Removable label and owner's manual.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on ~~May 1, 1995~~ October 1, 1996, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-14-02. Permit to construct.

1. **Permit to construct required.** No construction, installation, or establishment of a new stationary source within a source category designated in section 33-15-14-01 may be commenced unless the owner or operator thereof shall file an application for, and receive, a permit to construct in accordance with this chapter. This requirement shall also apply to any source for which a federal standard of performance has been promulgated prior to such filing of an application for a permit to construct. A list of sources for which a federal standard has been promulgated, and the standards which apply to such sources, must be available at the department's offices.

   The initiation of activities that are exempt from the definition of construction, installation, or establishment in section 33-15-14-01.1, prior to obtaining a permit to construct, are at the owner's or operator's own risk. These activities have no impact on the department's decision to issue a permit to construct. The initiation or completion of such activities conveys no rights to a permit to construct under this section.

2. **Application for permit to construct.**

   a. Application for a permit to construct a new installation or source must be made by the owner or operator thereof on forms furnished by the department.

   b. A separate application is required for each new installation or source subject to this chapter.

   c. Each application must be signed by the applicant, which signature shall constitute an agreement that the applicant will assume responsibility for the construction or operation of the new installation or source in accordance with this article and will notify the department, in writing, of the startup of operation of such source.

3. **Alterations to source.**

   a. The addition to or enlargement of or replacement of or alteration in any stationary source, already existing, which is undertaken pursuant to an approved compliance schedule for the reduction of emissions therefrom, shall be exempt from the requirements of this section.

b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an amount greater than that specified in subdivision a of subsection 5 of section 33-15-14-02 of any pollutant for which an ambient air quality standard has been promulgated under this article or which results in the emission of any such pollutant not previously emitted must be considered to be construction, installation, or establishment of a new source, except that:

(1) Routine maintenance, repair, and replacement may not be considered a physical change.

(2) The following may not be considered a change in the method of operation:

(a) An increase in the production rate, if such increase does not exceed the operating design capacity of the source and it is not limited by a permit condition.

(b) An increase in the hours of operation if it is not limited by a permit condition.

(c) Changes from one operating scenario to another provided the alternative operating scenarios are identified and approved in a permit to operate.

(d) Trading of emissions within a facility provided:

[1] These trades have been identified and approved in a permit to operate; and

[2] The total facility emissions do not exceed the facility emissions cap established in the permit to operate.

(e) Trading and utilizing acid rain allowances provided compliance is maintained with all other applicable requirements.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of

the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.

a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health ~~and--consolidated--laboratories~~, division of environmental engineering). These documents are incorporated by reference.

b. Where an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:

(1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.

(2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711).

(3) Written approval from the department must be obtained for any modification or substitution.

(4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

5. **Review of application - Standard for granting permits to construct.** The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within thirty days of the receipt of the completed application, make the following preliminary determinations:

a. Whether the proposed project will be in accord with this article, including whether the operation of any new stationary source at the proposed location will cause or contribute to a violation of any applicable ambient air quality standard. A new stationary source will be considered to cause or contribute to a violation of an ambient air quality standard when such source would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable ambient standard:

Contaminant	Averaging Time (hours)				
	Annual ($\mu g/m^3$)	24 ($\mu g/m^3$)	8 ($\mu g/m^3$)	3 ($\mu g/m^3$)	1 ($\mu g/m^3$)
SO_2	1.0	5		25	25
PM_{10}	1.0	5			
NO_2	1.0				25
CO			500		2000

b. Whether the proposed project will provide all known available and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application.** ~~This subsection shall apply only to those affected facilities designated under chapter 33-15-13, those that will be required to obtain a permit to operate under section 33-15-14-06, for sources which the department has determined to have a major impact on air quality, those for which a request for a public comment period has been received from the public, sources for which a significant degree of public interest exists regarding air quality issues, or those sources which desire a federally enforceable permit which limits their potential to emit. The department shall:~~

a. The following source categories are subject to the public participation procedures under this subsection:

(1) Those affected facilities designated under chapter 33-15-13.

(2) New sources that will be required to obtain a permit to operate under section 33-15-14-06.

(3) Modifications to an existing facility which will increase the potential to emit from the facility by the following amounts:

(a) One hundred tons [90.72 metric tons] per year or more of particulate matter, sulfur dioxide, nitrogen oxides, hydrogen sulfide, carbon monoxide, or volatile organic compounds; or

(b) Ten tons [9.07 metric tons] per year or more of any contaminant listed under section 112(b) of the Federal Clean Air Act; or

(c) Twenty-five tons [22.68 metric tons] per year or more of any combination of contaminants listed under section 112(b) of the Federal Clean Air Act.

(4) Sources which the department has determined to have a major impact on air quality.

(5) Those for which a request for a public comment period has been received from the public.

(6) Sources for which a significant degree of public interest exists regarding air quality issues.

(7) Those sources which request a federally enforceable permit which limits their potential to emit.

b. With respect to the permit to construct application, the department shall:

a. (1) Within ninety days of receipt of a complete application, make a preliminary determination concerning issuance of a permit to construct.

b. (2) Within ninety days of the receipt of the complete application, make available in at least one location in the county or counties in which the proposed project is to be located, a copy of its preliminary determinations and copies of or a summary of the information considered in making such preliminary determinations.

c. (3) Publish notice to the public by prominent advertisement, within ninety days of the receipt of the complete application, in the region affected, of the opportunity for written comment on the preliminary determinations. The public notice must include the proposed location of the source.

d. (4) Within ninety days of the receipt of the complete application, deliver a copy of the notice to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: The chief executive of the

city and county; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions.

~~e.~~ (5) Within ninety days of receipt of a complete application, provide a copy of the proposed permit and all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

~~f.~~ (6) Allow thirty days for public comment.

~~g.~~ (7) Consider all public comments properly received, in making the final decision on the application.

~~h.~~ (8) Allow the applicant to submit written responses to public comments received by the department. The applicant's responses must be submitted to the department within twenty days of the close of the public comment period.

~~i.~~ (9) Take final action on the application within thirty days of the applicant's response to the public comments.

~~j.~~ (10) Provide a copy of the final permit, if issued, to the applicant, the regional administrator of the United States environmental protection agency and anyone who requests a copy.

c. For those sources subject to the requirements of chapter 33-15-15, the public participation procedures under subsection 5 of section 33-15-15-01 shall be followed.

7. **Denial of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of any one of subdivision a or b of subsection 5 in the negative, it shall deny the permit and notify the applicant, in writing, of the denial to issue a permit to construct.

   If a permit to construct is denied, the construction, installation, or establishment of the new stationary source shall be unlawful. No permit to construct or modify may be granted if such construction, or modification, or installation, will result in a violation of this article.

8. **Issuance of permit to construct.** If, after review of all information received, including public comment with respect to any proposed project, the department makes the determination of subdivision a or b of subsection 5 in the affirmative, the

department shall issue a permit to construct. The permit may provide for conditions of operation as provided in subsection 9.

9. **Permit to construct - Conditions.** The department may impose any reasonable conditions upon a permit to construct, including conditions concerning:

   a. Sampling, testing, and monitoring of the facilities or the ambient air or both.

   b. Trial operation and performance testing.

   c. Prevention and abatement of nuisance conditions caused by operation of the facility.

   d. Recordkeeping and reporting.

   e. Compliance with applicable rules and regulations in accordance with a compliance schedule.

   f. Limitation on hours of operation, production rate, processing rate, or fuel usage when necessary to assure compliance with this article.

   The violation of any conditions so imposed may result in revocation or suspension of the permit or other appropriate enforcement action.

10. **Scope.**

   a. The issuance of a permit to construct for any source does not affect the responsibility of an owner or operator to comply with applicable portions of a control strategy affecting the source.

   b. A permit to construct shall become invalid if construction is not commenced within eighteen months after receipt of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time. The department may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date. In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

11. **Transfer of permit to construct.** To ensure the responsible owners or operators, or both, are identified, the holder of a permit to construct may not transfer such permit without prior approval of the department.

12. **[Reserved].**

13. **Exemptions.** A permit to construct is not required for the following stationary sources provided there is no federal requirement for a permit or approval for construction or operation and there is no applicable new source performance standard, or national emission standard for hazardous air pollutants.

    a. Maintenance, structural changes, or minor repair of process equipment, fuel burning equipment, control equipment, or incinerators which do not change capacity of such process equipment, fuel burning equipment, control equipment, or incinerators and which do not involve any change in the quality, nature, or quantity of emissions therefrom.

    b. Fossil fuel burning equipment, other than smokehouse generators, which meet all of the following criteria:

        (1) The aggregate heat input per unit does not exceed ten million British thermal units per hour.

        (2) The total aggregate heat input from all equipment does not exceed ten million British thermal units per hour.

        (3) The actual emissions, as defined in chapter 33-15-15, from all equipment do not exceed twenty-five tons [22.67 metric tons] per year of any air contaminant and the potential to emit any air contaminant for which an ambient air quality standard has been promulgated in chapter 33-15-02 is less than one hundred tons [90.68 metric tons] per year.

    c. Any single internal combustion engine with less than five hundred brake horsepower, or multiple engines with a combined brake horsepower rating less than five hundred brake horsepower.

    d. Bench scale laboratory equipment used exclusively for chemical or physical analysis or experimentation.

    e. Portable brazing, soldering, or welding equipment.

    f. The following equipment:

(1) Comfort air-conditioners or comfort ventilating systems which are not designed and not intended to be used to remove emissions generated by or released from specific units or equipment.

(2) Water cooling towers and water cooling ponds unless used for evaporative cooling of process water, or for evaporative cooling of water from barometric jets or barometric condensers or used in conjunction with an installation requiring a permit.

(3) Equipment used exclusively for steam cleaning.

(4) Porcelain enameling furnaces or porcelain enameling drying ovens.

(5) Unheated solvent dispensing containers or unheated solvent rinsing containers of sixty gallons [227.12 liters] capacity or less.

(6) Equipment used for hydraulic or hydrostatic testing.

g. The following equipment or any exhaust system or collector serving exclusively such equipment:

(1) Blast cleaning equipment using a suspension of abrasive in water.

(2) Bakery ovens where the products are edible and intended for human consumption.

(3) Kilns for firing ceramic ware, heated exclusively by gaseous fuels, singly or in combinations, and electricity.

(4) Confection cookers where the products are edible and intended for human consumption.

(5) Drop hammers or hydraulic presses for forging or metalworking.

(6) Diecasting machines.

(7) Photographic process equipment through which an image is reproduced upon material through the use of sensitized radiant energy.

(8) Equipment for drilling, carving, cutting, routing, turning, sawing, planing, spindle sanding, or disc sanding of wood or wood products, which is located within a facility that does not vent to the outside air.

(9) Equipment for surface preparation of metals by use of aqueous solutions, except for acid solutions.

(10) Equipment for washing or drying products fabricated from metal or glass; provided, that no volatile organic materials are used in the process and that no oil or solid fuel is burned.

(11) Laundry dryers, extractors, or tumblers for fabrics cleaned with only water solutions of bleach or detergents.

h. Natural draft hoods or natural draft ventilators.

i. Containers, reservoirs, or tanks used exclusively for:

(1) Dipping operations for coating objects with oils, waxes, or greases, where no organic solvents are used.

(2) Dipping operations for applying coatings of natural or synthetic resins which contain no organic solvents.

(3) Storage of butane, propane, or liquefied petroleum or natural gas.

(4) Storage of lubricating oils.

(5) Storage of petroleum liquids except those containers, reservoirs, or tanks subject to the requirements of chapter 33-15-12.

j. Gaseous fuel-fired or electrically heated furnaces for heat treating glass or metals, the use of which does not involve molten materials.

k. Crucible furnaces, pot furnaces, or induction furnaces, with a capacity of one thousand pounds [453.59 kilograms] or less each, unless otherwise noted, in which no sweating or distilling is conducted, nor any fluxing conducted utilizing chloride, fluoride, or ammonium compounds, and from which only the following metals are poured or in which only the following metals are held in a molten state:

(1) Aluminum or any alloy containing over fifty percent aluminum; provided, that no gaseous chlorine compounds, chlorine, aluminum chloride, or aluminum fluoride are used.

(2) Magnesium or any alloy containing over fifty percent magnesium.

(3) Lead or any alloy containing over fifty percent lead, in a furnace with a capacity of five hundred fifty pounds [249.48 kilograms] or less.

(4) Tin or any alloy containing over fifty percent tin.

(5) Zinc or any alloy containing over fifty percent zinc.

(6) Copper.

(7) Precious metals.

l. Open burning activities within the scope of section 33-15-04-02.

m. Flares used to indicate some danger to the public.

n. Sources or alterations to a source which are of minor significance as determined by the department.

o. Oil and gas production facilities as defined in chapter 33-15-20 which are not a major source as defined in subdivision n of subsection 1 of section 33-15-14-06.

14. **Performance and emission testing.**

a. Emission tests or performance tests or both shall be conducted by the owner or operator of a facility and data reduced in accordance with the applicable procedure, limitations, standards, and test methods established by this article. Such tests must be conducted under the owner's or operator's permit to construct, and such permit is subject to the faithful completion of the test in accordance with this article.

b. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to construct must be approved in advance by the department. Trial operation shall cease if the department determines, on the basis of the test results, that continued operation will result in the violation of this article. Upon completion of any test conducted under a permit to construct, the department may order the cessation of the operation of the tested equipment or facility until such time as a permit to operate has been issued by the department.

c. Upon review of the performance data resulting from any test, the department may require the installation of such additional control equipment as will bring the facility into compliance with this article.

d. Nothing in this article may be construed to prevent the department from conducting any test upon its own initiative, or from requiring the owner or operator to conduct any test at such time as the department may determine.

15. **Responsibility to comply.**

a. Possession of a permit to construct does not relieve any person of the responsibility to comply with this article.

b. The exemption of any stationary source from the requirements of a permit to construct by reason of inclusion in subsection 13 does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

16. **Portable sources.** Sources which are designated to be portable and which are not subject to the requirements of chapter 33-15-15 are exempt from requirements to obtain a permit to construct. The owner or operator shall submit an application for a permit to operate prior to initiating operations.

17. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted under subsection 13 shall register the source with the department within such time limits and on such forms as the department may prescribe.

18. **Extensions of time.** The department may extend any of the time periods specified in subsections 4, 5, and 6 of section 33-15-14-02 upon notification of the applicant by the department.

19. **Amendment of permits.** The department may, when the public interest requires or when necessary to ensure the accuracy of the permit, modify any condition or information contained in the permit to construct. Modification shall be made only upon the department's own motion and the procedure shall, at a minimum, conform to any requirements of federal and state law. In the event that the modification would have a significant impact as defined in chapter 33-15-15, the department shall follow the procedures established in chapter 33-15-15. For those of concern to the public, the department will provide:

a. Reasonable notice to the public, in the area to be affected, of the opportunity for comment on the proposed modification, and the opportunity for a public hearing, upon request, as well as written public comment.

b. A minimum of a thirty-day period for written public comment, with the opportunity for a public hearing during that thirty-day period, upon request.

c. Consideration by the department of all comments received in its order for modification.

The department may require the submission of such maps, plans, specifications, emission information, and compliance schedules as it deems necessary prior to the issuance of an amendment. It is the intention of the department that this subsection shall apply only in those instances allowed by federal rules and regulations and only in those instances in which the granting of a variance pursuant to section 33-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Amended effective March 1, 1980; February 1, 1982; October 1, 1987; June 1, 1990; March 1, 1994; August 1, 1995; September 1, 1997.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-06. Title V permit to operate.

1. **Definitions.** For purposes of this section:

a. "Affected source" means any source that includes one or more affected units.

b. "Affected state" means any state that is contiguous to North Dakota whose air quality may be affected by a source subject to a proposed title V permit, permit modification, or permit renewal or which is within fifty miles [80.47 kilometers] of the permitted source.

c. "Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under title VI of the Federal Clean Air Act.

d. "Applicable requirement" means all of the following as they apply to emissions units at a source that is subject to requirements of this section (including requirements that have been promulgated or approved by the United States environmental protection agency through rulemaking at the time of issuance but have future-effective compliance dates):

(1) Any standard or other requirement provided for in the North Dakota state implementation plan approved or promulgated by the United States environmental protection agency through rulemaking under title I of the Federal Clean Air Act that implements the relevant requirements of the Federal Clean Air Act, including any revisions to that plan.

(2) Any term or condition of any permit to construct issued pursuant to this chapter.

(3) Any standard or other requirement under section 111 including section 111(d) of the Federal Clean Air Act.

(4) Any standard or other requirement under section 112 of the Federal Clean Air Act including any requirement concerning accident prevention under section 112(r)(7) of the Federal Clean Air Act.

(5) Any standard or other requirement of the acid rain program under title IV of the Federal Clean Air Act.

(6) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Federal Clean Air Act.

(7) Any standard or other requirement governing solid waste incineration, under section 129 of the Federal Clean Air Act.

(8) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Federal Clean Air Act.

(9) Any standard or other requirement for tank vessels under section 183(f) of the Federal Clean Air Act.

(10) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Federal Clean Air Act.

(11) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the Federal Clean Air Act, unless the administrator of the United States environmental protection agency has determined that such requirements need not be contained in a title V permit.

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the Federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Federal Clean Air Act.

e. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted

in accordance with subpart B of 40 Code of Federal Regulations 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

f. "Draft permit" means the version of a permit for which the department offers public participation or affected state review.

g. "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

h. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

i. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act. This term does not alter or affect the definition of unit for purposes of title IV of the Federal Clean Air Act.

j. "Environmental protection agency" or the "administrator" means the administrator of the United States environmental protection agency or the administrator's designee.

k. "Federal Clean Air Act" means the Federal Clean Air Act, as amended [42 U.S.C. 7401 et seq.].

l. "Final permit" means the version of a title V permit issued by the department that has completed all review procedures required in this section.

m. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

n. "General permit" means a title V permit to operate that meets the requirements of subdivision d of subsection 5.

o. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph 1 or 2. For the purposes of defining "major source", a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the contaminant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the standard industrial classification manual, 1987.

(1) A major source under section 112 of the Federal Clean Air Act, which is defined as:

(a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the Federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator of the United States environmental protection agency by rule.

(2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68 metric tons] per year or more of any air contaminant (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

(a) Coal cleaning plants (with thermal dryers).

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

(h) Municipal incinerators capable of charging more than two hundred fifty tons [226.80 metric tons] of refuse per day.

(i) Hydrofluoric, sulfuric, or nitric acid plants.

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

(u) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input.

(v) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels.

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

(z) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input.

(aa) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Federal Clean Air Act, but only with respect to those air contaminants that have been regulated for that category.

p. "Permit modification" means a revision to a title V permit that meets the requirements of subdivision e of subsection 6.

q. "Permit program costs" means all reasonable (direct and indirect) costs required to develop and administer a permit program, under this section (whether such costs are incurred by the department or other state or local agencies that do not issue permits directly, but that support permit issuance or administration).

r. "Permit revision" means any permit modification or administrative permit amendment.

s. "Potential to emit" means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator of the United States environmental protection agency and the department.

t. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator of the United States environmental protection agency for review.

u. "Regulated air contaminant" means the following:

(1) Nitrogen oxides or any volatile organic compounds.

(2) Any contaminant for which a national ambient air quality standard has been promulgated.

(3) Any contaminant that is subject to any standard promulgated under section 111 of the Federal Clean Air Act.

(4) Any class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

(5) Any contaminant subject to a standard promulgated under section 112 or other requirements established under section 112 of the Federal Clean Air Act, including sections 112(g), (j), and (r) of the Federal Clean Air Act, including the following:

(a) Any contaminant subject to requirements under section 112(j) of the Federal Clean Air Act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the Federal Clean Air Act, any contaminant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and

(b) Any contaminant for which the requirements of section 112(g)(2) of the Federal Clean Air Act have been met, but only with respect to the individual source subject to section 112(g)(2) of the Federal Clean Air Act requirement.

v. "Regulated contaminant" for fee calculation, which is used only for ~~subsection 8~~ chapter 33-15-23, means any "regulated air contaminant" except the following:

(1) Carbon monoxide.

(2) Any contaminant that is a regulated air contaminant solely because it is a class I or II substance subject to a standard promulgated under or established by title VI of the Federal Clean Air Act.

(3) Any contaminant that is a regulated air contaminant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

w. "Renewal" means the process by which a permit is reissued at the end of its term.

x. "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding twenty-five million dollars (in second quarter 1980 dollars).

(b) The delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this section, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the United States environmental protection agency).

(4) For affected sources:

(a) The designated representative insofar as actions, standards, requirements, or prohibitions under title IV of the Federal Clean Air Act or the regulations promulgated thereunder are concerned.

(b) The designated representative for any other purposes under this section.

y. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

z. "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air contaminant or any contaminant listed under section 112(b) of the Federal Clean Air Act.

aa. "Title V permit to operate or permit" (unless the context suggests otherwise) means any permit or group of permits covering a source that is subject to this section that is issued, renewed, amended, or revised pursuant to this section.

bb. "Title V source" means any source subject to the permitting requirements of this section, as provided in subsection 2.

2. **Applicability.**

a. This section is applicable to the following sources:

(1) Any major source.

(2) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Federal Clean Air Act.

(3) Any source, including an area source, subject to a standard or other requirement under section 112 of the Federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Clean Air Act.

(4) Any affected source.

(5) Any source in a source category designated by the administrator of the United States environmental protection agency.

b. The following source categories are exempt from the requirements of this section:

(1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Federal Clean Air

Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.

(2) In the case of nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Federal Clean Air Act after July 21, 1992, those the administrator of the United States environmental protection agency determines to be exempt from the requirement to obtain a title V source permit at the time that the new standard is promulgated.

(3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 of this subdivision and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33-15-14-03.

(4) The following source categories are exempted from the obligation to obtain a permit under this section.

(a) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 60, subpart AAA - standards of performance for new residential wood heaters.

(b) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61, subpart M - national emission standard for hazardous air pollutants for asbestos, section 61.145, standard for demolition and renovation.

c. For major sources, the department will include in the permit all applicable requirements for all relevant emissions units in the major source.

For any nonmajor source subject to the requirements of this section, the department will include in the permit all applicable requirements applicable to the emissions units that cause the source to be subject to this section.

d. Fugitive emissions from a source subject to the requirements of this section shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category

in question is included in the list of sources contained in the definition of major source.

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

   a. Duty to apply. For each title V source, the owner or operator shall submit a timely and complete permit application in accordance with this subdivision.

      (1) Timely application.

         (a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the United States environmental protection agency approval of this rule or in accordance with the following schedule, whichever is earlier:

            [1] The following designated air contaminant sources shall submit their initial application by May 1, 1995.

               [a] Crude oil and natural gas production facilities.

               [b] Natural gas processing facilities.

               [c] Internal combustion engines used for natural gas transmission or distribution.

               [d] Stationary gas turbines used for natural gas transmission or distribution.

            [2] Except as provided in subparagraphs b, c, and d of this paragraph, all other applications shall be submitted by August 7, 1996.

         (b) Title V sources required to meet the requirements under section 112(g) of the Federal Clean Air Act, or to have a permit to construct under section 33-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or

change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than eighteen months, prior to the date of permit expiration.

(d) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996, for sulfur dioxide, and by January 1, 1998, for nitrogen oxides.

(2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(3) Confidential information. If a source has submitted information to the department under a claim of confidentiality, the source must also submit a copy of such information directly to the administrator of the United States environmental protection agency when directed to do so by the department.

b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect

submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

c. Standard application form and required information. All applications for a title V permit to operate shall be made on forms supplied by the department. Information as described below for each emissions unit at a title V source shall be included in the application. Emissions units or activities that have the potential to emit less than the following quantities of air contaminants need not be included in permit applications:

Particulate: 2 tons [1.81 metric tons] per year
Inhalable particulate: 2 tons [1.81 metric tons] per year
Sulfur dioxide: 2 tons [1.81 metric tons] per year
Hydrogen sulfide: 2 tons [1.81 metric tons] per year
Carbon monoxide: 2 tons [1.81 metric tons] per year
Nitrogen oxides: 2 tons [1.81 metric tons] per year
Ozone: 2 tons [1.81 metric tons] per year
Reduced sulfur compounds: 2 tons [1.81 metric tons] per year
Volatile organic compounds: 2 tons [1.81 metric tons] per year

All other regulated contaminants including those in section 112(b) of the Federal Clean Air Act: 0.5 tons [0.45 metric tons] per year.

Where a contaminant could be placed in more tha one category, the smallest emission level applies.

However, for exempted activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33-15-23-04. The application, shall, as a minimum, include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) All emissions of contaminants for which the source is major, and all emissions of regulated air contaminants. A permit application shall describe all emissions of regulated air contaminants emitted from any emissions unit, except where such units are exempted under this subdivision.

(b) Identification and description of all points of emissions described in subparagraph a in sufficient detail to establish the basis for fees and applicability of requirements of the Federal Clean Air Act and this article.

(c) Emissions rates in tons per year, in terms of the applicable standard, and terms that are necessary to establish compliance with the applicable compliance method.

(d) Fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated contaminants.

(g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33-15-18.

(h) Calculations on which the information in subparagraphs a through g is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements; and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Federal Clean Air Act or of this article or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Information that the department determines to be necessary to define alternative operating scenarios identified by the source or to define permit terms and conditions.

(8) A compliance plan for all title V sources that contains all the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

[1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

[2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

[3] For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

[1] For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

[2] For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

[3] A schedule of compliance for sources that are not in compliance with all applicable

requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with subdivision d and section 114(a)(3) of the Federal Clean Air Act;

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Federal Clean Air Act.

(10) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Federal Clean Air Act.

d. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

5. **Permit content.**

a. Standard permit requirements. Each permit issued under this section shall include, as a minimum, the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(a) The permit must specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit must state that, where an applicable requirement of the Federal Clean Air Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Federal Clean Air Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator of the United States environmental protection agency and the department.

(c) Where the state implementation plan allows a determination of an alternative emission limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency

determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Each title V permit to operate shall expire upon the fifth anniversary of its issuance.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

[1] All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act;

[2] Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subparagraph c. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this item; and

[3] As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

[1] Records of required monitoring information that include the following:

[a] The date, place as defined in the permit, and time of sampling or measurements;

[b] The dates analyses were performed;

[c] The company or entity that performed the analyses;

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

[f] The operating conditions as existing at the time of sampling or measurement;

[2] Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:

[1] Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subdivision d of subsection 4.

[2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33-15-01 and the applicable requirements.

(4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Federal Clean Air Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under title IV of the Federal Clean Air Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Provisions stating the following:

(a) The permittee must comply with all conditions of the title V permit. Any permit noncompliance constitutes a violation of the Federal Clean Air Act and this article and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee must furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee must also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee must also furnish such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

(7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33-15-23.

(8) Emissions trading. No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit and the state implementation plan.

(9) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield described in subdivision f to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including

the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under subdivisions a and c to determine compliance;

(b) Shall extend the permit shield described in subdivision f to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of this section.

(11) If a permit applicant requests it, the department shall issue permits that contain terms and conditions, including all terms required under subdivisions a and c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements provided the changes in emissions are not modifications under title I of the Federal Clean Air Act and the changes do not exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. The permittee shall supply written notification at least seven days prior to the change to the department and the administrator of the United States environmental protection agency and shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit. The permit shield described in subdivision f shall extend to terms and conditions that allow such increases and decreases in emissions.

b. Federally enforceable requirements.

(1) All terms and conditions in a title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator of the United States environmental protection agency and citizens under the Federal Clean Air Act.

(2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

c. Compliance requirements. All title V permits shall contain the following elements with respect to compliance:

(1) Consistent with paragraph 3 of subdivision a, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including reports, required by a title V permit shall contain a certification by a responsible official that meets the requirements of subdivision d of subsection 4.

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where a title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose

of assuring compliance with the permit or applicable requirements.

(3) A schedule of compliance consistent with paragraph 8 of subdivision c of subsection 4.

(4) Progress reports consistent with an applicable schedule of compliance and paragraph 8 of subdivision c of subsection 4 to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(a) The frequency, which is annually or such more frequent periods as specified in the applicable requirement or by the department, of submissions of compliance certifications;

(b) In accordance with paragraph 3 of subdivision a, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices. The means for monitoring shall be contained in applicable requirements or United States environmental protection agency guidance;

(c) A requirement that the compliance certification include the following:

[1] The identification of each term or condition of the permit that is the basis of the certification;

[2] The compliance status;

[3] Whether compliance was continuous or intermittent;

[4] The methods used for determining the compliance status of the source, currently and over the reporting period consistent with paragraph 3 of subdivision a; and

[5] Such other facts as the department may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the administrator of the United States environmental protection agency as well as to the department; and

(e) Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the Federal Clean Air Act.

(6) Such other provisions as the department may require.

d. General permits.

(1) The department may, after notice and opportunity for public participation provided under subdivision h of subsection 6, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other title V permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Notwithstanding the shield provisions of subdivision f, the source shall be subject to enforcement action for operation without a title V permit to operate if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under title IV of the Federal Clean Air Act. The department is not required to issue a general permit in lieu of individual title V permits.

(2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the Federal Clean Air Act, and include all information necessary to determine qualification for, and to

assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator notify the department at least ten days in advance of each change in location; and

(3) Conditions that assure compliance with all other provisions of this section.

f. Permit shield.

(1) Except as provided in this section, upon written request by the applicant, the department shall include in a title V permit to operate a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this subdivision or in any title V permit shall alter or affect the following:

(a) The provisions of section 303 of the Federal Clean Air Act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) The applicable requirements of the acid rain program, consistent with section 408(a) of the Federal Clean Air Act; or

(d) The ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the Federal Clean Air Act.

g. Emergency provision.

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the title V permit to operate, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 3 are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of

emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the department within one working day of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of item 2 of subparagraph c of paragraph 3 of subdivision a of subsection 5. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of subsection 2 of section 33-15-01-13 when a threat to health and welfare would exist.

6. **Permit issuance, renewal, reopenings, and revisions.**

a. Action on application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under subdivision d of subsection 5.

(b) Except for modifications qualifying for minor permit modification procedures under paragraphs 1 and 2 of subdivision e, the department has complied with the requirements for public participation under subdivision h;

(c) The department has complied with the requirements for notifying and responding to affected states under subdivision b of subsection 7;

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this section; and

(e) The administrator of the United States environmental protection agency has received a copy of the proposed permit and any notices required under subdivisions a and b of subsection 7, and has not objected to issuance of the permit under subdivision c of subsection 7 within the time period specified therein.

(2) Except for applications received during the initial transitional period described in 40 Code of Federal Regulations 70.4(b)(11) or under regulations promulgated under title IV or title V of the Federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.

(3) The department shall provide notice to the applicant of whether the application is complete. Unless the department requests additional information or otherwise notifies the applicant of incompleteness within sixty days of receipt of an application, the application shall be deemed complete. For modifications processed through the minor permit modification procedures, in paragraphs 1 and 2 of subdivision e, a completeness determination is not required.

(4) The department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The department shall send this statement to the United States environmental protection agency and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33-15-14-02.

b. Requirement for a permit.

(1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete

application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

(2) A permit revision is not required for section 502(b)(10) changes provided:

(a) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or title I of the Federal Clean Air Act.

(b) The changes do not exceed the emissions allowable under the title V permit whether expressed therein as a rate of emissions or in terms of total emissions.

(c) A permit to construct under section 33-15-14-02 has been issued, if required.

(d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

(3) A permit revision is not required for changes that are not addressed or prohibited by the permit provided:

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) The source must provide contemporaneous written notice to the department and the administrator of the United States environmental protection agency of each such change, except for changes that qualify as insignificant under the provisions of subdivision c of subsection 4. Such written notice shall describe each such change, including the date, any change in emissions, contaminants emitted, and any applicable requirement that would apply as a result of the change.

(c) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air contaminant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(d) The changes are not subject to any requirements under title IV of the Federal Clean Air Act.

(e) The changes are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act.

(f) A permit to construct under section 33-15-14-02 has been issued, if required.

The permit shield described in subdivision f of subsection 5 shall not apply to any change made pursuant to this paragraph.

c. Permit renewal and expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected state and the United States environmental protection agency review, that apply to initial permit issuance; and

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with

subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department;

(e) Incorporates into the title V permit the requirements from a permit to construct, provided that the permit to construct review procedure is substantially equivalent to the requirements of subsections 6 and 7 that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in subsection 5; or

(f) Incorporates any other type of change which the administrator of the United States environmental protection agency has approved as being an administrative permit amendment as part of the approved title V operating permit program.

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the department consistent with the following:

(a) The department shall take no more than sixty days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this subdivision.

(b) The department shall submit a copy of the revised permit to the administrator of the United States environmental protection agency.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33-15-14-02 has been issued, if required.

(4) The department may, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in subdivision f of subsection 5 for administrative permit amendments made pursuant to subparagraph e of paragraph 1 of subdivision d which meet the relevant requirements of subsections 5, 6, and 7 for significant permit modifications.

e. Permit modification. A permit modification is any revision to a title V permit that cannot be accomplished under the provisions for administrative permit amendments under subdivision d of this subsection. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the Federal Clean Air Act.

(1) Minor permit modification procedures.

(a) Criteria.

[1] Minor permit modification procedures may be used only for those permit modifications that:

[a] Do not violate any applicable requirement;

[b] Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

[c] Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;

[e] Are not modifications under chapters 33-15-12, 33-15-13, and 33-15-15 or any provision of title I of the Federal Clean Air Act; and

[f] Are not required to be processed as a significant modification.

[2] Notwithstanding item 1 of this subparagraph and subparagraph a of paragraph 2 of subdivision e, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the state implementation plan, or in applicable requirements promulgated by the United States environmental protection agency.

(b) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

[2] The source's suggested draft permit;

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

[4] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. Within five working days of receipt of a complete permit modification application, the department shall notify the administrator of the United States environmental protection agency and affected states of the requested permit modification. The department shall promptly send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The department may not issue a final permit modification until after the United States environmental protection agency forty-five-day review period or until the United States environmental protection agency has notified the department that the United States environmental protection agency will not object to issuance of the permit modification, whichever is first, although the department can approve the permit modification prior to that time. Within ninety days of the department's receipt of an application under minor permit modification procedures or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later, the department shall:

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

[3] Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

[4] Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by subdivision a of subsection 7.

(e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(f) The permit shield under subdivision f of subsection 5 shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the department may modify the procedure outlined in paragraph 1 to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

[1] That meet the criteria for minor permit modification procedures under item 1 of subparagraph a of paragraph 1 of subdivision e; and

[2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five

tons [4.54 metric tons] per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of subdivision c of subsection 4 and shall include the following:

[1] A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

[2] The source's suggested draft permit.

[3] Certification by a responsible official, consistent with subdivision d of subsection 4, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

[4] A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under item 2 of subparagraph a of paragraph 2 of subdivision e.

[5] Certification, consistent with subdivision d of subsection 4, that the source has notified the United States environmental protection agency of the proposed modification. Such notification need only contain a brief description of the requested modification.

[6] Completed forms for the department to use to notify the administrator of the United States environmental protection agency and affected states as required under subsection 7.

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet

its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

(e) Source's ability to make change. The provisions of subparagraph e of paragraph 1 apply to modifications eligible for group processing.

(f) The permit shield under subdivision f of subsection 5 shall not extend to group processing of minor permit modifications.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with this subsection that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal.

The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

(b) Additional requirements, including excess emissions requirements, become applicable to an affected source under title IV of the Federal Clean Air Act or the regulations promulgated thereunder. Upon approval by the administrator of the United States environmental protection agency, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the United States environmental protection agency determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator of the United States environmental protection agency or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under paragraph 1 shall not be initiated before a notice of such intent is provided to the title V source by the department at least thirty days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

g. Reopenings for cause by the United States environmental protection agency.

(1) If the administrator of the United States environmental protection agency finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subdivision f, within ninety days after receipt of such notification, the department shall forward to the United States environmental protection agency a proposed determination of termination, modification, or revocation and reissuance, as appropriate.

(2) The administrator of the United States environmental protection agency will review the proposed determination from the department within ninety days of receipt.

(3) The department shall have ninety days from receipt of the United States environmental protection agency objection to resolve any objection that the United States environmental protection agency makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

(4) If the department fails to submit a proposed determination or fails to resolve any objection, the administrator of the United States environmental protection agency will terminate, modify, or revoke and reissue the permit after taking the following actions:

(a) Providing at least thirty days' notice to the permittee in writing of the reasons for any such action.

(b) Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an

opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

(1) Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice; to persons on a mailing list developed by the department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public;

(2) The notice shall identify the affected facility; the name and address of the permittee; the name and address of the department; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, and all other materials available to the department that are relevant to the permit decision; a brief description of the comment procedures required by this subsection; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled;

(3) The department shall provide such notice and opportunity for participation by affected states as is provided for by subsection 7;

(4) The department shall provide at least thirty days for public comment and shall give notice of any public hearing at least thirty days in advance of the hearing; and

(5) The department shall keep a record of the commenters and also of the issues raised during the public participation process. These records shall be available to the public.

7. **Permit review by the United States environmental protection agency and affected states.**

a. Transmission of information to the administrator.

(1) The department shall provide a copy of each permit application including any application for a permit modification (including the compliance plan), to the administrator of the United States environmental protection agency except that the applicant shall

provide such information directly to the administrator of the United States environmental protection agency when directed to do so by the department. The department shall provide a copy of each proposed permit and each final title V permit to operate to the administrator of the United States environmental protection agency. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the United States environmental protection agency's national data base management system.

(2) The department may waive the requirements of paragraph 1 and paragraph 1 of subdivision b for any category of sources (including any class, type, or size within such category) other than major sources upon approval by the administrator of the United States environmental protection agency.

(3) The department shall keep these records for at least five years.

b. Review by affected states.

(1) The department shall give notice of each draft permit to any affected state on or before the time that the notice to the public under subdivision h of subsection 6 is given, except to the extent paragraphs 1 and 2 of subdivision e of subsection 6 requires the timing of the notice to be different.

(2) As part of the submittal of the proposed permit to the administrator of the United States environmental protection agency (or as soon as possible after the submittal for minor permit modification procedures allowed under paragraphs 1 and 2 of subdivision e of subsection 6) the department shall notify the administrator of the United States environmental protection agency and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this section.

c. United States environmental protection agency objection: No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if

the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in subdivision h of subsection 6, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator of the United States environmental protection agency objects to the permit as a result of a petition filed under this subdivision, the department shall not issue the permit until the United States environmental protection agency's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the forty-five-day review period and prior to the United States environmental protection agency objection. If the department has issued a permit prior to receipt of the United States environmental protection agency objection under this subdivision, the department may thereafter issue only a revised permit that satisfies the United States environmental protection agency's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

e. Prohibition on default issuance. The department shall issue no title V permit to operate, including a permit renewal or modification, until affected states and the United States environmental protection agency have had an opportunity to review the proposed permit as required under this subsection.

8. [Reserved]

9. **Enforcement.**

The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate

which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

CHAPTER 33-15-22

33-15-22-01. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 63, as they exist on ~~May 1, 1995~~ October 1, 1996, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-03. Emission standards.

Subpart A - General provisions.

Subpart B - Requirements for control technology determinations for major sources in accordance with Clean Air Act sections 112(g) and 112(j).

Subpart C - List of hazardous air pollutants, petitions process, lesser quantity designations, source category list. [Reserved]

Subpart D - Regulations governing compliance extensions for early reductions of hazardous air pollutants.

Subpart F - National emission standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National emission standards for organic hazardous air pollutants from synthetic organic chemical manufacturing industry for process vents, storage vessels, transfer operations, and wastewater.

Subpart H - National emission standards for organic hazardous air pollutants for equipment leaks.

Subpart I - National emission standards for organic hazardous air pollutants for certain processes subject to the negotiated regulation for equipment leaks.

Subpart M - National perchloroethylene air emission standards for drycleaning facilities.

Subpart N - National emission standards for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks.

Subpart O - Ethylene oxide emissions standards for sterilization facilities.

Subpart Q - National emission standards for hazardous air pollutants for industrial process cooling towers.

Subpart R - National emission standards for gasoline distribution facilities (bulk gasoline terminals and pipeline breakout stations).

Subpart T - National emission standards for halogenated solvent cleaning.

Appendix A to subpart T - test of solvent cleaning procedures.

Appendix B to subpart T - general provisions applicability to subpart T.

Subpart W - National emission standards for hazardous air pollutants for epoxy resins production and non-nylon polyamides production.

Table 1 to subpart W - General provisions applicability to subpart W.

Subpart X - National emission standards for hazardous air pollutants from secondary lead smelting.

Subpart CC - National emission standards for hazardous air pollutants from petroleum refineries.

Subpart EE - National emission standards for magnetic tape manufacturing operations.

Subpart GG - National emission standards fro aerospace manufacturing and rework facilities.

Subpart JJ - National emission standards for wood furniture manufacturing operations.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions authority: 42 U.S.C. 7401 et seq.

Appendix C to part 63 - Determination of the fraction biodegraded (f_{bio}) in a biological treatment unit.

History: Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

TITLE 45

Insurance Commissioner

OCTOBER 1, 1997

CHAPTER 45-02-04

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

1. A-K shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every odd-numbered year.

2. L-Z shall report thirty hours or more of approved coursework for the previous two years within thirty days of January first of every even-numbered year.

3. A newly licensed agent shall have the remainder of the calendar year in which initially licensed as a grace period. Beginning January first of the next calendar year, newly licensed agents must comply with continuing education requirements, reporting the required continuing education credits for each calendar year according to the alphabetized schedule.

4. Agents licensed exclusively for the sale of title insurance, baggage insurance, surety bonds, ~~or~~ bail bonds, or legal expense insurance, including prepaid legal services sales representatives, are exempt from continuing education requirements.

History: Effective July 1, 1986; amended effective November 1, 1990; May 1, 1997; October 1, 1997.
General Authority: NDCC 26.1-26-49
Law Implemented: NDCC 26.1-26-31.1(1), 26.1-26-31.1(2), 26.1-26-31.4

TITLE 54

Nursing, Board of

SEPTEMBER 1997

CHAPTER 54-02-08.1

54-02-08.1-01. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Program of study" means the written agreement outlining the plan for coursework necessary to accomplish the required nursing degree.

2. "Proof of progression" means submission of ~~an--official transcript-showing-successful-completion-of-coursework--within a--calendar--year--toward-achievement-of-the-required-degree~~ a current program of study.

3. "Transitional practical nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a licensed practical nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.

4. "Transitional registered nurse license" means the license issued to an individual who meets all of the requirements for licensure by endorsement as a registered nurse except the educational requirements in North Dakota Century Code section 43-12.1-02.

History: Effective December 1, 1995; amended effective September 1, 1997.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09

54-02-08.1-03. Renewal.

1. A transitional practical nurse license may be renewed for ~~eight calendar years~~ four biennial renewal cycles, for a total of eight years, if the licensee meets the following requirements:

   a. Submit a completed biennial renewal application;

   b. Pay the ~~calendar year~~ biennial renewal fee of ~~twenty-five~~ fifty dollars; and

   c. For ~~the first renewal year~~ each biennial renewal period, submit a current program of study from the nursing education program;

   ~~d. For each of the subsequent renewal years, submit proof of progression and an updated program of study; and~~

   ~~e. Submit a narrative statement justifying any change in the date of completion on updated programs of study.~~

2. A transitional registered nurse license may be renewed for ~~eight calendar years~~ four biennial renewal cycles, for a total of eight years, if the licensee meets the following requirements:

   a. Submit a completed biennial renewal application;

   b. Pay the ~~calendar year~~ biennial renewal fee of ~~thirty~~ sixty dollars; and

   c. For ~~the first renewal year~~ each biennial renewal period, submit a current program of study from the nursing education program;

   ~~d. For each of the subsequent renewal years, submit proof of progression and an updated program of study; and~~

   ~~e. Submit a narrative statement justifying any change in the date of completion on updated programs of study.~~

3. An individual who does not meet the requirements for renewal of the transitional license will be ineligible for renewal. An application for reinstatement will be accepted if accompanied by ~~an updated~~ a current program of study ~~and proof of progression for the last calendar year of North Dakota licensure~~. The transitional license may be renewed for no more than eight years unless approved by the board.

4. A petition for extension of renewal of a transitional license may be considered by the board. The licensee is responsible for submitting sufficient information to the board regarding

progression in the educational program for determination if an extension of renewal eligibility is to be allowed.

History: Effective December 1, 1995; amended effective September 1, 1997.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09

TITLE 71

Retirement Board

SEPTEMBER 1997

CHAPTER 71-03-03

71-03-03-09. Leave without pay. An employee on an approved leave without pay may elect to continue coverage for the periods specified in the plans for life insurance, hospital and medical coverages by paying the full premium to the agency. An eligible employee electing not to continue coverage during a leave of absence is entitled to renew coverage for the first of the month following the month that the employee has returned to work if the employee submits an application for coverage within the first thirty-one days of returning to work. An eligible employee failing to submit an application for coverage within the first thirty-one days of returning to work must furnish evidence of insurability ~~upon--returning--to-work~~ on the employee and any dependent for whom coverage is desired. Any person may be denied coverage based on the carrier's underwriting requirements.

History: Effective October 1, 1986; amended effective November 1, 1990; June 1, 1996; September 1, 1997.
General Authority: NDCC 54-52.1-08
Law Implemented: NDCC 54-52.1-03

CHAPTER 71-04-04

71-04-04-01. Enrollment. The retirement board shall design and provide employees with a participant agreement to facilitate the enrollment in the plan.

The participant agreement must provide for the collection of all information regarding identification of the employee, starting date of the deduction, the payroll period affected, name of the provider, and listing of primary and contingent beneficiaries.

~~The--participant-agreement-may-be-produced-in-a-three-part-format, allowing--the--original--to--be--retained--and--the--copies--distributed according-to-the-direction-of-the-retirement-board.~~

History: Effective April 1, 1989; amended effective September 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-01; 54-52.2-02; 54-52.2-05

71-04-04-02. Booklets. The retirement board shall, upon request of the employee, provide ~~each--employee--with~~ a descriptive booklet setting forth the enrollment requirements of the plan, explanation of the deferred compensation plan under section 457 of the Internal Revenue Code, and investment options under the plan.

History: Effective April 1, 1989; amended effective September 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

71-04-05-08. Employer participation termination. The employer may terminate participation in the deferred compensation plan by first giving sixty days' written notice to the retirement board of the employer's intent to terminate. The participants in the plan must be considered to have terminated from the plan as of the date the employer terminates participation in the deferred compensation plan. Deferral of benefits must stop and benefits must be made payable as provided in sections 71-04-03-06 and 71-04-07-01.

History: Effective April 1, 1989; amended effective September 1, 1997.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 54-52.2-03

CHAPTER 71-04-07

71-04-07-01. Application.

1. The participant upon separation from service may apply for settlement of the participant's account by completion of a benefit selection form. Application for benefits must be completed within sixty days of separation from service. If no application is received by the public employees retirement system within sixty days, a letter will be sent to the provider directing that the funds be distributed to the member within sixty days. A copy of the letter will be sent by certified mail to the participant. If the participant sends an application to the public employees retirement system prior to distribution, the executive director shall inform the provider to distribute the funds in a manner consistent with the application.

2. An active participant may submit a written request for a lump sum distribution of the participant's account balance without separating from service if:

   a. The total value of the deferred assets in the program is less than three thousand five hundred dollars;

   b. The participant has not contributed to the plan in the preceding two years; and

   c. The participant has not received a distribution from the plan.

History: Effective April 1, 1989; amended effective July 1, 1994; September 1, 1997.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-05

71-04-07-03. Benefit commencement. A participant may make an ~~irrevocable~~ election to begin benefit payments immediately upon separation from service or defer payments until a later date. ~~Such~~ The election must be made pursuant to section 71-04-07-01 and is irrevocable. However, the participant may elect to defer distribution to a later date in a manner consistent with the Internal Revenue Code. Payments of amount deferred must begin not later than April first of the calendar year following the year in which the participant attains age seventy and one-half. The entire interest of the participant ~~will~~ must be distributed beginning not later than the required beginning date and in accordance with Internal Revenue Code regulations, over the life of the participant or over the lives of the participant and a designated beneficiary, or a period not extending beyond the life expectancy of the participant and a designated beneficiary. Distributions must be made

primarily for the benefit of the participant and any distributions payable to a beneficiary should be no more than incidental.

History: Effective April 1, 1989; amended effective July 1, 1994; September 1, 1997.
General Authority: NDCC 28-32-02, 54-52.2-03.2
Law Implemented: NDCC 54-52.2-03; 26 USC 457(e)(9)(b)

TITLE 74

Seed Commission

SEPTEMBER 1997

CHAPTER 74-04-01

74-04-01-01. Definitions. As used in this chapter:

1. "Basic seed" means seed potatoes produced by means of meristem, stem cutting, or other techniques for increase by certified growers.

2. "Certification" is strictly limited to the act of endorsing that the potatoes have met the standards or requirements specified in this chapter for seed potatoes. Certification does not mean or constitute any warranty that the potatoes are merchantable, disease free, fit for a particular purpose or anything other than that the potato crop was inspected and that at the time of inspection did meet the standards set forth in this chapter.

3. "Damaged by soil" means that the individual potato has more than fifty percent of its surface affected by light caked soil, or more than fifteen percent of its surface badly caked with soil.

4. "Dry land type", as allowed for long varieties only, means not seriously misshapen.

5. "Except for shape", as allowed for long varieties only, means the potatoes may be seriously misshapen.

6. "Field year" means the time which is required for the potato plant to complete the growing cycle from planting in the field until maturity.

7. "Foundation seed" means a primary source of a genetically identified variety from which increases are made.

8. "Grade" refers to the tuber quality, condition, and size factors as specified in this chapter.

~~7.~~ 9. "Inspection" means visual examination or observation of sample plants or tubers.

~~8.~~ 10. "Latent diseases" means diseases not detectable by visual inspection.

~~9.~~ 11. "Lightly caked with soil" means approximately one-eighth of an inch [3.18 millimeters] in depth.

12. "Micropropagation" means the production of aseptical micropropagation utilizing meristem culture of potato tubers or sprouts.

13. "Off type" means potato plants in a field that deviate in one or more characteristics from that which is usual in the variety being grown.

14. "Plant Variety Protection Act" means a federal Act passed in 1970 which gives the owner of a novel variety the exclusive right to produce and market that variety.

15. "Prenuclear seed" means plantlet propagation source resulting from the use of aseptic propagation techniques either in the laboratory or controlled environment.

~~10.~~ 16. "Seed potatoes" means Irish potato tubers to be used for planting.

~~11.~~ 17. "Seriously damaged by soil" means a potato having caked soil on more than one-half of the surface or an equivalent amount of soil in excessively thick chunks on a lesser area.

~~12.~~ 18. "Tag" refers to the state seed department's official certification tag used to identify certified seed.

~~13.~~ 19. "Tolerance" means a permissible allowance for such factors as disease, grade defects, and varietal mixture.

~~14.~~ 20. "Virus tested" means tested for latent viruses by methods established by the state seed department.

~~15.~~ 21. "Zero tolerance" means that no amount is permissible. It does not mean that the seed is absolutely free of a disease or disease causing agent, grade defect, or varietal mixture, but that none was found during inspection.

History: Amended effective December 1, 1981; December 1, 1987; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-04. Application fees and restrictions.

1. Application for field inspection must be received in the state seed department, university station, Fargo, North Dakota, not later than June fifteenth. There is a one dollar per acre [.40 hectare] cash penalty for later applications.

2. At least one-half the fees and all due accounts must accompany the applications.

3. Applications are subject to cancellation in the case of crop failure or other valid reason and the application fee, minus twenty-five dollars will be returned if the request reaches the state seed department before the inspector arrives in the general locality of the field. However, in such a case, the crop must be plowed under or destroyed so as not to create a possible disease hazard.

4. Separate application forms are required for latent virus testing.

5. Loss by drown outs, if over twenty-five percent of the field, will be allowed after the first inspection only. No adjustments will be made thereafter.

6. Fees, which are subject to change, are:

   a. Field inspection, fifteen dollars per acre [.40 hectare] including tags and bulk fees; minimum fee per farm, one hundred dollars; and minimum fee per field, fifteen dollars.

   b. Late penalty, one dollar per acre [.40 hectare].

   c. Latent virus testing - single virus test, fifty cents per acre [.40 hectare]; minimum fee fifteen dollars per field.

   d. Grade inspection, ~~six--and--one-half~~ seven cents per hundredweight [45.36 kilograms].

7. Prompt payment of all fees will be required at all times.

8. Additional testing such as laboratory tests will be assessed at costs to the grower.

History: Amended effective December 1, 1981; December 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-05. Seed potato farm requirements.

1. All potato fields on the farm or in the farming operation must be eligible and entered for certification. A farming operation means all potato fields in the farming operation whether actually grown by the applicant or under growing agreements with common equipment and storages.

2. All equipment and storages in the potato operation must be used only on the acreage [hectarage] entered for certification.

3. Parts of fields will not be accepted or certified.

4. Boundaries of certified seed potato fields must be clearly defined. Adequate separation from uncertified fields must be maintained and are the responsibility of the certified seed potato grower. The definition of adequate separation is at the discretion of the state seed department or its representative. Field separation of a certified field from an uncertified field must be established prior to the second inspection.

5. Seed potatoes will not be planted on ground that was cropped to potatoes the previous year, unless the ground is fumigated.

6. Strips or markers are required between seed lots and varieties.

7. Equipment and storages must be cleaned and disinfected at least once annually.

8. All cull piles in the farming operation must be properly destroyed.

History: Amended effective December 1, 1981; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-06. Seed eligibility.

1. North Dakota seed stocks.

a. Seed lots of North Dakota origin to be eligible will have been grown under the seed certification program in the previous season passing field inspection and the winter test.

b. Seed stocks not having a winter test may be accepted on an observational basis but only after they have been laboratory tested and only with prior approval from the state seed department. The cost of laboratory testing will be borne by the applicant. The same field inspection fee structure will apply to this application.

2. Seed stocks from other sources. Seed lots from sources other than North Dakota will be of the foundation or approved classification and have passed a winter grow-out or laboratory test on a sample of the lot that is equal to or greater than the size of the winter test sample as outlined in this bulletin.

3. ~~Tags or purchase~~ Purchase proof must accompany the application to provide sufficient evidence as to origin and quantity of seed. Shipping point certificates, affidavits, or sales receipts will be accepted.

4. Individual seed lots will be maintained separately at all times.

5. Verification of genetically engineered varieties is the responsibility of the developer of such variety.

6. Any variety protected by patent or the Plant Variety Protection Act must have authorization from the owner.

History: Amended effective December 1, 1981; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

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

1. All seed potatoes must be limited to seven years of reproduction in the field. Seed lots may be reproduced beyond this limit with prior approval of the state seed department providing the seed lot has been winter tested and eligible for recertification.

2. Prenuclear seed stocks must originate from tissue-culture derived plantlets, minitubers, microtubers, or pathogen-tested stem cuttings. Experimental breeding selections may originate from disease-tested material. The first year of reproduction of these stocks will be regarded as nuclear seed stock (generation zero). Nuclear seed (first field year) is the

progeny of prenuclear seed, generation 1 (second field year) is the progeny of nuclear seed, generation 2 (third field year) is the progeny of generation 1 seed, generation 3 (fourth field year) is the progeny of generation 2 seed, generation 4 (fifth field year) is the progeny of generation 3 seed, generation 5 (sixth field year) is the progeny of generation 4 seed, certified generation (seventh field year) is the progeny of generation 5 seed.

3. Prenuclear seed stocks intended to be grown in the field as nuclear (GO) seed potatoes must be laboratory tested ~~and~~, be demonstrated to be free of the following pathogens, and meet the following standards:

   a. ~~Corynebacterium---sepedonicum~~ Clavibacter micheganesis subsp. sepedonicus (ring rot).

   b. Erwinia carotovora (blackleg and soft rot).

   c. Potato virus A.

   d. Potato virus M.

   e. Potato virus X.

   f. Potato virus Y.

   g. Potato leafroll virus.

   h. Potato spindle tuber viroid.

   i. All micropropagation production must be approved by a certification agency.

   j. Good records must be maintained on all tests and submitted with the application for field inspection.

   k. A minimum of one percent of the plantlets must have been tested for the above pathogens using the most reliable testing techniques.

4. Basic seed must originate from sources described above and developed in seed plots grown in tuber-units and have met specific field inspection and winter test standards established by the state seed department. Seed stocks will be grown a limited number of generations.

5. Foundation seed must be seed meeting standards for recertification.

   a. Foundation seed will be produced on farms found to be free of bacterial ring rot for three years. All seed stocks

must be replaced on a farm in which bacterial ring rot has been found.

b. Excessive blackleg symptoms will be cause for rejection as foundation stock.

6. Generation numbers increase with years of field reproduction from the original seed source. Generation five will be the final generation of seed eligible for recertification. The certified seed class is not eligible for recertification. If seed availability is low for a specific potato variety, seed lots with more advanced generation numbers may be eligible for recertification providing the seed lot has passed a winter test and prior approval of the state seed department has been obtained.

7. ~~Seed~~ Except for varietal mixtures, seed lots may be downgraded or advanced in generation if they do not meet the disease tolerances for that generation or they may be placed in the certified class and sold by their generation number as certified seed providing they meet the specifications for that class. Disease tolerances for each generation of seed are outlined in the section on field inspection standards.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

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

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

2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visibly may be present.

First Inspection ~~D~~isease Tolerances (%)
Generation

	0	1	2	3	4	5	Certified
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.1	0.1	0.1
Severe mosaics							

(PVY)	0.2	0.3	0.4	0.5	0.5	0.5	0.7
Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	0.7
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	0.7
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Second and all Subsequent Inspections
~~Disease~~ Tolerances (%)
Generation

	0	1	2	3	4	5	Certified
Varietal mixture	~~0.0~~ 0.1	0.1	0.2	0.3	0.3	0.3	0.3
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	0.5
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	0.5
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	0.5
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Late blight found during field inspection and confirmed by laboratory diagnosis may be reported on the inspection report.

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

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

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

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

There will be zero tolerance for potato wart, powdery scab, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths or

other such injurious pests that have never been found in North Dakota seed potato fields.

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

3. Field conditions.

   a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering undue insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.

   b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, strips of unkilled vines must be left in the seed fields to facilitate final inspections. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.

   c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.

   d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.

   e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official southern sample tests shall be considered ineligible for certification tags.

4. Appeal inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done previous to reinspection.

5. Bacterial ring rot control.

a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.

b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.

c. A farming operation found to be infected on three consecutive years is required to repurchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before being eligible to enter any seed for certification.

d. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-09. Winter testing program.

1. All foundation and basic seed potato fields must be randomly sampled and tested if the grower intends to plant the same seed lot or sell to growers who intend to enter the lot for certification the following year. Only seed lots with three-tenths of one percent total serious virus or less during field inspections are eligible for winter testing.

2. The results will be based on visible inspection of the plants for virus or viruslike symptoms from the sample the grower submitted. However, laboratory testing may be used on varieties that have slight or latent symptoms.

3. Other factors such as vigor, other diseases, and any factor that might impair seed quality will be considered in the winter testing program.

4. Information concerning sample size and time to submit samples will be available from the state seed department.

5. Lots failing the winter test will be ineligible for planting in the certification program.

6. In the event of frost or other serious malfunctions of the winter grow-out test, eligibility of a seed lot will be based on the current field readings or a laboratory test at the discretion of the state seed department.

7. Seed lots showing excessive amounts of virus in the winter test may be disqualified for tags or final certification. The level at which to disqualify the lot will be established by the seed commissioner.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-10. Storage and packaging requirements.

1. A storage to be eligible must have been cleaned and disinfected prior to harvest. Storages not previously used for certified seed must be inspected by the state seed department.

2. Seed potatoes to be eligible for final certification tags must be stored in a warehouse containing only seed potatoes which have been field inspected. Such warehouses may contain field inspected stocks rejected for seed certification for causes other than such diseases as ring rot.

3. Equipment for handling, sorting, or grading can be used only on certified stock, but also must be cleaned and disinfected.

4. Containers.

   a. Graded stocks must be placed in new sacks or in clean crates or bulk containers which are tagged or marked in an approved manner to indicate the lot contains certified seed potatoes.

   b. Brands or markings must feature "North Dakota" as the production area.

   c. No used bags may be brought into the farming operation.

   d. It is highly recommended that all containers be disinfected for the grower's own protection.

5. Out-of-state storage. Growers, upon special application, may be permitted final certification on eligible stocks in approved nearby storages outside the state.

6. Bin inspection. Certified storages may be checked by an authorized inspector during the storage season.

7. Yield and storage reports. Before tags will be issued for a lot of potatoes, a report will be given to the state seed department stating yield of each field entered for certification and the location of the storages.

8. Transfers of seed potatoes to other parties. A lot of seed potatoes eligible for final certification may be transferred to another party along with tags provided authorization is given by the state seed department and the grower.

9. Each bin containing certified seed potatoes must be plainly labeled for certification with the grower's name and address, hundredweight [45.36 kilograms] or bushels [35.24 liters], variety, and field identification.

10. All basic and foundation seed lots and other seed lots intended for recertification must be stored in identifiable, clearly separated bins. Bins containing two or more seed lots of a variety without a divider or some other method of separation will be downgraded to the appropriate generation or disease tolerance level.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. Two grades, first or blue tag, and second or yellow tag, are available for shipment outside the state. A white tag is available but restricted to shipments within the state. The potatoes will be packed in new burlap sacks or clean, disinfected containers identified by official tags attached as to variety, crop year, grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March 1987, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:

   a. Shape:

      (1) Fairly well-shaped except for long varieties.

         (a) Dryland type (see definitions section 74-04-01-01).

         (b) Except for shape (see definitions section 74-04-01-01).

   b. Free from:

      (1) Freezing injury.

(2) Blackheart.

(3) Soft rot and wet breakdown.

(4) Late blight tuber rot.

(5) Bacterial ring rot.

(6) Nematode or tuber moth injury.

(7) Fresh cuts or fresh broken off second growth.

c. Free from serious damage caused by:

(1) Hollow heart.

(2) Vascular ring discoloration.

(3) Wireworm.

(4) Growth cracks.

d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).

e. Size:

(1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.

(2) Maximum size may not exceed twelve ounces [340.2 grams] for round or intermediate shaped varieties and fourteen ounces [396.9 grams] for long varieties.

(3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.

f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:

(1) For defects:

(a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.

(b) Ten percent for potatoes in any lot which are damaged by soil. (See definitions section 74-04-01-01).

(c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.

(d) Potatoes affected by silver scurf are not grade factors.

(e) Not more than ten percent of the potatoes seriously damaged by wireworm.

(f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

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

(2) For off-size:

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

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

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

a. Tolerances.

(1) For defects:

(a) Twenty percent for potatoes seriously damaged by hollow heart.

(b) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.

(c) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.

(2) Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round or intermediate shaped varieties and sixteen ounces [453.60 grams] for long varieties.

3. White tag. Official white identification tags will be furnished on request for potatoes which passed field inspection requirements and are being transferred for seed purposes, within the state of North Dakota only. Such stock shall meet United States number two grade requirements, except for defects caused by firmness, sunburn, hollow heart, wireworm, and sunken, flattened or depressed areas with or without underlying flesh discolored. Not more than two percent shall be damaged by dry-type or moist-type fusarium tuber rot. Unless otherwise specified, the maximum size shall be fourteen ounces [396.60 grams] and one and one-half inches [38.1 millimeters] minimum. State seed department grade inspection on white tag lots is not compulsory, but may be obtained upon request.

4. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.

5. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.

6. Classification of defects.

a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.

b. Table I - External defects.

Defect	DAMAGE		
	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
Air cracks			x
Bruises			x
Cuts and broken-off second growth (healed)	x		x
Elephant hide (scaling)	x		
Enlarged, discolored, or sunken lenticels	x		
Folded ends	x		
Second growth	x		
Shriveling	When more than moderately shriveled, spongy, or flabby.		
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 mm] in length.		
Surface cracking	x		x
Flea beetle injury	x		x
Grub damage	x		x
Rodent and/or bird damage	x		x
Wireworm or grass damage	Any hole more than 3/4 inch [19.1 mm] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 mm][1].		
Dry-type or moist-type type fursarium rot			x

Rhizoctonia	x		
Scab, pitted	x		x
Scab, russet	When affecting more than 1/3 of the surface.		
Scab, surface . . .	When affecting more than 5 percent of the surface.		
Growth cracks . . .	When seriously detracting from the appearance.		
Pressure bruises and sunken areas - with underlying flesh discolored			When removal cause a loss of more than 10 percent of the total weight.

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

c. Table II - Internal defects.

	DAMAGE		
Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
Ingrown sprouts			x
Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning and heat necrosis).	When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 mm] in diameter[1].		
All other internal discoloration excluding discoloration confined to the vascular ring.	. . . . .		x

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

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

7. Classification and serological tested stocks.

   a. Foundation seed classification may be indicated on the tag provided the lot meets foundation standards.

   b. Serologically tested stocks for potato virus x, potato virus s, or potato virus m may be so indicated on the tag if within the specified tolerance during the current growing season.

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

History: Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

TITLE 75

Department of Human Services

AUGUST 1997

CHAPTER 75-04-05

AGENCY SYNOPSIS: On October 31, 1996, the North Dakota Department of Human Services released proposed amendments to North Dakota Administrative Code Chapter 75-04-05, Reimbursement for Providers of Service to Persons With Developmental Disabilities for public opinion. The written data and views were taken from between October 31, 1996, and January 9, 1997.

A public hearing was conducted on Friday, December 6, 1996, in the AV Room of the Judicial Wing of the State Capitol Building in Bismarck concerning proposed amendments to North Dakota Administrative Code Chapter 75-04-05, Reimbursement for Providers of Service to Persons With Developmental Disabilities beginning at 1:30 p.m. CDT and continued until 3:00 p.m.

The amendments to Chapter 75-04-05 are offered to conform the department's rule on return on investment, Section 75-04-05-14, with legislative and accounting changes in depreciation, Section 75-04-05-15.

Sections 75-04-05-08, 75-04-05-09, and 75-04-05-24 are being amended to reflect the merger of Vocational Rehabilitation and Developmental Disabilities Divisions in the Disabilities Services Division.

Section 75-04-05-13 is amended to clarify issues that arose following the 1995 and 1996 administrative rule amendments.

There was one commentor, who gave both written and oral comments. This comment is documented in the summary of comments.

75-04-05-08. Financial reporting requirements.

1. **Records.**

   a. The provider shall maintain on the premises the required census records and financial information sufficient to provide for a proper audit or review. For any cost being claimed on the cost report, sufficient data must be available as of the audit date to fully support the report item.

   b. Where several programs are associated with a group and their accounting and reports are centrally prepared, additional fiscal information shall be submitted for costs, undocumented at the reporting facility, with the cost report or provided prior to the audit or review of the facility. Accounting or financial information regarding related organizations must be readily available to substantiate cost.

   c. Each provider shall maintain, for a period of not less than five years following the date of submission of the cost report to the department, financial and statistical records of the period covered by such cost report which are accurate and in sufficient detail to substantiate the cost data reported. If an audit has begun, but has not been finally resolved, the financial and statutory records relating to the audit shall be retained until final resolution. Each provider shall make such records available upon reasonable demand to representatives of the department or to the secretary of health and human services or representatives thereof.

2. **Accounting and reporting requirements.**

   a. The accounting system must be double entry.

   b. The basis of accounting for reporting purposes must be accrual in accord with generally accepted accounting principles. Ratesetting procedures will prevail if conflicts occur between ratesetting procedures and generally accepted accounting principles.

   c. To properly facilitate auditing, the accounting system must be maintained in a manner that will allow cost accounts to be grouped by cost center and readily traceable to the cost report.

   d. The forms for annual reporting for reimbursement purposes must be the report forms designated by the department. The statement of budgeted costs must be submitted to the ~~developmental~~ disabilities services division at least sixty days before the end of the facility's normal

accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The cost report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate.

e. The mailing of cost reports by registered mail, return receipt requested, will ensure documentation of the filing date.

f. Costs reported must include all actual costs and adjustments for nonallowable costs. Adjustments made by the audit unit, to determine allowable cost, though not meeting the criteria of fraud or abuse on their initial identification, could, if repeated on future cost filings, be considered as possible fraud or abuse. The audit unit will forward all such items identified to the appropriate investigative unit.

3. **Auditing.** In order to properly validate the accuracy and reasonableness of cost information reported by the service provider, the department will provide for audits as necessary.

4. **Penalties.**

a. If a provider fails to file the required statement of budgeted costs and cost report on or before the due date, the department may invoke the following provisions:

(1) After the last day of the first month following the due date, there will be a nonrefundable penalty of ten percent of any amount claimed for reimbursement.

(2) The penalty continues through the month in which the statement or report is received.

b. At the time of audit and final computation for settlement, the department may invoke a penalty of five percent of a provider's administrative costs for the period of deficiency if:

(1) Poor or no daily census records are available to document client units. Poor census records exist if those records are insufficient for audit verification of client units against submitted claims for reimbursement.

(2) After identification and notification through a previous audit, a provider continues to list items

exempted in audit as allowable costs on the cost report.

(3) For intermediate care facilities for the mentally retarded, the provider fails the certification requirements one hundred twenty days after the initial startup date or is decertified after having been previously certified.

c. Penalties may be separately imposed for each violation.

d. A penalty may be waived by the department upon a showing of good cause.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-16-10, 50-24.1-01

75-04-05-09. Rate payments.

1. Except for intermediate care facilities for the mentally retarded, payment rate limits will be established for services, room, and board.

2. Interim rates based on factors including budgeted data, as approved, will be used for payment of services during the year.

3. Room and board charges to clients may not exceed the maximum supplemental security income payment less twenty-five dollars for the personal incidental expenses of the client, plus the average dollar value of food stamps to the eligible clientele in the facility. If the interim room and board rate exceeds the final room and board rate, the provider shall reimburse clients in a manner approved by the department.

4. In residential facilities where rental assistance is available to individual clients or the facility, the rate for room costs chargeable to individual clients will be established by the governmental unit providing the subsidy.

5. In residential facilities where energy assistance program benefits are available to individual clients or the facility, room and board rates will be reduced to reflect the average annual dollar value of such benefits.

6. Income from client production must be applied to client wages and the cost of production. The department will not participate in the gains or losses associated with client production conducted pursuant to the applicable provision of 29 CFR 525.

7. The final rate established is payment of all allowable, reasonable, and actual costs for all elements necessary to the delivery of a basic service to eligible clients subject to limitations and cost offsets of this chapter.

8. No payments may be solicited or received by a provider from a client or any other person to supplement the final rate of reimbursement.

9. The rate of reimbursement established must be no greater than the rate charged to a private payor for the same or similar service.

10. The department will determine interim and final rates of reimbursement for continuing contract providers based upon cost data from the:

    a. Submission requirements of section 75-04-05-02; and

    b. Field and desk audits.

11. Rates of continuing service providers, except for those identified in subdivision f of subsection 3 of section 75-04-05-10, will be based on the following:

    a. Rate for continuing contract providers, who have had no increase in the number of clients the provider is licensed to serve, will be based upon ninety-five percent of the rated occupancy established by the department or actual occupancy, whichever is greater.

    b. Rates for continuing service providers, who have an increase in the number of clients the provider is licensed to serve in an existing service, will be based upon:

        (1) Subdivision a of subsection 11 of section 75-04-05-09 for the period until the increase takes effect; and

        (2) Ninety-five percent of the projected units of service for the remaining period of the fiscal year based upon an approved plan of integration or actual occupancy, whichever is greater.

    c. When establishing the final rates, the department may grant nonenforcement of subdivisions a and b of subsection 11 of section 75-04-05-09 when it determines the provider implemented cost containment measures consistent with the decrease in units, or when it determines that the failure to do so would have imposed a detriment to the well-being of its clients.

        (1) Acceptable cost containment measures include a decrease in actual salary and fringe benefit costs

from the approved salary and fringe benefits costs for the day service or group home proportionate to the decrease in units.

(2) Detriment to the well-being of clients includes a forced movement from one group home to another or obstructing the day service movement of a client in order to maintain the ninety-five percent rated occupancy requirement.

12. Adjustments and appeal procedures are as follows:

a. Rate adjustments may be made to correct errors.

b. A final adjustment will be made for those facilities which have terminated participation in the program and have disposed of all its depreciable assets. Federal medicare regulations pertaining to gains and losses on disposable assets will be applied.

c. Any requests for reconsideration of the rate must be submitted in writing to the ~~developmental~~ disabilities services division within ten days of the date of the rate notification of the final rate determination. The department may redetermine the rate on its own motion.

d. A provider may appeal a decision within thirty days after mailing of the written notice of the decision on a request for reconsideration of the final rate.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-16-10, 50-24.1-01

75-04-05-13. Nonallowable costs. Nonallowable costs include:

1. Advertising to the general public exclusive of procurement of personnel and yellow page advertising limited to the information furnished in the white page listing.

2. Amortization of noncompetitive agreements.

3. Bad debt expense.

4. Barber and beautician services.

5. Basic research.

6. Capital improvements by the provider to the buildings of a lessor.

7. Compensation of officers, directors, or stockholders other than reasonable and actual expenses related to client services.

8. Concession and vending machine costs.

9. Contributions or charitable donations.

10. Corporate costs, such as organization costs, reorganization costs, and other costs not related to client services.

11. Costs for which payment is available from another primary third-party payor or for which the department determines that payment may lawfully be demanded from any source.

12. Costs of functions performed by clients in a residential setting which are typical of functions of any person living in their own home, such as keeping the home sanitary, performing ordinary chores, lawnmowing, laundry, cooking, and dishwashing. These activities shall be an integral element of an individual program plan consistent with the client's level of function.

13. Costs of participation in civic, charitable, or fraternal organizations.

14. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to the vendor.

15. Costs incurred by the provider's subcontractors, or by the lessor of property which the provider leases, and which becomes an element in the subcontractor's or lessor's charge to the provider, if such costs would have not been allowable under this section had they been incurred by a provider directly furnishing the subcontracted services, or owning the leased property.

16. Costs exceeding the approved budget unless the written prior approval of the department has been received.

17. Depreciation on assets acquired with federal or state grants.

18. Education costs incurred for the provision of services to clients who are, could be, or could have been, included in a student census. Education costs do not include costs incurred for a client, defined as a "child with disabilities" by subsection 2 of North Dakota Century Code section 15-59-01,

who is no longer enrolled in a school district pursuant to an interdepartmental plan of transition.

19. Education or training costs, for provider staff, which exceed the provider's approved budget costs.

20. Employee benefits not offered to all full-time employees.

21. Entertainment costs.

22. Equipment costs for any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates to the satisfaction of the department that any particular use of the equipment was related to client services. Equipment used for client services, other than developmental disabilities contract services, will be allocated by time studies, mileage, client census, percentage of total operational costs, or otherwise as determined appropriate by the department.

23. Expense or liabilities established through or under threat of litigation against the state of North Dakota or any of its agencies; provided, that reasonable insurance expense shall not be limited by this subsection.

24. Federal and other governmental income taxes.

25. Fringe benefits exclusive of Federal Insurance Contributions Act, unemployment insurance, medical insurance, workers compensation, retirement, and other benefits which have received written prior approval of the department.

26. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose.

27. Funeral and cemetery expenses.

28. Goodwill.

29. Home office costs when unallowable if incurred by facilities in a chain organization.

30. Housekeeping staff or service costs.

31. In-state travel not directly related to industry conferences, state or federally sponsored activities, or client services.

32. Interest cost related to money borrowed for funding depreciation.

33. Items or services, such as telephone, television, and radio, located in a client's room and furnished primarily for the convenience of the clients.

34. Key man insurance.

35. Laboratory salaries and supplies.

36. Staff matriculation fees and fees associated with the granting of college credit.

37. Meals and food service in day service programs.

38. Membership fees or dues for professional organizations exceeding five hundred dollars in any fiscal year.

39. Miscellaneous expenses not related to client services.

40. Out-of-state travel expense which is not directly related to client services or which has not received written prior approval by the department.

41. a. Except as provided in subdivisions b and c, payments to members of the governing board of the provider, the governing board of a related organization, or families of members of those governing boards, including spouses and persons in the following relationship to those members or to spouses of those members: parent, stepparent, child, stepchild, grandparent, step-grandparent, grandchild, step-grandchild, brother, sister, half brother, half sister, stepbrother, and stepsister.

    b. Payments made to a member of the governing board of the provider to reimburse that member for allowable expenses incurred by that member in the conduct of the provider's business may be allowed.

    c. Payments for a service or product unavailable from another source at a lower cost may be allowed except that this subdivision may not be construed to permit the employment of any person described in subdivision a.

42. Penalties, fines, and related interest and bank charges other than regular service charges.

43. Personal purchases.

44. Pharmacy salaries.

45. Physician and dentist salaries.

46. a. Production costs, such as the cost of the finished goods or products that are assembled, altered, or modified, square footage that the department determines is primarily for nontraining or production purposes, and property, equipment, supplies, and materials used in nonfacility-based day and work activity.

b. For extended services, in addition to subdivision a, costs of employing clients, including preproduction and postproduction costs for supplies, materials, property, and equipment, and property costs other than an office, office supplies, and equipment for the supervisor, job coach, and support staff.

c. Total production-related legal fees in excess of five thousand dollars in any fiscal period.

47. Religious salaries, space, and supplies.

48. Room and board costs in residential services other than an intermediate care facility for the mentally retarded, except when such costs are incurred on behalf of persons who have been found not to be disabled by the social security administration, but who are certified by the department as indigent and appropriately placed. Allowable room and board cost must not exceed the room and board rate established pursuant to subsections 2 and 3 of section 75-04-05-09. Services offering room and board temporarily, to access medical care, vocational evaluation, respite care, or similar time limited purposes are or may be exempt from the effect of this provision.

49. Salary costs of employees determined by the department to be inadequately trained to assume assigned responsibilities, but where an election has been made to not participate in appropriate training approved by the department.

50. Salary costs of employees who fail to meet the functional competency standards established or approved by the department.

51. Travel of clients visiting relatives or acquaintances in or out of state.

52. Travel expenses in excess of state allowances.

53. Undocumented expenditures.

54. Value of donated goods or services.

55. Vehicle and aircraft costs not directly related to provider business or client services.

56. X-ray salaries and supplies.

History: Effective July 1, 1984; amended effective June 1, 1985; January 1, 1989; August 1, 1992; June 1, 1995; July 1, 1995; April 1, 1996; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-16-10, 50-24.1-01

75-04-05-14. Profit-motivated entities - Return on investment. ~~Eight-and-one-half-percent-of-net-investment-in-fixed-assets-related--to client--care--will--be--allowed--annually,-as-a-return-on-investment,-to profit-motivated-entities.--The-allowance-must-exclude-that--portion--of the--current--owner's--net--investment--in-fixed-assets-in-existence-and purchased-from-any-other-hospital-or-facility,--on--or--after--July--18, 1984,--which--exceed--the--net-investment,-in-these-assets,-of-the-first owner-on-or-after-July-18,-1984.~~ Effective August 1, 1995, the annual average percentage of existing debt divided by the original asset cost shall determine the annual return on the original cost of fixed assets.

1. For an annual average percentage of debt to annual average assets that is between fifty-one and eighty percent, a two percent return on the original cost of fixed assets must be allowed.

2. For an annual average percentage of debt to annual average assets that is between zero and fifty percent, a three percent return on the original cost of fixed assets must be allowed.

History: Effective July 1, 1984; amended effective June 1, 1985; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC ~~25-15-01,~~ 25-16-10, 25-16-10.1, 50-24.1-01

75-04-05-15. Depreciation.

1. The principles of reimbursement for provider costs require that payment for services ~~should~~ include depreciation on depreciable assets that are used to provide allowable services to clients. This includes assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program. The useful lives of ~~such~~ these assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. Likewise, a depreciation allowance is permitted on assets that are used in a normal standby or emergency capacity. Depreciation is recognized as an allocation of the cost of an asset over its estimated useful life. If any depreciated asset is sold or disposed of for an amount in excess of its undepreciated value, the excess represents an overstatement of the cost of the asset to the facility.

2. Depreciation methods ~~are-as-follows~~:

   a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied

on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared.

b. ~~Depreciation~~ For all assets obtained prior to August 1, 1997, depreciation will be computed using a useful life of ten years for all items except vehicles, which must be four years, and buildings, which must be twenty-five years or more. ~~A--different-useful-life-may-be-used;-however, when-the-useful-life-selected-differs--significantly--from that--established-by-the-guidelines,-the-deviation-must-be based--on--convincing--reasons---supported---by---adequate documentation,--generally--describing--the--realization-of some-unexpected-event.~~ For assets other than vehicles and buildings obtained after August 1, 1997, a provider may use the American hospital association guidelines as published by the American hospital publishing, inc., in "estimated useful lives of depreciable hospital assets", revised 1993 edition, to determine the useful life or the composite useful life of ten years. Whichever useful life methodology is chosen, the provider may not thereafter use the other option without the department's prior written approval. A useful life of ten years must be used for all equipment not identified in the American hospital association depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) (a) A composite remaining useful life for movable equipment, determined from the seller's records; or

(b) The remaining useful life for movable equipment, determined from the seller's records.

(3) Movable equipment means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the American hospital association depreciation guidelines.

3. Acquisitions are treated as follows:

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least ~~three--hundred~~ one thousand dollars, ~~or-if-it-is-acquired-in-quantity-and~~

~~the cost of the quantity is at least five hundred dollars,~~ its cost must be capitalized and depreciated in accordance with subdivision b of subsection 2. Cost during the construction of an asset, such as architectural, consulting and legal fees, interest, etc., should be capitalized as a part of the cost of the asset.

b. Major repair and maintenance costs on equipment or buildings must be capitalized if they exceed five thousand dollars per project and will be depreciated in accordance with subdivision b of subsection 2.

4. Proper records will provide accountability for the fixed assets and also provide adequate means by which depreciation can be computed and established as an allowable client-related cost.

5. The basis for depreciation is as follows:

   a. The amount of historical costs must not exceed the lower of:

      (1) Current reproduction costs less straight-line depreciation over the life of the asset to the time of purchase; or

      (2) Fair market value at the time of purchase.

      In the case of a trade-in, the historical cost will consist of the sum of the book value of the trade-in plus the cash paid.

   b. For depreciation and reimbursement purposes, donated depreciable assets may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal must be made. An appraisal made by a recognized appraisal expert will be accepted for depreciation.

   c. No provision shall be made for increased costs due to the sale of a facility.

6. Providers which finance facilities pursuant to North Dakota Century Code chapter 6-09.6, subject to the approval of the department, may elect to be reimbursed based upon the mortgage principle payments rather than depreciation. Once an election is made by the provider, it may not be changed without department approval.

7. Recapture of depreciation.

a. At any time that the operators of a facility sell an asset, or otherwise remove that asset from service in or to the facility, any depreciation costs asserted after June 1, 1984, with respect to that asset, are subject to recapture to the extent that the sale or disposal price exceeds the undepreciated value except:

(1) If the facility has been owned for twenty years or longer, no recapture of depreciation may be allowed; or

(2) If the facility has been owned for more than ten years but for less than twenty years, the depreciation recapture amount must be reduced by ten percent times the number of years the facility is owned after the tenth year.

If the department determines that a sale or disposal was made to a related party, or if a facility terminates participation as a provider of services in a department program, any depreciation costs asserted after June 1, 1984, with respect to that asset or facility, are subject to recapture to the extent that the fair market value of the asset or facility exceeds the depreciated value.

b. The seller and the purchaser may, by agreement, determine which shall pay the recaptured depreciation. If the parties to the sale do not inform the department of their agreement, the department will offset the amount of depreciation to be recaptured against any amounts owed, or to be owed, by the department to the seller and buyer. The department will first exercise the offset against the seller, and shall only exercise the offset against the buyer to the extent that the seller has failed to repay the amount of the recaptured depreciation.

History: Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-16-10, 26-16-15, 50-24.1-01

75-04-05-24. Application.

1. This chapter will be applied to providers of services to persons with developmental disabilities, except distinct parts of state institutions for persons with developmental disabilities which are certified as intermediate care facilities for the mentally retarded, starting the first day of a facility's first fiscal year which begins on or after July 1, 1985; provided, however, that neither this section, nor the effective date, shall preclude the application and implementation of some or all of the provisions of this

chapter through contract or through official statements of department policy. Specific sections of this chapter will be applied to services provided in distinct parts of state institutions for persons with developmental disabilities which are certified as intermediate care facilities for the mentally retarded. The applicable sections of this chapter that apply are section 75-04-05-01; subsections 1, 4, 5, 6, and 7 of section 75-04-05-02; subsections 1, 2, and 3 of section 75-04-05-08; sections 75-04-05-09, 75-04-05-10, 75-04-05-11, and 75-04-05-12; subsections 1 through 11, 13 through 22, 24 through 29, 31 through 34, 36 and 37, 39 through 43, 46, and 48 through 55 of section 75-04-05-13; sections 75-04-05-14, 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, 75-04-05-19, 75-04-05-20, 75-04-05-21, 75-04-05-22, and 75-04-05-23; and subsection 1 of section 75-04-05-24.

2. This chapter will be applied to providers of supported employment extended services to individuals with developmental disabilities, mental illness, traumatic brain injury, and other severe disabilities, except as operated through the human service centers; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, subsections 1 through 3, 5, 9 through 15, 17 through 19, 21 through 24, and 27 of section 75-04-05-01; section 75-04-05-02; subsection 1, subdivisions a through c and e through f of subsection 2, subsection 3, subdivision a of subsection 4, paragraphs 1 and 2 of subdivision b of subsection 4, and subdivisions c and d of subsection 4 of section 75-04-05-08; subsections 2, 6 through 10, and subdivisions a, b, and d of subsection 12 of section 75-04-05-09; subsection 1, ~~subdivision a of~~ subsection 2, and subdivisions a, h, and i of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and l of subsection 1, and subdivisions a through c of subsection 2 of section 75-04-05-11; subsections 1 and 2, subdivisions a through d, f, and i of subsection 3, and subsections 4 through 7 of section 75-04-05-12; subsections 2 through 11, 14 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; and subsections 1, 2, and 5 of section 75-04-05-21 of this chapter will be applied to supported employment extended services, with the following additions:

   a. Nonallowable costs include costs of participation in charitable or fraternal organizations;

   b. Report forms designed by the department must be used for annual reporting for reimbursement. The statement of budgeted costs must be submitted to the ~~vocational rehabilitation~~ disabilities services division at least sixty days before the end of the facility's normal

accounting year reflecting budgeted costs and units of service for establishing an interim rate in the subsequent year. The statement of actual costs must be submitted on or before the last day of the third month following the end of the facility's normal accounting year. The report must contain the actual costs, adjustments for nonallowable costs, and units of service for establishing the final rate;

c. Requests for reconsideration of the final rate of reimbursement established must be submitted in writing to the ~~vocational---rehabilitation~~ disabilities services division within ten days of the date of the rate notification;

d. "Units of service" means one person served for one hour of intervention for billing purposes.

3. This chapter will be applied to providers of individualized supported living arrangements services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to the providers of individualized supported living arrangements services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and l of subsection 1, and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 11, 13 through 15, 17 and 18, and 20 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7 and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of individualized supported living arrangements services:

a. Each provider of individualized supported living arrangements shall maintain separate revenue records for direct service reimbursements and for administrative reimbursement. Records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:

(1) Direct service reimbursements from the department;

(2) Interest income from excess department direct service payments as provided for by section 18 of article X of the Constitution of North Dakota. If no interest has been earned on the overpayment amount, then no return of interest will be required; and

(3) Intended to cover direct service costs.

b. Each provider of individualized supported living arrangements shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client revenues and cost records are to be separately maintained from revenue and cost records whose payment source is the department.

c. When direct service reimbursements from the department exceed direct service costs attributable to the department by the margin established by department policy, payback to the department is required. In these situations, the entire overpayment must be refunded.

d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

4. This chapter will be applied to providers of family support services; provided, however, that neither this section nor the effective date shall preclude the application on and implementation of some or all of the provisions of this chapter through contract or through official statement of department policy. Effective June 1, 1995, the following sections apply to providers of family support services: sections 75-04-05-01, 75-04-05-02, and 75-04-05-08; subdivisions a and h of subsection 3 of section 75-04-05-10; subdivisions a through f, h, i, and l of subsection 1, and subdivisions a and b of subsection 2 of section 75-04-05-11; section 75-04-05-12; subsections 1 through 11, 13 through 15, 17 and 18, and 20 through 56 of section 75-04-05-13; sections 75-04-05-15, 75-04-05-16, 75-04-05-17, 75-04-05-18, and 75-04-05-19; subsections 1 through 7, and 9 through 16 of section 75-04-05-20; and sections 75-04-05-21, 75-04-05-23, and 75-04-05-24. The following additions apply only to the providers of family support services:

a. Each provider of family support services shall maintain separate revenue records for direct service reimbursements and for administrative reimbursements. These cost records must distinguish revenues from the department from all other revenue sources. Direct service revenues are:

(1) Direct service reimbursements from the department;

(2) Interest income from excess department direct service payments as provided for by section 18 of article X of the Constitution of North Dakota. If no interest has been earned from the overpayment amount, then no return of interest will be required; and

(3) Parental financial responsibility as documented on the family support service contract which will be determined using the following guidelines:

(a) Respite care parental financial responsibility for a nonmedicaid eligible minor under the age of eighteen shall be determined by the sliding fee scale that is established by and administered by the human service centers as provided for in North Dakota Century Code section 50-06.3-03. Copies of the "monthly income billing rate schedule", which may be updated from time to time, are available from the department upon request.

(b) Family care options parental financial responsibility for services for a minor under the age of eighteen who is receiving supplemental security income shall be determined by the following method:

[1] Subtract forty-five dollars from the supplemental security income check for personal needs and extraordinary expenses determined by the parents and the agency; and

[2] Divide the amount by thirty to determine the daily rate.

(c) Family care options parental financial responsibility for services for a minor under the age of eighteen who is not receiving supplemental security income shall be determined by the following method:

[1] Determine the net monthly income;

[2] Determine the number of children under eighteen living in the household;

[3] Apply the scale of suggested minimum contribution percentages from the "North Dakota child support guidelines scale of suggested minimum contributions", which may be updated from time to time and is available upon request from the department;

[4] Divide the suggested contribution by the number of children to derive the per child contribution; and

[5] Divide the per child contribution by thirty to determine the daily rate.

b. Each provider of family support services shall maintain cost records distinguishing costs attributable to the department from other cost sources. Private pay client cost records are to be separately maintained from cost records for clients whose payment source is the department.

c. Payback in the form of a refund is required when direct service revenues from the department exceed direct service costs attributable to the department.

d. A provider may appeal the department's determination of direct costs and reimbursements by requesting a hearing within thirty days after the departmental mailing of the payback notification.

History: Effective July 1, 1984; amended effective July 1, 1984; June 1, 1985; June 1, 1995; August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-16-10, 50-24.1-01; 34 CFR 363

CHAPTER 75-04-06

AGENCY SYNOPSIS: On October 31, 1996, the North Dakota Department of Human Services released proposed amendments to Section 75-04-06-05, Service Availability, a section of North Dakota Administrative Code Chapter 75-04-06, Eligibility for Mental Retardation - Developmental Disabilities Case Management Services. A public hearing was conducted on Friday, December 6, 1996, in the AV Room of the Judicial Wing of the State Capitol Building in Bismarck concerning the proposed amendments.

Section 75-04-06-05 is a new section offered to clarify the nature of eligibility for mental retardation - developmental disability case management to appropriations and resource allocation. If a client is eligible for case management services, the client does not automatically become entitled to services if the services are not available due to a lack of appropriations or legislative resource allocation.

There were two commentors, Stan Holzmer of Bismarck, and Mark Breyfogle of Grand Forks, both with written comments. Stan Holzmer stated that he did not receive notice of the rulemaking until after the oral hearing was held. Our records indicate that the mailing list which we received from the Developmental Disabilities Division did not include the association with whom Mr. Holzmer is affiliated. The error has been corrected.

75-04-06-05. Service availability. The extent to which appropriate services other than case management services are available to eligible clients is dependent upon legislative appropriations and resources. Eligibility for case management services does not create an entitlement to services other than case management services if resources are not available.

History: Effective August 1, 1997.
General Authority: NDCC 25-01.2-18, 50-06-16
Law Implemented: NDCC 25-01.2-02, 50-06-05.3

CHAPTER 75-05-03

AGENCY SYNOPSIS: The North Dakota Department of Human Services proposed amendments to North Dakota Administrative Code Article 75-05; Human Service Center Licensure Standards, Specifically Section 75-05-03-03, Extended Care Services. The department used adopted procedures to assure public input into the formulation of the rules prior to adoption. The department provided a written comment period from December 31, 1996, to March 17, 1997. A public hearing was conducted on February 12, 1997, in the AV Room of the Judicial Wing of the State Capitol Building in Bismarck concerning the proposed amendments.

No comments, neither oral nor written, were received.

The purpose of the proposed amendments is to conform the language with prior definitional changes and to incorporate evening hours for the psychosocial rehabilitation centers. The change allows the psychosocial centers to reduce their required number of hours of programming a week to 40 and requires evening hours as a part of the programming. The Division of Mental Health and Substance Abuse Services must also receive written monthly reports from the psychosocial rehabilitation center.

75-05-03-03. Extended care services.

1. **Community residential services.**

   a. The regional director shall designate a community living supervisor to supervise the community residential services.

   b. The human service center shall provide or contract for at least two of the following options:

      (1) SMI group care.

         (a) SMI group care facilities shall:

            [1] Comply with the provisions of the chapter entitled "Lodging Rooming Houses" of the 1985 life safety code. The community living supervisor shall assure that the appropriate officials provide onsite review and documentation of review once every two years;

            [2] House no more than fourteen clients;

            [3] Have the ability to house both male and female clients while accommodating privacy for individuals;

[4] Provide at least one full bathroom for every four clients; and

[5] Have bedrooms which are outside rooms, accommodate one or two clients, provide each client with a bed appropriate for the client's size and weight, with a clean and comfortable mattress, bedding appropriate for weather and climate, and provide other appropriate bedroom furniture.

(b) The staff of the SMI group care facility shall:

[1] Assure that the client's individual plan includes input from the community home counselors and the residential treatment team.

[2] Maintain an inventory of the client's personal belongings when the client enters the SMI group care facility.

(c) A brochure of client rights according to section 75-05-01-10 must be given to all new residents of the SMI group care facility upon admission.

(2) Semi-independent living arrangement.

(a) The human service center shall develop policies and procedures that facilitate conformance with all local building and fire safety codes to encourage that safe and sanitary conditions are maintained.

(b) Human service center staff shall develop policies and procedures to ensure that semi-independent living services are being provided in the client's residence.

(c) An evaluation of the client's progress in semi-independent living services must be documented in the client's record on at least a monthly basis.

(3) Crisis residential services.

(a) Human service center staff shall develop policies and procedures to assure that safe and effective crisis residential services are provided.

(b) Documentation of the individual's progress must occur daily.

2. **Work skills development.**

   a. The human service center shall either provide or contract for:

      (1) Methods to assess the abilities of individuals with serious mental illness as related to employment;

      (2) Prevocational skills development and training;

      (3) Job exploration; and

      (4) Followup.

   b. The human service center shall document the client's progress in work skills development at least monthly.

3. Case management and aftercare services for an individual with serious mental illness.

   a. Case management must be available to all eligible individuals with serious mental illness throughout the human service center's catchment area.

   b. Case management for an individual with serious mental illness must be identified on the client's individual plan and must be documented in the progress notes.

   c. Aftercare services must be available to all individuals with serious mental illness in an inpatient facility who are returning to the region after discharge. The regional director shall designate one or more staff members to provide aftercare services.

   d. The human service center shall, through case management services, ensure that extended services are provided for an individual with serious mental illness who has completed the training and stabilization components of the supported employment program and continues to require ongoing support services to maintain competitive employment.

   e. If individual plans dictate, case management services must provide or arrange for daily living skills training in the community.

4. **Community supportive care services.**

   a. The human service center shall provide or contract with a private, nonprofit group to provide a community supportive care program.

   b. The program must include:

(1) Designation of an individual to serve as the community supportive care supervisor;

(2) Assignment of responsibility to the community supportive care supervisor for the recruitment, scheduling, and training of all community supportive caregivers; and

(3) Provision of companionship services for an individual with serious mental illness who has been referred by a multidisciplinary staff. These services may include: transportation; assisting in meal preparation; leisure activities; and assisting in shopping for food, clothes, and other essential items by community supportive caregivers.

5. **Psychosocial rehabilitation centers.**

a. The human service center shall provide or contract for the operation of a psychosocial rehabilitation center.

b. The psychosocial rehabilitation center shall:

(1) Provide evening and weekend activities;

(2) Be open seven days a week;

(3) Be located in an ADA accessible location in the community which provides a minimum of ~~fifty~~ forty hours of programming a week. ~~Ten of the fifty hours must be during evening~~ Evening hours must be included in the programming. "Evening hours" means after six p.m. This does not include support groups.

(4) Develop a written plan delineating expected programs and services provided.

(5) Employ a full-time director and part-time staff sufficient to provide services.

c. The psychosocial rehabilitation center shall have a mechanism for client member participation in policy formation.

d. The regional director shall appoint a human service center staff member as a liaison between the human service center and the psychosocial rehabilitation center.

e. The psychosocial rehabilitation center shall provide written monthly reports to the human service center and the division of mental health and substance abuse services.

History: Effective November 1, 1987; amended effective December 1, 1991; February 1, 1996; March 1, 1997; August 1, 1997.
General Authority: NDCC 50-06-05.2
Law Implemented: NDCC 50-06-05.2

SEPTEMBER 1997

CHAPTER 75-03-18

AGENCY SYNOPSIS: Synopsis regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-18 Procedures for Review of Child Abuse and Neglect Assessments. The Department of Human Services acted through interim final rules with an effective date of November 1, 1996, to adopt procedures to ensure the protection of children in child abuse and neglect assessments and reports. The department provided the public with a copy of the proposed rules with written data, views, or arguments taken between October 31, 1996, and January 15, 1997.

A public hearing was held Wednesday, December 11, 1996, in Bismarck. We had ten commentors at the oral hearing, nine in writing, with one commentor making two separate written comments.

The proposed amendments to North Dakota Administrative Code Chapter 75-03-18, Procedures for Review of Child Abuse and Neglect Assessments, allow filing of an appeal from any child abuse or neglect assessment. The appellant would no longer need to sustain a high burden of proof. Child witnesses would be entitled to limited special protections. The assessment report would no longer be automatically admitted as nonhearsay evidence in an appeal hearing.

75-03-18-02. Who may file ~~request for review~~ an appeal.

1. The subject of a report of suspected child abuse or neglect who is aggrieved by the ~~conduct or~~ result of the assessment ~~if the decision is made that services are required to provide for the protection and treatment of an abused or neglected child~~ may file an appeal.

2. A staff member of child protection services will notify the subject in writing of the decision resulting from an assessment. The staff member of child protection services who notifies the subject of the decision resulting from the assessment shall complete an affidavit of mailing that becomes a part of the assessment record in the form and manner prescribed by the department.

3. Written appeal procedures are available from the department upon request.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18-03. Request for appeal to be in writing - Where filed - Content. A request for an appeal must be in writing on forms developed and provided by the department. The subject shall submit the written request for an appeal and formal hearing to:

Appeals Supervisor
North Dakota Department of Human Services
State Capitol - Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0250

The written request must include:

1. A succinct statement by the subject ~~who meets the criteria in section 75-03-18-02~~ as to why the subject disagrees with the ~~conduct of the assessment or the~~ decision ~~that services are required~~;

2. All reasons or grounds the subject disagrees with must be included in a single request for appeal; and

3. A statement of the relief sought by the subject.

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18-04. Time for filing request for appeal ~~--Standard for review.~~

~~1.~~ An appeal may not be filed before the date of an assessment decision and must be filed within thirty days after the documented date of the subject notification of the decision in accordance with procedures in chapter 75-01-03. ~~A--child~~

~~protection--services--decision--of--"services-required"-is-the only--decision--that--may--be---appealed.~~ Notification is considered to have occurred three days after the date on the affidavit of mailing.

~~2.--The--decision--of--the--department-must-be-affirmed-unless-the department-acted-arbitrarily,-capriciously,-or-unreasonably-in making-its-decision.~~

History: Effective September 1, 1990; amended effective November 1, 1994; January 1, 1996; September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18-07.1. Treatment of witnesses.

1. The hearing must be conducted according to any fair treatment standards adopted by the legislative assembly or the supreme court for the protection of witnesses or children in court proceedings.

2. If any child is to be called as a witness during the appeal hearing, whether for deposition, discovery, or for the hearing, the office of administrative hearings may appoint a guardian ad litem for the child witness. If the child witness is the victim and the ~~child's-parent-or-guardian~~ party calling the victim is the subject and the victim's parent or guardian, the office of administrative hearings shall appoint a guardian ad litem for the child victim.

History: Effective January 1, 1996; January 1, 1996, amendments voided by the Administrative Rules Committee effective August 8, 1996; amended effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-03, 50-25.1-05.4

CHAPTER 75-03-18.1

AGENCY SYNOPSIS: Regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-18.1 Child Abuse and Neglect Assessment Grievance Procedure for Conduct of the Assessment.

The department of human services acted through interim final rules with an effective date of November 1, 1996, to adopt procedures to ensure the protection of children in child abuse and neglect assessments and reports. The department provided the public with a copy of the proposed rules with written data, views, or arguments taken between October 31, 1996, and January 15, 1997.

A public hearing was held Wednesday, December 11, 1996, in Bismarck. We had ten commentors at the oral hearing, nine in writing, with one commentor making two separate written comments.

The proposed amendments to North Dakota Administrative Code Chapter 75-03-18.1, Child Abuse and Neglect Assessment Grievance Procedure for Conduct of the Assessment, is entirely new material. The procedure allows for filing a written grievance, followed by a grievance meeting and a written decision.

STAFF COMMENT: Chapter 75-03-18.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-03-18.1
CHILD ABUSE AND NEGLECT ASSESSMENT GRIEVANCE PROCEDURE FOR CONDUCT OF THE ASSESSMENT

75-03-18.1-01. Definitions.

1. "Department" means the North Dakota department of human services.

2. "Director" means the director of the county social services board, the director of the human service center, or the director's designee.

3. "Regional representative" means the regional supervisor of child protection services who is located in regional human service centers.

4. "Subject" means a person named in a child abuse or neglect report who is suspected as having abused or neglected any child. "Subject" includes:

   a. A child's parent;

   b. A child's guardian;

   c. A child's foster parent;

   d. An employee of a public or private school or nonresidential child care facility;

   e. An employee of a public or private residential home, institution, or agency; or

f. A person responsible for the child's welfare in a residential setting.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-02. Who may file grievance. Only the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct of the assessment may file a grievance.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-03. Grievance to be in writing - Contents - Time for filing.

1. The grievance must be in writing on forms developed and provided by the department and must contain a succinct statement of the grievant's objections to the conduct of the assessment.

2. A grievance must be filed within ten days of the grievant's receipt of the written decision of the department or county social service board.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-04. Grievance meeting.

1. If a grievance is filed, the agency completing the assessment shall schedule a grievance meeting with the subject. This meeting must be held within ten days of the agency's receipt of the written grievance. The director shall preside at the grievance meeting.

2. At a maximum, the grievance meeting may include the following participants:

   a. The regional representative;

   b. Two individuals that the subject determines should be present; and

c. Up to two agency-selected individuals having information concerning the conduct of the assessment.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-05. Grievance meeting decision. Within ten days after conclusion of the grievance meeting, the director of the assessing agency shall prepare a written summary of the meeting and the resolution of the grievance. The written summary must be based on the files, records, and information received at the grievance hearing. The written summary and resolution constitutes the final determination of the grievance. The summary and resolution of the director must be sent to the grievants and the regional representative.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-06. Informal conference. This chapter must be construed to encourage informal, mutually consensual conferences or discussions between the subject and the assessing agency. Such informal conferences may not suspend or extend the time for filing a grievance under this chapter or for filing an appeal under chapter 75-03-18.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

75-03-18.1-07. Confidentiality. Information furnished at the informal conference and grievance meeting is confidential and subject to the provisions of North Dakota Century Code section 50-25.1-11.

History: Effective September 1, 1997.
General Authority: NDCC 50-25.1-05.4
Law Implemented: NDCC 50-25.1-05.4

OCTOBER 1997

AGENCY SYNOPSIS: Proposed new North Dakota Administrative Code Chapter 75-09-03.1, Low Intensity Outpatient Treatment.

This proposed new chapter is necessary because of the promulgation of the other licensure rules for addiction counseling. Low intensity outpatient providers were not included in North Dakota Administrative Code Chapter 75-09-01, et seq. Originally, the department expected these providers to offer the low intensity outpatient services under the auspices of their addiction licensure or under the licensure of the larger facility within which the addiction counselor provided services. However, an Attorney General's opinion issued in 1995 determined that the low intensity outpatient service was "treatment" and had to be licensed separately.

There were four comments, one oral and three written.

The summary of comments was made and all documentation was sent to the Attorney General's office for approval as to their legality. We have also performed a takings assessment and a regulatory analysis.

STAFF COMMENT: Chapter 75-09-03.1 contains all new material but is not underscored so as to improve readability.

CHAPTER 75-09-03.1
LOW INTENSITY OUTPATIENT TREATMENT

75-09-03.1-01. Definition. "Low intensity outpatient treatment" means an organized nonresidential service or an office practice that provides professionally directed aftercare, individual, and other addiction services to clients according to a predetermined schedule.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-02. Application for licensure - Licensure.

1. An application for a low intensity outpatient treatment license must be made in the form and manner prescribed by the department.

2. A new application for a license must be filed by a provider upon change of operator, location, management, or programming philosophy.

3. An application may be withdrawn if the applicant fails to submit all required documentation within thirty days of notification of incompleteness.

4. The issuance of a license to operate a low intensity outpatient treatment program is evidence of compliance with the standards contained in this chapter at the time of licensure.

5. The facility must display the license in a conspicuous place.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-03. Provider criteria.

1. The provider shall offer therapeutic programming not to exceed eight hours per week.

2. The provider shall be licensed as an addiction treatment program in North Dakota and shall provide care by North Dakota licensed addiction counselors.

3. The provider shall develop and implement a treatment plan based on client needs that must be updated and reviewed with the active involvement of the client at least once every three months.

4. The provider shall document progress or lack of progress in reference to the treatment plan.

5. The assessment process must include thorough evaluation of the client's use and abuse of alcohol, tobacco, and any other mind-altering substance.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-04. Information management.

1. A provider shall have a system of information collection, dissemination, and utilization.

2. Information gathered must include data collection as described by the department and fiscal information such as a fee structure which must be posted or provided to the client.

3. Appropriate safeguards must be applied to protect confidential administrative records, whether they are electronically or manually maintained. These safeguards must include:

   a. Limiting record access to authorized individuals;

   b. Suitably maintaining the record indexing and filing system;

   c. Knowledge of essential record location at all times;

d. The reasonable protection and security of records from fire, water damage, and other hazards; and

e. Routinely protecting electronic records with a backup file.

4. A provider shall maintain a policy to prevent files from being prematurely discarded. The retention of client records and administrative records must be guided by professional and state research, administrative, and legal requirements.

5. Subject to applicable federal and state laws, rules, and regulations, minimum client information may be released to satisfy federal, state, and grant statistical requirements.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-05. Programming standards.

1. In addition to the provisions of this chapter, low intensity outpatient programs must comply with the following provisions of chapter 75-09-02:

   a. A list of rights and responsibilities of clients served, subsection 3 of section 75-09-02-01;

   b. Release of information and materials, subsection 3 of section 75-09-02-04;

   c. Peer review, review process, and representative sampling, subsections 3, 4, and 5 of section 75-09-02-06; and

   d. Client rights, subsection 1 of section 75-09-02-07.

2. The provider shall develop a written policy that specifies timeframes for entries into client records, including clinical information, critical incidents or interactions, progress notes, and discharge summaries. Progress notes must be entered into client records on the following schedule:

   a. Weekly for a client seen one or more times per week; and

   b. Monthly for a client seen less than once per week.

3. The program must provide screening or referral procedures and must include verbal assessment of high risk behaviors for tuberculosis and HIV.

4. The provider shall provide information explaining the client's right to revoke consent to voluntary treatment and provide the means for the client's revocation of consent.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-06. Client admission criteria. For admission to low intensity outpatient treatment, the client shall meet the criteria set forth in subsections 1 and 2 and at least one of the following criteria:

1. The client has few or no symptoms of withdrawal and presents only stable physical or psychiatric conditions;

2. The client has an environment supportive of recovery efforts;

3. The client demonstrates the need to take extended time for evaluation or lacks motivation to make a commitment to a more intensive recovery effort;

4. The client has completed a higher intensity level of care, but requires continued services until recovery stabilizes;

5. The client has evidence of a brief return to usage not resulting in significant physical or emotional deterioration;

6. The client requires structured outpatient counseling of an intensity that will meet the client's needs without intensive outpatient placement; or

7. The client has not been through a prior treatment and exhibits motivation for recovery.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-07. Continued stay criteria. For a client to remain in low intensity outpatient treatment, the client shall:

1. Be willing to participate in the low intensity outpatient treatment program and to attend all activities;

2. Be motivated and work towards achievement of treatment goals; and

3. Demonstrate a decrease in denial and an increase in the ability to focus on short-term and long-term recovery issues.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-08. Client discharge and transfer criteria.

1. Transfer to a higher level of care must occur when:

   a. A client is unable to sustain abstinence during the course of treatment;

   b. There is deterioration in the client's condition;

   c. There is continued lack of progress toward treatment goals;

   d. Additional addiction problems are identified and greater intensity treatment is necessary to impact problems; or

   e. Necessary services are not available at the current level.

2. The client may be discharged if the client is uncooperative to the degree that no further progress is likely to occur or if the client has met the criteria for care in this level of treatment and there is mutal agreement that treatment goals have been met.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

75-09-03.1-09. Sanctions. Immediate license revocation may result if the provider or an employee or agent of the provider violates this chapter, performs any illegal act, or threatens the health and safety of a client.

History: Effective October 1, 1997.
General Authority: NDCC 23-17.1, 50-06-16, 54-38
Law Implemented: NDCC 23-17.1-05, 50-06-16

TITLE 81

Tax Commissioner

SEPTEMBER 1997

CHAPTER 81-03-01.1

81-03-01.1-05. Computation of interest on an extension, a late payment, underpayment, and additional tax found due through audit or mathematical verification.

~~1.--All--interest--additions--computed--on-filing-extensions-after June-30,-1989,-will-be-charged-at-the-rate-of--twelve--percent per--annum.---Interest-additions-computed-after-June-30,-1989, on-late-payments,-underpayments,-and-additional-tax-found--due through--audit-or-mathematical-verification-will-be-charged-at the-rate-of-one-percent-per-month-or-fraction-thereof.~~

~~2.--All--interest-additions-to-liabilities-owed-to-the-state-prior to-July-1,-1989,-which-are-made-after-June-30,-1989,--will--be charged--at--the--rate--of--one--percent-per-month-or-fraction thereof.~~ Repealed effective September 1, 1997.

~~History: Effective-November-1,-1987;-amended-effective-March-1,-1990.~~
General Authority: NDCC-57-38-56
Law Implemented: NDCC-57-38-45

81-03-02.1-09. Exemptions - Separate filers. ~~Where--married persons-who-file-separate-returns-and-one-person-elects--to--file--under North--Dakota--Century-Code-section-57-38-30.3-and-the-other-person-does not,-the-person-not-electing-to-file-under-that-section--is--limited--to one--personal--exemption--plus-an-additional-exemption-if-that-person-is age-sixty-five-or-over,-and-an-additional-exemption-if--that--person--is legally-blind.--The-person-not-electing-to-file-pursuant-to-North-Dakota Century-Code-section--57-38-30.3--may--not--claim--exemptions--for--that person's--spouse--or--for--that-person's-dependents.~~ Repealed effective September 1, 1997.

History: ~~Effective-July-1,-1985.~~
General Authority: ~~NDCC-57-38-56~~
Law Implemented: ~~NDCC-57-38-01.15~~

81-03-05.1-08. Consolidated returns.

1. As used in this section:

   a. "Combined report" means a tax return on which the tax liability is computed using the method described in chapters 81-03-05.2 and 81-03-05.3.

   b. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.

   c. "Taxpayer" means a corporation liable to report income or loss to North Dakota.

2. Only taxpayers who compute their liability using the combined report method may file a consolidated return. ~~They must obtain written permission to do so from the commissioner prior to filing the return. Permission to file a consolidated return will be granted by the commissioner if the taxpayer~~ The consolidated return must contain the following information:

   a. Identifies the name and federal identification number of the corporation that will file the consolidated return.

   b. Reports the tax liabilities of all taxpayers in the combined report.

3. ~~If permission to file a consolidated return has been obtained,~~ all taxpayers in the combined group must continue to file a consolidated return until the commissioner is notified in writing of the combined group's intent to file individual returns.

4. This section is effective for all tax years beginning after December 31, 1992.

Example:	Corporation A	Corporation B	Corporation C	Combined Amounts
Facts:				
Federal taxable income	$ 500,000	$ (80,000)	$ 40,000	$ 460,000
Federal tax accrued	144,815	0	11,585	156,400
North Dakota property	150,000	0	10,000	
Total property	150,000	100,000	10,000	260,000
North Dakota payroll	60,000	0	40,000	

Total payroll	60,000	100,000	40,000	200,000
North Dakota sales	1,000,000	0	200,000	
Total sales	1,500,000	300,000	200,000	2,000,000

Computation of Apportionment Factor	Corporation A		Corporation C	
North Dakota property	$ 150,000		$ 10,000	
Combined property	260,000		260,000	
Property factor		.576923		.038462
North Dakota payroll	60,000		40,000	
Combined payroll	200,000		200,000	
Payroll factor		.300000		.200000
North Dakota sales	1,000,000		200,000	
Combined sales	2,000,000		2,000,000	
Sales factor		.500000		.100000
Sum of factors		1.376923		.338462
Apportionment factor		.458974		.112821

Computation of Tax Liability	Corporation A	Corporation C	Total Tax Due
Federal taxable income	$ 460,000	$ 460,000	
Federal tax deduction	156,400	156,400	
North Dakota apportionable income	303,600	303,600	
Apportionment factor	.458974	.112821	
North Dakota taxable income	139,345	34,252	
North Dakota tax due (1990 rates)	12,966	2,168	$ 15,134

History: Effective December 1, 1993; amended effective September 1, 1997.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-14

81-03-09-38. Special rules - Television and radio broadcasting. The following special rules are established in respect to the apportionment of income from television and radio broadcasting by a broadcaster that is taxable both in this state and in one or more other states.

1. **In general.** When a person in the business of ~~conducting television or radio broadcasts~~ broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network, including owned and affiliated stations, or through an affiliated, unaffiliated, or independent television or radio broadcasting station, has income from sources both within and without this state, the amount of business income from sources within this state must be determined pursuant to North Dakota Century Code chapter 57-38.1 and article IV of North Dakota Century Code section 57-59-01, and the regulations issued thereunder by this state, except as modified by this section. This section also applies to telecasting by cable television systems.

2. **Business and nonbusiness income.** For definitions and regulations for determining whether income must be classified as business or nonbusiness income, see sections 81-03-09-03 through 81-03-09-05.

3. **Definitions.** The following definitions are applicable to the terms contained in this section, unless, the context clearly requires otherwise:

   a. "Film" or "film programming" means any and all performances, events, or productions telecast~~, live or otherwise~~, on television, including, but not limited to, news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works, ~~in the format of a motion picture,~~ through the use of a videotape, disc, or any other type of format or medium. Each episode of a series of films produced for television constitutes a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more ~~television seasons~~ tax periods.

   b. "Outer-jurisdictional" property means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables, and the like, that are owned or rented by the taxpayer and used in the business of telecasting or broadcasting, but which are not physically located in any particular state.

c. "Radio" or "radio programming" means any and all performances, events, or productions broadcast~~,--live--or otherwise,~~ on radio, including, but not limited to, news, sporting events, plays, stories, or other literary, commercial, educational, or artistic works, ~~in-the-format~~ through the use of an audiotape, disc, or any other format or ~~other~~ medium. Each episode of a series of radio programming produced for radio broadcast constitutes a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

d. "Release ~~date~~" or "in release" means the ~~date-on-which-a film-is-placed~~ placing of film or radio programming into service. A film or radio program is placed into service when it is first ~~telecast~~ broadcast to the primary audience for which the ~~film~~ program was created. Thus, for example, a film is placed into service when it is first publicly telecast for entertainment, educational, commercial, artistic, or other purpose. Each episode of a television or radio series is placed in service when it is first ~~telecast~~ broadcast. A ~~film~~ program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for ~~telecast~~ broadcast or, merely because it is ~~telecast~~ previewed to prospective sponsors or purchasers~~,--or--is shown-in-preview-before-a-select-audience~~.

e. "Rent" includes license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

f. "Subscriber" to a television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

g. ~~"Tangible-personal-property"-used-in-the-business,-whether owned-or-rented,-includes,-but-is-not-limited--to,--camera and--sound--equipment,--sets,--props,-wardrobes,-and-other similar-equipment-or-property,-but-does-not--include--film or-radio-programming.~~

h. "Telecast" or "broadcast", (sometimes used interchangeably with respect to television), means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radiowaves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other ~~conduits~~ means of communications.

~~i.--"United--States"--includes--and--is--limited--to-the-fifty states,-the-District--of--Columbia,--the--Commonwealth--of Puerto--Rico,-and-the-possessions-and-territories-thereof.~~

4. **Apportionment of business income.** The property factor must be determined in accordance with North Dakota Century Code sections 57-38.1-10 through 57-38.1-12, subsections 10, 11, and 12 of article IV of North Dakota Century Code section 57-59-01, and sections 81-03-09-15 through 81-03-09-21. The payroll factor must be determined in accordance with North Dakota Century Code sections 57-38.1-13, 57-38.1-14, subsections 13 and 14 of article IV of North Dakota Century Code section 57-59-01, and sections 81-03-09-22 through 81-03-09-25. The sales factor must be determined in accordance with North Dakota Century Code sections 57-38.1-01, 57-38.1-15, 57-38.1-16, subsections 15 and 16 of article IV of North Dakota Century Code section 57-59-01, and sections 81-03-09-26 through 81-03-09-30, except as modified by this section.

5. **Property factor - In general.**

   a. In the case of rented studios, the net annual rental rate includes only the amount of the basic or flat rental charge by the studio for the use of a stage or other permanent equipment such as sound recording equipment and the like, except that additional equipment rented from other sources or from the studio not covered in the basic or flat rental charge and used for one week or longer, even though rented on a day-to-day basis, must be included. Lump-sum net rental payments for a period which encompasses more than a single income year must be assigned ratably over the rental period.

   b. No value or cost attributable to any <u>outer-jurisdictional</u> film or radio programming <u>property</u> may be included in the property factor at any time.

6. **Property factor denominator.**

   a. All real property and tangible personal property, other than outer-jurisdictional and film or radio programming property, whether owned or rented, which is used in the business must be included in the denominator of the property factor.

   b. Audio or video cassettes, discs, or similar medium containing film or radio programming and intended for sale or rental by the taxpayer for home viewing or listening must be included in the property factor at their original cost. To the extent that the taxpayer licenses or otherwise permits others to manufacture or distribute such cassettes, discs, or other medium containing film or radio

programming for home viewing or listening, the value of said cassettes, discs, or other medium must include the license, royalty, or other fees received by the taxpayer capitalized at a rate of eight times the gross receipts derived therefrom during the income year.

c. Outer-jurisdictional, film and radio programming property must be excluded from the denominator of the property factor.

7. **Property factor numerator.**

a. With the exception of ~~the~~ outer-jurisdictional ~~and~~, film ~~or~~ and radio programming property, all real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period must be included in the numerator of the property factor. ~~If--tangible personal-property,--other--than--outer-jurisdictional--and film--or-radio-programming-property,-is-located-or-used-in this-state-for--part--of--the--income--year,--it--must--be included--in--the--numerator--of--the-property-factor-at-a value-determined-by-applying-the-ratio-which-the-number-of days--the--property-is-located-or-used-in-this-state-bears to-the-total-number-of-days-such--property--was--owned--or rented-by-the-taxpayer-during-the-income-year.~~

b. Outer-jurisdictional, film and radio programming property must be excluded from the numerator of the property factor.

Example: XYZ Television Company has a total value of all of its property everywhere of five hundred million dollars, including a satellite valued at fifty million dollars that was used to telecast programming into this state and one hundred fifty million dollars in film property of which one million dollars' worth was located in this state the entire tax year. The total value of real and tangible personal property other than film programming property, located in this state for the entire income year was valued at two million dollars, and the moveable and mobile property described in subdivision a was determined to be of a value of four million dollars and such moveable and mobile property was used in this state for one hundred days. The total value of property to be attributed to this state would be determined as follows:

Value of property permanently in state:	$ 2,000,000
Mobile and moveable property: (100/365 x $4,000,000):	$ 1,095,600

Total value of property to be included in

the state's property factor numerator without apportionment of outer-jurisdictional and film property	$ 3,095,600
Total value of property to be used in the denominator ($500,000,000-$200,000,000)	$300,000,000
Total property factor percent ($3,095,600/$300,000,000):	.0103

8. **Payroll factor denominator.**

   a. The denominator of the payroll factor must include all compensation, including residual and profit participation payments, paid to employees during the income year, including that paid to directors, actors, newscasters, and other talent in their status as employees.

   b. ~~Amounts paid or other consideration that is provided to another person, corporation, or other business entity for providing the services of directors, actors, newscasters, and other talent for live television broadcast, film, or radio programming may be included in the payroll factor only upon a finding by the tax commissioner, supported by clear and convincing evidence that such payments or other consideration were at least twenty-five percent of the total compensation paid to employees, and failure to include such other payments or consideration would prevent the apportionment formula from fairly representing the extent of the taxpayer's business activity in this state.~~

9. **Payroll factor numerator.** Compensation for all employees ~~who are engaged on location in the production of a live television broadcast, film or radio programming, as well as any payments or other consideration for the providing of those talent services that are included in the payroll denominator pursuant to subdivision a of subsection 8,~~ must be attributed to the state or states as may be determined by the application of the provisions of North Dakota Century Code sections 57-38.1-13, 57-38.1-14, subsections 13 and 14 of article IV of North Dakota Century Code section 57-59-01, and sections 81-03-09-22 through 81-03-09-25. ~~For purposes of applying North Dakota Century Code sections 57-38.1-13, 57-38.1-14, subsections 13 and 14 of article IV of North Dakota Century Code section 57-59-01, and sections 81-03-09-22 through 81-03-09-25, the persons for whom compensation was included in the payroll denominator pursuant to subdivision b of subsection 8 must be deemed to be employees of the taxpayer.~~

10. **Sales factor denominator.** The denominator of the sales factor must include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its

trade or business, except receipts excluded under subsection 2~~,-and-section-81-03-09-34~~.

11. **Sales factor numerator.** The numerator of the sales factor must include all gross receipts of the taxpayer from sources within this state, including the following:

    a. Gross receipts, including advertising revenue, from live television, film or radio programming in release to or by television and radio stations located in this state.

    b. Gross receipts, including advertising revenue, from ~~live television,-films~~ film or radio programming in release to or by a television or radio station, independent or unaffiliated, or network of stations for broadcast must be attributed to this state in the ratio, hereafter "audience factor", that the audience for such station, or owned and affiliated stations in the case of networks, located in this state bears to the total audience for such station, or owned and affiliated stations in the case of networks, ~~within-the-United-States~~.

    c. The audience factor for television or radio programming must be determined by the ratio that the taxpayer's in-state viewing and listening audience bears to its total ~~United-States~~ viewing and listening audience. ~~In-the-case of-television,-the~~ Such audience factor must be determined either by reference to the ~~rating-statistics-as--reflected in--such-sources-as-Arbitron,-Nielsen,-or-other-comparable resources--or--by--the--average---circulation---statistics published--annually--in-the-Television-and-Cable-Factbook, "Stations--Volume"--by--Television--Digest,--Incorporated, Washington,--D.C.,--provided--that--the-source-selected-is consistently-used-from-year-to-year-for-such-purpose.---In the--case-of-radio,-the-audience-factor-must-be-determined~~ books and records of the taxpayer or by reference to published rating statistics ~~as-reflected-in-such-sources as--Arbitron,---Birch/Scarborough---Research,---or---other comparable--resources,~~ provided ~~that-the-source-selected~~ the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

    d. Gross receipts from ~~live--telecasts--and--films~~ film programming in release to or by a cable television system must be attributed to this state in the ~~audience-factor~~ ratio, hereafter "audience factor", that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system ~~in-the-United-States~~. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, ~~the~~ such audience factor ratio must be determined on the basis of the applicable year's

subscription statistics ~~published~~ located in ~~Cable-Vision, International---Thompson---Communications,---Incorporated, Denver,--Colorado,--if-available,-or,-if-not-available,-by~~ other published ~~market~~ surveys, provided that the source selected is consistently used from year to year for that purpose.

e. Receipts from the sale, rental, licensing, or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening must be included in the sales factor as provided in North Dakota Century Code section 57-38.1-16, subsection 16 of article IV of North Dakota Century Code section 57-59-01, and section 81-03-09-29.

History: Effective June 1, 1992; amended effective September 1, 1997.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38, 57-38.1, 57-59

OBJECTION

THE LEGISLATIVE COUNCIL'S COMMITTEE ON ADMINISTRATIVE RULES OBJECTS TO THE JUNE AND NOVEMBER 1992 RULE CHANGES OF THE TAX COMMISSIONER.

The committee objects to these rules because:

1. North Dakota Century Code Section 28-32-02.2 requires an agency proposing a rule to issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of $50,000.

2. The Tax Commissioner has refused to issue a regulatory analysis not because the rules will not have an impact of over $50,000 but because the Tax Commissioner maintains that the rules relate only to the administration of revenue laws and do not impact any regulated community.

3. The Committee on Administrative Rules maintains that the Tax Commissioner is subject to the regulatory analysis requirements of Chapter 28-32 and that the rules may have an economic impact on the regulated community in excess of $50,000.

4. The June and November 1992 rule changes have not been legally adopted because the regulatory analysis was not issued.

5. The absence of the regulatory analysis made it impossible for the committee to properly review the rules.

Section 28-32-03.3 provides that after the filing of a committee objection, the burden of persuasion is upon the agency in any action for judicial review or for enforcement of the rule to establish that the

whole or portion thereof objected to is within the procedural and substantive authority delegated to the agency. If the agency fails to meet its burden of persuasion, the court shall declare the whole or portion of the rule objected to invalid and judgment shall be rendered against the agency for court costs.

History: Effective November 4, 1992.
General Authority: NDCC 28-32-03.3

CHAPTER 81-04.1-04

81-04.1-04-14. Automobiles - Tire and tube repairing. ~~The sale of tires which have been retreaded is subject to sales tax. Retreading is a nontaxable service only when the customer brings in the customer's own tire casings and these same casings are actually retreaded and returned to the customer.~~ Repealed effective September 1, 1997.

History: ~~Effective June 1, 1984.~~
General Authority: ~~NDCC 57-39.2-19~~
Law Implemented: ~~NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-14, 57-39.2-20~~

81-04.1-04-20. Contractors. A contractor or subcontractor installing materials into real property located in North Dakota must pay sales or use tax on those materials regardless of who owns them. If the materials are sold for installation into real property located outside of this state, sales or use tax must be paid if such sales would be subject to tax in the state of attachment. For example, delivery of ~~possession of~~ tangible personal property within this state to a South Dakota contractor for installation in South Dakota is subject to tax because the delivery of ~~possession~~ tangible personal property to a North Dakota contractor in South Dakota would be subject to tax there. This also applies to a contractor or subcontractor engaged in retail sales who removes all or part of the machinery, equipment, material, or supplies used in carrying out a contract from stock purchased for resale.

A contractor or subcontractor is subject to sales tax on the cost of any items incorporated into or used in assembling articles used or consumed in carrying out a construction contract.

~~A contractor not engaged in retail sales who purchases carpeting, drapery, or drapery hardware and installs them into a home is required to pay tax on the selling price or to offer the seller a contractor's certificate of resale.~~

A business which holds a contractor's license issued by the North Dakota secretary of state may not contract with itself to install material into real property. A contractor or subcontractor who

purchases or takes possession of construction material in North Dakota for its own use in another state must pay North Dakota sales or use tax on the goods.

For purposes of this rule, the terms "contractor" and "subcontractor" have the meaning ascribed to the term "contractor" in subsection 3 of North Dakota Century Code section 43-07-01. This rule applies to any person thus defined as a "contractor", regardless of whether the person is licensed under North Dakota Century Code chapter 43-07.

History: Effective June 1, 1984; amended effective March 1, 1990; September 1, 1997.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-40.2-03.3

CHPATER 81-09-02

81-09-02-01. Definitions. As used in this chapter and for the administration of North Dakota Century Code chapter 57-51, unless the context otherwise requires:

1. "Casinghead gas" means gas as produced from a well classified as an oil well by the industrial commission.

2. "Commissioner" means the tax commissioner of the state of North Dakota.

3. "Gross value at the well" means fair market value at the time of production.

4. "Natural gas" means gas as produced from a well classified as a gas well by the industrial commission.

5. "Nonoperating interest" means an interest in production from a mineral property which does not share in operating rights. A nonoperating interest includes an overriding royalty interest, a net profit interest, and a carried interest.

6. "Oil" means petroleum, crude oil (including condensate), mineral oil, and casinghead gasoline.

7. "Operator" means the person responsible for the actual physical operation of the producing property.

8. "Person" means an individual, partnership, corporation, association, fiduciary, trustee, and any combination thereof.

9. "Producer" means the owner of a working interest or a nonoperating interest, in a well capable of producing oil or gas, or both.

10. "Purchaser" means any buyer of oil or gas after it has been produced, or any processor of gas. Purchaser does not include one who acquires oil or gas in place in the earth through a lease, estate, or other interest.

11. "Return" means any statement, report, or return required by North Dakota Century Code chapter 57-51 to be filed with the commissioner. To constitute a timely filed original or amended return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return and determine the correct tax due. In the case of an information return, a return must be filed on or before the due date and must contain sufficient information by which the commissioner can process the return

and determine the correct oil and gas volumes to be reported and, where applicable, the gross value of oil produced.

12. "Take-in-kind" means a nonoperator elects to receive production in lieu of proceeds from the sale of production.

13. "Tax" means the oil and gas gross production tax.

14. "Taxpayer" means any person that is responsible for filing a report or paying the tax.

15. "Trunkline" means a pipeline for the transportation of oil or gas from producing areas to refineries or terminals.

16. "Working interest" means a mineral interest which includes the rights granted to a lessee of property to explore for, produce and own, oil or gas.

History: Effective July 1, 1982; amended effective August 1, 1986; July 1, 1989; June 1, 1992; April 1, 1995; September 1, 1997.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51

81-09-02-11. Tax reimbursement. Tax--reimbursement-to-which-a producer-is-entitled-in-settlement-for-gas-sold-must--be--included--when determining-gross-value-at-the-well.--The-producer-may-calculate-the-tax reimbursement-as-follows:

Tax-reimbursement--=-0.052632-x-residue-value-of-gas.

Where--a--producer-claims-an-exempt-royalty,-the-above-formula-may be-modified-as-follows:

Tax---reimbursement---=--0.052632--x--[residue--value-----(royalty percentage-x-residue-value)].

This--rule--is--only--effective-for-periods-prior-to-July-1,-1991. Repealed effective September 1, 1997.

History: Effective-August-1,-1986;-amended-effective-June-1,-1992.
General Authority: NDCC-57-51-21
Law Implemented: NDCC-57-51-02

81-09-02-12. Postproduction costs for periods prior to July 1, 1991. When-reporting-the-price-of-oil-or-gas-on-forms-prescribed-by-the commissioner,--postproduction--costs--incurred--by--the--producer-may-be deducted-from-the-price-paid-at-the-point-of-sale.--These-postproduction costs--include-expenditures-made-to-transport,-by-pipeline-or-truck,-oil or-gas-from-the-point-of-production-to-the-place-of-sale.

~~Nothing--in-this-rule-may-be-construed-to-limit-the-commissioner's authority-pursuant-to-subsection-4-of-North-Dakota-Century-Code--section 57-51-05--(repealed--by--the--1991--North-Dakota-Session-Laws)-and-North Dakota-Century-Code-section-57-51-09.~~

~~This--rule--is--only--effective-for-periods-prior-to-July-1,-1991.~~ Repealed effective September 1, 1997.

History: ~~Effective-August-1,-1986;-amended-effective-June-1,-1992.~~
General Authority: ~~NDCC-57-51-21~~
Law Implemented: ~~NDCC-57-51-02,-57-51-06~~

81-09-02-14. Taxation of volume gains.

1. ~~For--purposes--of--this-section,-the-term-"purchaser"-includes any-transporter-of-oil.~~

2. An oil purchaser that ~~benefits-from~~ has realized a volume gain ~~which-results~~ resulting from differing measurements of the oil, must report and pay tax on the volume gain. An oil purchaser,-~~however,~~ that ~~is--detrimentally--affected--by~~ has incurred a volume loss ~~which-results~~ resulting from differing measurements of the oil, may ~~carry-forward~~ utilize the volume loss to offset a volume gain in subsequent periods. as follows:

   a. For a volume loss carried forward after December 31, 1996, an oil purchaser may utilize the loss to offset a gain at any trunkline measurement point. A volume loss carried forward after December 31, 1996, must be utilized on a first in-first out basis before January 1, 2000.

   b. For a volume loss which is incurred after December 31, 1996, an oil purchaser may utilize the loss to offset a gain at another trunkline measuring point. A volume loss which is incurred after December 31, 1996, may be carried forward for three years after the due date of the return for the production month in which the loss was incurred.

2. The amount of volume gain and volume loss must be calculated for each month and reported. The amount of volume gain must be reported on the oil return in the month succeeding production.

3. A volume gain or volume loss is calculated ~~in-the-following manner:~~

   ~~a.--For--a--purchaser--who--is--not--a--transporter-of-oil,~~ by subtracting the total amount of oil received by the purchaser as measured at the well from the total amount of oil delivered by the purchaser as measured at the trunkline. If this calculation results in a positive

number, there is a volume gain. If this calculation results in a negative number, there is a volume loss. A volume gain or loss may be adjusted for a volume gain or loss attributable to production outside North Dakota.

~~b.--For---a---purchaser--who--is--a--transporter--of--oil,--by subtracting-the--total--amount--of--oil--received--by--the transporter--as--measured--at-the-well-or-at-the-trunkline from-the-total-amount-of-oil-delivered-by-the--transporter as--measured--at--a-subsequent-point.--If-this-calculation results-in-a-positive-number,-there-is-a-volume-gain.---If this--calculation-results-in-a-negative-number,-there-is-a volume-loss.~~

~~c.--For--the--purposes--of-calculating-a-volume-gain-or-volume loss-under--this--subsection,--a--volume--gain--cannot--be decreased--and--a--volume--loss-cannot-be-increased-by-oil lost-due-to-spillage,-leakage,-fire,-theft,-or--any--other event-resulting-in-a-physical-loss-of-oil.~~

4. ~~The--amount--of-volume-gain-and-volume-loss-must-be-calculated on-a-monthly-basis.--A-monthly-volume--gain--or--loss--may--be adjusted--for-a-volume-gain-or-loss-attributable-to-production outside-North-Dakota.~~ A volume gain cannot be decreased and a volume loss cannot be increased by oil lost due to spillage, leakage, fire, theft, or any other event resulting in a physical loss of oil.

~~5.--Purchasers-must-file-an-annual-report,-on-a-form-prescribed-by the-commissioner,-showing-monthly-volume-gains-and-losses--for the--calendar--year.---The--annual-report-must-be-filed-by-the twenty-fifth-day-of-February-following-the-end-of-the-calendar year.~~

History: Effective June 1, 1992; amended effective September 1, 1997.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-02, 57-51-05, 57-51-06

81-09-02-14.1. Taxation of oil pipeline volume gains.

1. Each operator of an oil pipeline in North Dakota must file a report with the tax commissioner showing its volume gains and volume losses for the calendar year. The report may be filed in the form of the pipeline's "over and short" report compiled during the ordinary course of its business. The annual report must be filed by the twenty-fifth day of February following the end of the calendar year.

2. The volume gains and losses must be calculated on a monthly basis by subtracting the total amount of oil received by the pipeline as measured at the well or at the trunkline from the total amount of oil delivered by the pipeline as measured at a

subsequent point. If this calculation results in a positive number, there is a volume gain. If this calculation results in a negative number, there is a volume loss.

3. For purposes of calculating a volume gain or volume loss under this section, a volume gain cannot be decreased and a volume loss cannot be increased by oil lost due to spillage, leakage, fire, theft, or any other event resulting in a physical loss of oil.

History: Effective September 1, 1997.
General Authority: NDCC 57-51-21
Law Implemented: NDCC 57-51-02, 57-51-05, 57-51-06

81-09-03-03. Determination of a property - Operator's election to designate individual wells as separate properties. A--property,--for purposes--of-exemption-of-stripper-well-property-from-the-oil-extraction tax,-is-governed-by-the-following:

1.--A--unit,-whether-created-before,-on,-or-after-January-1,-1972, constitutes-a-separate-property.

2.--A--lease-or-fee-interest-subdivision-created-before-January-1, 1972,-constitutes-a-separate-property--if--production--of--oil occurred-in-commercial-quantities-before-January-1,-1972.

3.--A-lease-or-fee-interest-subdivision-created-after-December-31, 1971,-does-not-constitute-a-separate-property-if-production-of oil--occurred-in-commercial-quantities-before-January-1,-1972.

To--receive--a--determination--from--the-tax-commissioner-that-the property-an-operator-desires-to--have--classified--as--a--stripper--well property--constitutes--a--property-as-specified-in-subsection-4-of-North Dakota-Century-Code-section-57-51.1-01,-the-operator-must-file,-on-forms prescribed---by--the--tax--commissioner,--an--application--for--property determination.--Upon-receipt-of-the-completed-application-form,-the--tax commissioner--will--determine--whether--the-unit,-lease,-or-fee-interest subdivision-constitutes-a-property-within-the-meaning-of-subsection-4-of North-Dakota-Century-Code-section-57-51.1-01.--The-tax-commissioner-will notify-the-operator--of--the--tax--commissioner's--determination--within thirty-days-of-receipt-of-a-completed-application-form.--If-the-operator objects-to-the-tax-commissioner's-determination,-the-operator-may--apply for-a-redetermination.--The-application-for-a-redetermination-must-state the-reasons-for-the-objection.--Within-fifteen-days-of--the--receipt--of the--objection,--the--tax--commissioner-shall-notify-the-operator-of-any change-in-the-property-determination.

An--operator--may--elect--at-any-time-to-treat-each-and-every-well located-on-the-property-determined-above--as--a--separate--property--for stripper--well-purposes.--An-operator's-election-to-designate-individual wells-as-separate-properties-is-effective-upon--proper--notification--to the--tax--commissioner--pursuant--to-section-81-09-03-04.--The-election, once-exercised,-is-irrevocable.

This--rule--is-only-effective-for-periods-prior-to-April-27,-1987.
Repealed effective September 1, 1997.

History: Effective-August-1,-1986;-amended-effective-October-1,-1987.
General Authority: NDCC-57-51-21,-57-51.1-05
Law Implemented: NDCC-57-51.1-01(3)(4)(5)(8),-57-51.1-03(2)

81-09-03-04. Designation of a property on an individual well basis - Notification by operator. An operator who elects to designate as a separate property each and every well located on a property determined in section 81-09-03-03 shall notify the tax commissioner. The notice must be submitted upon forms prescribed by the tax commissioner. The tax commissioner will review the notice to guarantee that the election is not in conflict with previous actions concerning that property. Provided the election is consistent with previous actions, within thirty days of receiving the notice, the tax commissioner shall provide the operator with a statement of separate property designation.

The origination date for a well receiving a separate property designation is the first day of the month following notification to the tax commissioner by the operator. Any consecutive twelve-month period after December 31, 1972, must be considered in determining whether a designated separate property qualifies for certification as a stripper well property. The exemption from the oil extraction tax for a designated separate property which is certified as a stripper well property is effective as of the origination date.

This rule is only effective for periods prior to April 27, 1987. Repealed effective September 1, 1997.

History: Effective August 1, 1986; amended effective October 1, 1987.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-01(4)(8), 57-51.1-03(2)