# NORTH DAKOTA ADMINISTRATIVE CODE

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# TITLE 13

# Banking and Financial Institutions, Department of

**AUGUST 1998**

## CHAPTER 13-03-02

**13-03-02-01. Aggregate limited to percent of paid-in shares and deposits - Type of lien.** ~~No credit union organized and operating under the laws of North Dakota, except the North Dakota central credit union, Bismarck, North Dakota, which is specifically exempted from the provisions of this section, shall make, purchase, own, or carry within its assets at any one time loans secured by mortgage liens on real property in an aggregate sum in excess of an amount equal to thirty percent of the assets of such credit union. Upon application in writing by a credit union, the state credit union board may authorize that credit union to exceed the thirty percent limitation.~~ Repealed effective August 1, 1998.

**History:** ~~Amended effective May 1, 1981; November 1, 1985.~~
**General Authority:** NDCC 6-01-04
**Law Implemented:** NDCC 6-06-06

**13-03-02-02. Requirements for advancement of money on security of real property.** No state-chartered credit union, except corporate central credit union, may advance money on security of real property until the following requirements are met:

1. The mortgage, ~~signed by the record owner and spouse, or by the authorized corporate officer or authorized partner,~~ has been properly signed and recorded in the office of the register of deeds of the county where the real property is located.

2. For mortgage loans greater than ~~ten~~ twenty thousand dollars ~~or fifteen percent of the credit union's equity,~~ a written opinion by an attorney is obtained certifying that the

mortgagor is the owner of the real property in fee simple, and indicating the order of priority of the lien established by the mortgage. For junior mortgage loans twenty thousand dollars or less, title review may be accomplished by either a written opinion by an attorney; a credit union official's written review of the public lien, mortgage, and tax lien filings; or a documented verbal opinion by an attorney supported by a title insurance company's written title search.

3. In lieu of a written opinion required in subsection 2, a title insurance policy equal to at least the original amount of the mortgage will be satisfactory. The policy must name the credit union as the insured.

4. A written appraisal has been obtained ~~conducted by a certified or licensed appraiser as required by the Federal Financial Reform, Recovery and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.], or an appraisal by the credit union on real estate loans in excess of ten thousand dollars or fifteen percent of the credit union's equity. The appraiser shall appraise the land and structures separately, and the appraisal must be made by the credit committee or a designated appraiser who shall appraise the real property and structures at their actual cash value. However, no relative of a borrower or applicant may act in making the appraisal. In such case, it shall be the duty of the board of directors of the credit union considering the loan to appoint another member of the credit union to serve on the credit committee~~ on all real estate loans. For real estate loans twenty thousand dollars or less, the county's annual tax statement is acceptable as a substitute for the written appraisal. For real estate loans more than twenty thousand dollars, a written appraisal by the credit union's designated appraiser or credit committee is acceptable. The credit union's designated appraiser must be independent of the transaction. If a credit committee is used instead of a designated appraiser, all members of the credit committee must be independent of the transaction. If the designated appraiser or credit committee member is not independent of the transaction, the credit union's board of directors must appoint someone else to replace the designated appraiser or credit committee member. In the written appraisal, the land and structures must be separately appraised based on their actual cash value. The written appraisal must be filed with the loan ~~papers~~ documents. However, this subsection does not apply to real estate loans subject to title 12, Code of Federal Regulations, part 722, promulgated by the national credit union administration board. For these loans, the credit union must comply with the federal requirements for transactions requiring a state-certified or licensed appraiser.

5. Adequate fire and tornado insurance has been obtained with a mortgage clause for the benefit of the credit union in an amount equal to the amount of the outstanding liens.

6. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.

7. An abstract of title of the real property for first real estate mortgages must be furnished to the credit union, at the expense of the borrower, unless an abstract of title is not prepared and, in that case, a title insurance policy is required. Within ninety days after the advancement of funds, the abstract of title, if prepared, must be updated to include the mortgage. After one year from the date of the first real estate mortgage, the credit union may return the abstract to the mortgagor.

**History:** Amended effective May 1, 1982; November 1, 1985; October 1, 1994; August 1, 1998.
**General Authority:** NDCC 6-01-04
**Law Implemented:** NDCC 6-06-06

**13-03-02-06. Exemption from restrictive provisions.** The limitations set out in sections ~~13-03-02-01~~, 13-03-02-02, and 13-03-02-03 shall not apply to any federally guaranteed loan, however, such loans must conform to all federal requirements for the making of the guaranteed loan.

**History:** Effective June 1, 1979; amended effective June 1, 1983; November 1, 1985; August 1, 1998.
**General Authority:** NDCC 6-01-04
**Law Implemented:** NDCC 6-06-06

# TITLE 14

## Barber Examiners, Board of

**AUGUST 1998**

**STAFF COMMENT:** Chapter 14-03-03 contains all new material and is not underscored so as to improve readability.

## CHAPTER 14-03-03
## CONTINUING EDUCATION



14-03-03-01. Continuing education requirements.

1. All barbers licensed to practice barbering in North Dakota must complete a minimum of six hours of continuing education every two years.

2. "Continuing education" means:

   a. Seminars or workshops conducted by barber and cosmetology supply dealers or barbers licensed in this state, if an affidavit is signed by the person conducting the seminar or workshop indicating that the barber has attended the seminar or workshop. Any seminar or workshop conducted by a barber licensed in this state must be preapproved by the board.

   b. Registration and attendance at the board's annual state barber convention.

   c. Correspondence courses by video, if accompanied by a worksheet to be filled out and returned to the board.

d. Any other education that relates to or increases competence in the practice of barbering, if approved by the board.

3. This section does not apply, and continuing education is not required, under the following circumstances:

   a. A barber whose license has not been revoked or suspended may request inactive license status. While on inactive status, the barber may not engage in the practice of barbering for more than twenty days per calendar year. If inactive status is approved, the barber must continue to submit an annual renewal application and pay the annual license fee, but is not subject to the continuing education requirements in this section. Before approval will be given by the board to return to active status, a barber must complete at least three hours of continuing education if on inactive status for less than two years, or at least six hours of continuing education if on inactive status for two years or more.

   b. The continuing education requirement in this section may be waived by the board upon request of a barber for reasons of health, military service, or other good cause if adequate proof is provided to the board.

**History:** Effective August 1, 1998.
**General Authority:** NDCC 43-04-11, 43-04-30.1
**Law Implemented:** NDCC 43-04-30.1

# TITLE 20

# Dental Examiners, Board of

**AUGUST 1998**

## CHAPTER 20-01-02

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

1. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.

2. "Board certified" means the dentist has been certified in a specialty area where there is a certifying body approved by the commission on dental accreditation of the American dental association.

3. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice where there is a certifying body approved by the commission on dental accreditation of the American dental association.

4. "Certified dental assistant" means a dental assistant who has satisfactorily completed the educational requirements specified by the commission on dental accreditation of the American dental association for dental assistants or has two

years of full-time work experience, and who has passed the dental assisting national board certification examination for dental assistants.

5. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

6. "Conscious sedation" means a drug-induced state in which the patient is calmed and relaxed, capable of making rational responses to commands and has all protective reflexes intact, including the ability to clear and maintain ~~his~~ the patient's own airway in a patent state, but does not include nitrous oxide sedation.

7. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.

8. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.

9. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota state board of dental examiners.

10. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.

11. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

12. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.

13. "General anesthesia" means a controlled state of unconciousness produced by pharmacologic or nonpharmacologic methods, or a combination thereof, accompanied by a partial or complete loss of protective reflexes including an inability to independently maintain an airway and to respond purposefully to physical stimulation or verbal commands.

14. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.

15. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.

16. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.

17. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.

18. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

19. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.

20. "Primary practice site" means the office location that is to be considered the main location of the dental practice. This office location would be listed first on the annual registration.

21. "Qualified dental assistant" means a dental assistant who has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week, has completed the dental assisting national board (DANB) infection control seminar and passed the x-ray and infection control portions of the DANB exam, and has applied to the board and paid the certificate fee determined by the board.

22. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has completed two years of full-time work experience as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota state board of dental examiners.

~~22.~~ 23. "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on ~~his~~ the dentist's annual registration certificate.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-28-06
**Law Implemented:** NDCC 43-20-02, 43-20-12, 43-28-06

## CHAPTER 20-02-01

**20-02-01-02. Office emergency.** Every dentist, dental hygienist, qualified dental assistant, or registered dental assistant practicing in North Dakota must have a current certificate of proficiency in cardiopulmonary resuscitation.

**History:** Effective February 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-28-06
**Law Implemented:** NDCC 43-28-06

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

1. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in actual teaching sessions. Subject matter directly related to clinical dentistry will be accepted by the board without limit. Limits are established for nonclinical subjects and home study courses.

2. The minimum number of hours required within a five-year cycle for dentists is eighty. Of these hours, a dentist may earn no more than fifteen hours in nonclinical subjects relating to the dental profession and no more than twenty-six hours through home study courses.

3. The minimum number of hours required within a five-year cycle for dental hygienists is forty. Of these hours, a dental hygienist may earn no more than eight hours in nonclinical subjects relating to the dental profession and no more than thirteen hours through home study courses.

4. The minimum number of hours for a registered dental assistant and a qualified dental assistant is eight hours annually. Of these hours, a registered dental assistant or qualified dental assistant may earn no more than four hours in nonclinical subjects relating to the dental profession and no more than three hours through home study courses.

5. ~~Of these hours, a dentist may earn no more than fifteen hours, a dental hygienist may earn no more than eight hours, and a registered dental assistant may earn no more than four hours in nonclinical subjects relating to the dental profession.~~

6. Nonclinical subjects relating to the dental profession are those which cover skills relating to dental services in general which are not related to, but are nevertheless supportive of, the provision of clinical dental services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.

7. 6. Examples of nonclinical subjects that will not be creditable to the continuing education requirement are those that deal with estate planning, financial planning, marketing, investments, and personal health.

8. 7. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable towards the continuing dental education requirement.

9. 8. The infection control continuing education requirement for dentists, dental hygienists, and registered dental assistants, and qualified dental assistants practicing in North Dakota is two hours ~~annually~~ biennially and is a requirement for renewal of the annual certificate of registration. This training may be accomplished in an office setting or at a sponsored course.

**History:** Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-28-06
**Law Implemented:** NDCC 43-20-12.1, 43-28-06, 43-28-12.2

## CHAPTER 20-03-01

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

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

16. Monitor a patient who has been inducted by a dentist into nitrous-oxide relative analgesia.

17. Place and remove periodontal dressings.

18. Place orthodontic elastic-type separators.

19. Remove ligature wires or elastic ties, or both.

20. Remove arch wires.

21. Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.

22. Perform nonsurgical clinical and laboratory oral diagnosis tests for interpretation by the dentist.

~~22.~~ 23. Polish the coronal surfaces of the teeth with a rubber cup or brush only after necessary scaling by a hygienist or dentist.

~~23.~~ 24. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

~~24.~~ 25. Take impressions for passive posttreatment orthodontic retainers which do not replace missing teeth. Dental assistants may take impressions for athletic mouth guards or rapid palatal expanders, or both.

~~25.~~ 26. Apply desensitizing solutions to the external surfaces of the teeth.

~~26.~~ 27. Place and remove matrix bands.

~~27.~~ 28. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the teeth.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-20-10
**Law Implemented:** NDCC 43-20-12

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

1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through 27 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before

expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.

2. A certificate of registration ~~will~~ may be issued by the board to a dental assistant when:

   a. The dental assistant has applied to the board and paid the registration fee determined by the board, and;

   b. The dental assistant possesses one of the following professional qualifications:

      (1) The dental assistant is currently dental assistant certified by the dental assisting national board;

      (2) The dental assistant has completed a course in dental assisting from a school of dental assisting accredited by the commission on dental accreditation of the American dental association; or

      (3) The dental assistant has completed a course in dental assisting which is approved by the North Dakota board of dental examiners.

3. Every registered dental assistant performing expanded duties shall provide the board a current business mailing address. A registered dental assistant may not practice in this state for more than thirty days after a change of business address without providing the board with written notice of the new address by first-class mail.

4. Each year registered dental assistants performing expanded duties shall submit to the board with the annual registration evidence of attendance or participation in continuing dental education acceptable to the board. To remain in good standing, a registered dental assistant performing expanded duties must complete at least eight hours of continuing education each year. The board shall suspend the registration of any person who fails to comply with this section.

5. A certificate of qualification to take dental radiographs (allows subsections 1 through 7 in 20-03-01-01) may be issued by the board to a dental assistant when:

a. The dental assistant has applied to the board and paid the certificate fee determined by the board.

b. The dental assistant has been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week.

c. The dental assistant has completed the dental assisting national board (DANB) infection control seminar and passed the x-ray and infection control portions of the DANB exam.

6. A dental assistant who is not registered or qualified may, at the direction of a licensed dentist, perform only basic dental assisting services listed in subsections 1 through 6 of section 20-03-01-01.

~~6.--The---provisions--requiring--registration--contained--in--this section-do-not-apply-to-dental-assistants-who-are-employed--on a-part-time-basis-and-who-are-qualified-as-required-by-section 20-03-01-03.--Part-time-employment-is-defined-as-working--less than--twenty-six--hours--per-week-or-a-period-of-employment-of less-than-ninety-days.~~

7. Current certification in cardiopulmonary resuscitation shall be required for registration of all dental assistants.

**History:** Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-28-06
**Law Implemented:** NDCC 43-28-06

## CHAPTER 20-04-01

**20-04-01-01. Duties.** A dental hygienist may perform the following services under the general, direct, indirect, or modified general supervision of a dentist.

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

18. Place and remove periodontal dressings.

19. Place orthodontic elastic-type separators.

20. Remove ligature wires or elastic ties, or both.

21. Remove arch wires.

22. Cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment, under general supervision.

23. Perform nonsurgical clinical and laboratory oral diagnostic tests for interpretation by the dentist.

~~23.~~ 24. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

~~24.~~ 25. Apply etching solutions to teeth and etch enamel and place pit and fissure sealants.

~~25.--A-dentist-or-program-manager,-supervising-federal-sponsored-or state-sponsored-public-health--dental--hygiene--programs,--may petition--the--state--board-of-dental-examiners-for-a-specific exemption-to-the-requirement-for--four-handed--application--of pit-and-fissure-sealants-by-dental-hygienists.~~

26. Take impressions for passivepost treatment orthodontic retainers which do not replace missing teeth. Dental hygienists may take impressions for athletic mouth guards or rapid palatal expanders, or both.

27. Apply desensitizing solutions to the external surfaces of the teeth.

28. Place and remove matrix bands.

29. Provide oral hygiene treatment planning.

**History:** Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-20-10
**Law Implemented:** NDCC 43-20-03

## CHAPTER 20-05-01

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

1. The nonrefundable fee to process an application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is two hundred dollars for a dentist and fifty-five dollars for a dental hygienist.

2. The nonrefundable fee to process an application for a license by a review of the applicant's professional credentials without additional clinical examination is four hundred fifty dollars for a dentist and one hundred sixty-five dollars for a dental hygienist.

3. The nonrefundable fee to process an application for a temporary license to practice dentistry is one hundred sixty dollars.

4. The certificate of registration annual renewal fee is ~~ninety~~ one hundred ten dollars for a dentist and ~~forty-five~~ fifty-five dollars for a dental hygienist. The fee for annual registration for registered or qualified dental assistants is thirty-five dollars.

5. ~~The~~ In addition to the fee for renewal, the penalty for late renewal of annual certificate of registration is ~~fifty~~ one hundred ten dollars for dentists ~~and~~, fifty-five dollars for dental hygienists, and thirty-five dollars for dental assistants ~~in-addition-to-the-fee-specified-above-for-renewal~~.

6. The fee to replace or provide a duplicate copy of a dental or dental hygiene license is ~~twenty-five~~ forty-five dollars.

7. The fee to reactivate a retired dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars. Maximum number of years will be five (maximum fee five hundred fifty dollars for dentists; three hundred twenty-five dollars for hygienists).

8. ~~The---fee---for--annual--registration--for--registered--dental assistants-is-twenty-five-dollars.~~

9. The nonrefundable fee to process an application by a Moorhead, Minnesota, dentist for a restricted dental license to treat emergency dental patients at Dakota Hospital in Fargo, North Dakota, is one hundred dollars.

~~10.~~ 9. The annual registration fee for renewal of a restricted dental license to treat emergency dental patients at Dakota Hospital in Fargo, North Dakota, is fifty dollars.

~~11.~~ 10. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be at a rate similar to compensation paid board members for services rendered to the state of North Dakota.

~~12.~~ 11. The fee for initial application and annual renewal of a permit to use general anesthesia or conscious sedation is fifty dollars.

**History:** Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998.
**General Authority:** NDCC 43-28-06
**Law Implemented:** NDCC 43-28-27

# TITLE 33

## State Department of Health

**SEPTEMBER 1998**

**CHAPTER 33-15-01**

**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. <u>"Coal conversion facility" means any of the following:</u>

   <u>a. An electrical generating plant, and all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a generator nameplate capacity of twenty-five megawatts or more.</u>

   <u>b. A plant, and all additions thereto, which processes or converts coal from its natural form into a form</u>

substantially different in chemical or physical properties, including coal gasification, coal liquefaction, and the manufacture of fertilizer and other products and which uses or is designed to use over five hundred thousand tons of coal per year.

c. A coal beneficiation plant, and all additions thereto, which improve the physical, environmental, or combustion qualities of coal and are built in conjunction with a facility defined in subdivision a or b.

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

~~7.~~ 8. "Department" means the North Dakota state department of health.

~~8.~~ 9. "Emission" means a release of air contaminants into the ambient air.

~~9.~~ 10. "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 alteration, rebuilding, or repair results in the emission of an additional or greater amount of air contaminants.

~~10.~~ 11. "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.~~ 12. "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.~~ 13. "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.~~ 14. "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.~~ 15. "Hazardous waste" has the same meaning as given by chapter 33-24-02.

~~15.~~ 16. "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.~~ 17. "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.~~ 18. "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.~~ 19. "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.~~ 20. "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.~~ 21. "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.~~ 22. "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.~~ 23. "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.~~ 24. "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.~~ 25. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

~~25.~~ 26. "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.~~ 27. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred micrometers.

~~27.~~ 28. "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air.

~~28.~~ 29. "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.~~ 30. "Pesticide" includes ~~(a)-any~~:

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~~

b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and ~~(c)-any~~

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.

31. "Petroleum refinery" means an installation that is engaged in producing gasoline, kerosene, distillate fuel oils, residual

fuel oils, lubricants, or other products through distillation of petroleum, or through the redistillation, cracking, or reforming of unfinished petroleum derivatives.

~~30.~~ 32. "$PM_{10}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

~~31.~~ 33. "$PM_{10}$ 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.~~ 34. "Premises" means any property, piece of land or real estate, or building.

~~33.~~ 35. "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.~~ 36. "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.~~ 37. "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.~~ 38. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.

~~37.~~ 39. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.

~~38.~~ 40. "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.~~ 41. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

~~40.~~ 42. "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.~~ 43. "Source" means any property, real or personal, or person contributing to air pollution.

~~42.~~ 44. "Source operation" means the last operation preceding emission which operation ~~(a) results~~:

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~~

b. Is not an air pollution abatement operation.

~~43.~~ 45. "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.~~ 46. "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.~~ 47. "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].

48. "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.

~~47.~~ 49. "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.~~ 50. "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.~~ 51. "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); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca);

1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3 -heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); methylacetate; 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.~~ 52. "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; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

## CHAPTER 33-15-02

### 33-15-02-04. Ambient air quality standards.

1. **Particulates and gases.** ~~The~~ Except as provided in section 33-15-02-07, the standards of ambient air quality listed in table 1 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.

2. **Radioactive substances.** The ambient air shall not contain any radioactive substances exceeding the concentrations specified in article 33-10.

3. **Other air contaminants.** The ambient air shall not contain air contaminants in concentrations that would be injurious to human health or well-being or unreasonably interfere with the enjoyment of property or that would injure plant or animal life. The department may establish, on a case-by-case basis, specific limits of concentration for these contaminants.

**History:** Amended effective October 1, 1987; January 1, 1989; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

### 33-15-02-07. Concentrations of air contaminants in the ambient air restricted.

1. ~~No~~ Except as provided in subsections 3 and 4, no person may cause or permit the emission of contaminants to the ambient air from any source in such a manner and amount that ~~exceeds, at any place beyond the premises on which the source is located,~~ causes or contributes to a violation in the ambient air of those standards stated in section 33-15-02-04.

2. Nothing in any other part or section of this article may in any manner be construed as authorizing or legalizing the emission of air contaminants in such manner as prohibited in ~~subsection~~ subsections 1, 3, and 4.

3. No person may cause or permit the emission of sulfur oxides (sulfur dioxide) to the ambient air from any coal conversion facility or petroleum refinery in such a manner or amount that causes or contributes to a violation in the ambient air of the national ambient air quality standards for sulfur oxides (sulfur dioxide) in title 40, Code of Federal Regulations, part 50, sections 4 and 5. The national ambient air quality

standards for sulfur oxides (sulfur dioxide) are summarized in table 2.

Sources subject to this subsection must also comply with the prevention of significant deterioration increments in chapter 33-15-15.

4. In the case of malfunctions and maintenance shutdowns of an installation as specified in section 33-15-01-13, the department may permit the one-hour and twenty-four-hour sulfur dioxide ambient air quality standards of table 1 to be exceeded provided it has been demonstrated that the three-hour and twenty-four-hour national sulfur dioxide air quality standards will not be exceeded and all reasonable measures will be taken to minimize the quantity of emissions and the length of the malfunction or shutdown period.

**History:** Amended effective October 1, 1987; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

**Table 1. AMBIENT AIR QUALITY STANDARDS**

| Air Contaminants | Standards (Maximum Permissible Concentrations) | |
|---|---|---|
| Particulates Inhalable Particulate ($PM_{10}$) | 50 | micrograms per cubic meter of air, expected annual arithmetic mean |
| | 150 | micrograms per cubic meter of air, maximum 24-hour average concentration with no more than one expected exceedance per year |
| Sulfur Dioxide | 0.023 | parts per million (60 micrograms per cubic meter of air), maximum annual arithmetic mean concentration |
| | 0.099 | parts per million (260 micrograms per cubic meter of air), maximum 24-hour average concentration |
| | 0.273 | parts per million (715 micrograms per cubic meter of air), maximum 1-hour average concentration |
| Hydrogen Sulfide | 10.0 | parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded |
| | 0.20 | parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month |
| | 0.10 | parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year |
| | 0.02 | parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months |
| Carbon Monoxide | 9 | parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year |
| | 35 | parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year |
| Ozone | 0.12 | parts per million (235 micrograms per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year |

| | | |
|---|---|---|
| Nitrogen Dioxide | 0.053 | parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean |
| Lead | 1.5 | micrograms per cubic meter of air, maximum arithmetic mean averaged over a calendar quarter |

**History:** Amended effective December 1, 1994.

~~Table 2.--METHODS OF AIR CONTAMINANT MEASUREMENT~~

~~[Repealed effective October 1, 1987]~~

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

| Air Contaminant | Standards (Maximum Permissible Concentrations) | |
|---|---|---|
| Sulfur oxides (sulfur dioxide) | 0.030 | parts per million (80 micrograms per cubic meter of air) maximum annual arithmetic mean concentration, not to be exceeded in a calendar year |
| | 0.14 | parts per million (365 micrograms per cubic meter of air) maximum 24-hour concentration, not to be exceeded more than once per calendar year |
| | 0.5 | parts per million (1300 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year |

**History:** Effective September 1, 1998.

## CHAPTER 33-15-05

### 33-15-05-03.1. Infectious waste incinerators.

1. **Applicability.**

   ~~a.--A--modification--or--reconstruction,-as-defined-in-chapter 33-15-12,-of-an-incinerator--for--infectious--waste--which existed-on-August-1,-1995,-must-meet-the-same-standards-as a-new-incinerator-for-infectious-waste.~~

   ~~b.--As--used--in--this--section,--"new--incinerator"--means-an incinerator,-the--construction--for--which--has--not--been approved--by-the-department-prior-to-August-1,-1995.~~ This section is applicable to any infectious waste incinerator for which construction was commenced before June 21, 1996.

2. **Existing infectious waste incinerators.** This subsection applies to an owner or operator of an incinerator for infectious waste of any design capacity existing on ~~August-1, 1995~~ June 21, 1996.

   a. Prohibited wastes. No industrial waste, special waste, radioactive waste, hazardous waste, or any other solid waste may be burned in an incinerator designed for infectious waste unless the incinerator's performance, design, and operating standards for those solid wastes are also met. Other solid waste that represents a potential public health problem may be incinerated when approved in advance by the department.

   b. Design. Each incinerator for infectious waste must be equipped with two or more chambers and with auxiliary fuel burners, designed to assure a temperature in the secondary combustion chamber or zone of at least one thousand five hundred degrees Fahrenheit [815 degrees Celsius] for a minimum of three-tenths-second retention time.

   c. Waste charging.

      (1) Wastes may not be introduced into the combustion chamber of an existing incinerator for infectious waste until the auxiliary fuel burners in the primary and secondary combustion chambers or zones have operated for a minimum of fifteen minutes or until the temperature in the secondary combustion chamber or zone has reached the operating temperature required by subdivision b.

(2) No owner or operator may cause an incinerator for infectious waste to be charged at a rate greater than one hundred percent of design capacity.

d. Operator training. The owner or operator of an incinerator for infectious waste shall provide both written and oral instructions for each operator in the proper operation of the incinerator.

e. Recordkeeping and reporting.

(1) The owner or operator of an incinerator for infectious waste shall keep a log indicating the dates and approximate quantities of infectious waste received from an onsite source, and from each offsite source, including the transporter. The log must be kept and maintained for a minimum period of three years from the date waste is received.

(2) An owner or operator of an incinerator for infectious waste shall record in the log any operational error or failure of one-hour or more duration of combustion equipment, emission control equipment, monitoring equipment, or waste charging equipment.

(3) When requested by the department, the owner or operator of an incinerator for infectious waste shall provide a summary of the daily operation of the incinerator.

f. Malfunctions. An owner or operator of an incinerator for infectious waste shall immediately halt all waste charging of the incinerator when a malfunction of combustion equipment, emission control equipment, monitoring equipment, or waste charging equipment occurs. Waste charging may not resume until the malfunction has been corrected or the department approves the operation of the incinerator while the malfunction is occurring.

~~3.--New---infectious---waste---incinerators.----In---addition---to subdivisions-a,-d,-e,-and-f-of-subsection-2,--this--subsection applies-to-a-new-incinerator-for-infectious-waste.~~

~~a.--Design.--Each-new-incinerator-for-infectious-waste-must-be equipped-with-a-primary-combustion-chamber-or--zone--which provides---complete---combustion--of--solid--waste--and--a secondary--combustion--chamber--or--zone--which---provides turbulent--mixing.--Auxiliary-fuel-burners-are-required-in all-chambers.--The-department--may--approve--an--alternate design---provided--the--design--achieves--the--performance requirements-of-this-section.~~

b.--Operating---temperature.----Each---new---incinerator---for infectious-waste-must-maintain-the-flue-gas-temperature-in the--secondary--combustion-chamber-or-zone-at-one-thousand eight-hundred-degrees-Fahrenheit-[982-degrees-Celsius]--or greater-for-a-minimum-of-one-second-retention-time.

c.--Opacity.---No--owner--or-operator-of-a-new-incinerator-for infectious-waste-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--opacity--is--permissible--for--not--more-than-one 6-minute-period-per-hour.

d.--Waste-charging.

(1)--Wastes--may--not--be--introduced--into-the-combustion chamber-of-a-new--incinerator--for--infectious--waste until--the--temperature--in--the-secondary-combustion chamber-or-zone-has-reached-at-least--ninety--percent of----the----operating----temperature---required---by subdivision-b.

(2)--The-waste-charging-system-must-be-designed-to-prevent overcharging-to-assure-complete-combustion.--No-owner or--operator--may-cause-an-incinerator-for-infectious waste-to-be--charged--at--a--rate--greater--than--one hundred-percent-of-design-capacity.

e.--Stack--height.---Each-new-incinerator-for-infectious-waste must-be-equipped-with-a-stack-for-the--discharge--of--flue gases----of---sufficient---height---to---prevent---ambient concentrations-of-air-contaminants-greater-than-allowed-by chapter--33-15-02.--The-minimum-stack-height-is-forty-feet [12.2-meters]-unless--it--is--demonstrated--that--a--stack height--less--than--forty-feet-[12.2-meters]-will-meet-the standards-of-chapter-33-15-02.--The-department-may-require taller--stacks--when-it-is-necessary-to-meet-the-standards of-chapter-33-15-02.

f.--Monitoring.---Each--new--incinerator--for-infectious-waste must-be-equipped-with-a--continuous--temperature--monitor, with--readout,--to--monitor--the--temperature-of-the-gases exiting-the-secondary-combustion-chamber-or-zone.

g.--Other-requirements.--The-department-may-impose-one-or-more of-the-requirements-under-subsection-4--on--the--owner--or operator-of-a-new-incinerator-for-infectious-waste-burning less--than--ten--thousand--pounds--[4535---kilograms]---of infectious--waste--per--week--based--on--factors--such--as emission-rates-and-site-circumstances.

4.--New--large--infectious--waste--incinerators.---In--addition-to subdivisions-a,-d,-e,-and-f-of-subsection-2-and--subsection-3,

this--subsection--applies--to-a-new-incinerator-for-infectious waste-burning-ten-thousand-pounds-[4535-kilograms]-or-more--of infectious-waste-per-calendar-week.

a.--Particulate--matter.---No--owner--or--operator--of--a--new incinerator-for-infectious-waste-may-allow--the--discharge into-the-atmosphere-of-any-gases-which-contain-particulate matter-in-excess-of-fifteen--thousandths--grains--per--dry standard-cubic-foot-corrected-to-seven-percent-oxygen-(dry volume-basis).

b.--Hydrogen---chloride.---No--owner--or--operator--of--a--new incinerator-for-infectious-waste-may-allow--the--discharge into--the--atmosphere--of-any-gases-which-contain-hydrogen chloride--in--excess--of--twenty-five--parts--per--million corrected-to-seven-percent-oxygen-(dry-volume-basis)-or-in excess-of-ten-percent-of-the-potential--hydrogen--chloride emissions--(ninety-percent-reduction)-by-weight-or-volume, whichever-is-less-stringent.

c.--Carbon---monoxide.----No---owner--or--operator--of--a--new incinerator-for-infectious-waste-may-allow--the--discharge into--the--atmosphere--of-carbon-monoxide-in-excess-of-one hundred-parts--per--million--corrected--to--seven--percent oxygen-(dry-volume-basis)-over-any-one-hour-period.

d.--Furans--and--dioxins.---No--owner--or--operator--of--a-new incinerator-for-infectious-waste-may-allow--the--discharge into--the--atmosphere--of--dioxin--or-furan-emissions-that exceed-sixty-grains-per-billion-dry-standard--cubic--feet, corrected--to--seven--percent--oxygen,--as-measured-by-EPA reference-method-23.--The-department-may--require--a--more stringent--emission--limitation--based--on-factors-such-as facility-design,-stack-height,-waste-charging-rate,--waste characteristics,-or-site-circumstances.

e.--Other--air--contaminants.---The--department--may-establish emission-limits-for-other-air-contaminants--which--may--be emitted--from--the--incinerator-in-accordance-with-section 33-15-02-04.

f.--Waste-charging.

(1)--The--waste--charging-system-of-a-new-incinerator-must be-designed-to-prevent-disruption-of--the--combustion process-as-waste-is-charged.

(2)--The--waste--charging--system-of-a-new-incinerator-for infectious-waste-must-include-an-interlock-preventing or---automatically---stopping--any--charging--if--the temperature-in-the-secondary--combustion--chamber--or zone--drops--below-one-thousand-eight-hundred-degrees

~~Fahrenheit [982 degrees Celsius] for any continuous fifteen-minute period.~~

~~g. Monitoring.~~

~~(1) An owner or operator of a new incinerator for infectious waste shall install, calibrate, operate, and maintain instruments for continuously monitoring and recording the operating parameters for carbon monoxide and for temperature of gases exiting the secondary combustion chamber or zone. Flames from burners must not impinge upon the sensors.~~

~~(2) The department may periodically require an audit of monitoring instruments to ensure the proper function of the instruments and compliance with the performance standards of this section.~~

~~(3) When requested by the department, the owner or operator of an incinerator for infectious waste shall provide summaries of the continuous emission and operating data.~~

~~h. Performance testing.~~

~~(1) An owner or operator of a new incinerator for infectious waste shall conduct performance tests showing compliance with the requirements of this article, with permit conditions and with subdivision b of subsection 3 and subdivisions a through g of this subsection within one hundred eighty days of initial startup or within sixty days of reaching maximum capacity, whichever comes first. The performance tests must be conducted in accordance with protocol established by this article or by the department. The owner or operator must give the department at least thirty days' written notice prior to performance testing, and safe, adequate testing facilities must be provided.~~

~~(2) The department may require subsequent performance tests, in order to demonstrate compliance with emission standards and other requirements, as provided by paragraph 1, to be conducted by the owner or operator of a new or upgraded existing incinerator for infectious waste.~~

**History:** Effective August 1, 1995; amended effective September 1, 1998.
**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--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; September 1, 1998.
**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~~ Except as noted below the title of the subpart, the subparts and appendices of title 40, Code of Federal Regulations, part 60, as they exist on ~~October 1, 1996~~ November 1, 1997, 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; September 1, 1998.
**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 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~~ parts 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 Ce - Emission guidelines and compliance times for hospital/medical/infectious waste incinerators.

Except as noted below, subpart Ce, as published in the federal register on September 15, 1997, is incorporated by reference. Designated facilities to which this rule applies shall comply with the minimum requirements for state plan approval listed in subpart Ce.

*60.32e(i) The following is added:

Title V permit to operate applications shall be submitted by September 15, 1999.

*60.39e(a) is deleted in its entirety.

*60.39e(b) is deleted in its entirety and replaced with the following:

(b) Except as provided in paragraphs c and d of this section, designated facilities shall comply with all requirements of this subpart within one year of environmental protection agency's approval of the state plan for hospital/medical/infectious waste incinerators regardless of whether a designated facility is identified in the

state plan. Owners or operators of designated facilities who will cease operation of their incinerator to comply with this rule shall notify the department of their intention within six months of state plan approval.

*60.39e(c) is deleted in its entirety and replaced with the following:

(c) Owners or operators of designated facilities planning to install the necessary air pollution control equipment to comply with the applicable requirements may petition the department for an extension of the compliance time of up to three years after the United States environmental protection agency's approval of the state plan, but not later than September 16, 2002, provided the facility owner or operator complies with the following:

1. Submits a petition to the department for site specific operating parameters under 40 CFR 60.56c(i) of subpart Ec within thirty months of approval of the state plan and sixty days prior to the performance test.

2. Provides proof to the department of a contract for obtaining services of an architectural or engineering firm or architectural and engineering firm regarding the air pollution control device within nine months of state plan approval.

3. Submits design drawings to the department of the air pollution control device within twelve months of state plan approval.

4. Submits to the department a copy of the purchase order or other documentation indicating an order has been placed for the major components of the air pollution control device within sixteen months after state plan approval.

5. Submits to the department the schedule for delivery of the major components of the air pollution control device within twenty months after state plan approval.

6. Begins initiation of site preparation for installation of the air pollution control device within twenty-two months after state plan approval.

7. Begins initiation of installation of the air pollution control device within twenty-five months after state plan approval.

8. Starts up the air pollution control device within twenty-eight months after state plan approval.

9. Notifies the department of the performance test thirty days prior to the test.

10. Conducts the performance test within one hundred eighty days of the installation of the air pollution control device.

11. Submits a performance test report which demonstrates compliance within thirty-six months of state plan approval.

*60.39e(d) is deleted in its entirety and replaced with the following:

1. Designated facilities petitioning for an extension of the compliance time in paragraph b of this section shall:

   i. Within six months after the environmental protection agency's approval of the state plan, submit documentation of the analyses undertaken to support the need for more than one year to comply, including an explanation of why up to three years after environmental protection agency approval of the state plan is sufficient to comply with this subpart while one year is not. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

   ii. Documentation of measurable and enforceable incremental steps of progress to be taken toward compliance with this subpart.

2. The department shall review any petitions for the extension of compliance times within thirty days of receipt of a complete petition and make a decision regarding approval or denial. The department shall notify the petitioner in writing of its decision within forty-five days of the receipt of the petition. All extension approvals must include incremental steps of progress. For those sources planning on installing air pollution control equipment to comply with this subpart, the incremental steps of progress included in 40 CFR 60.39e(c) shall be included as conditions of approval of the extension.

3. Owners or operators of facilities which received an extension to the compliance time in this subpart shall be in compliance with the applicable requirements on or

before the date three years after environmental protection agency approval of the state plan but not later than September 16, 2002.

*60.39e(f) is deleted in its entirety.

After the compliance dates specified in this subpart, an owner or operator of a facility to which this subpart applies shall not operate any such unit in violation of this subpart.

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 Ec - Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996.

The subpart as published in the federal register on September 15, 1997, is incorporated by reference.

Subpart F - Standards of performance for portland cement plants.

Subpart G - Standards of performance for nitric acid plants.

Subpart 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 VOCs 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 VOCs 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 drycleaners.

Subpart KKK - Standards of performance for equipment leaks of VOC VOCs 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; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

## CHAPTER 33-15-14

### 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.

c. Any owner or operator of a source who requests an increase in the allowable sulfur dioxide emission rate for the source pursuant to section 33-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other

requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.

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, 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 ($ug/m^3$) | 24 ($ug/m^3$) | 8 ($ug/m^3$) | 3 ($ug/m^3$) | 1 ($ug/m^3$) |
| $SO_2$ | 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.**

   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:

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

(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.

(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.

(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.

(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.

(6) Allow thirty days for public comment.

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

(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.

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

(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; September 1, 1998.
**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~~ CFR 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~~ preventive 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 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 than 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~~ Emissions 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~~ emissions 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 monitoring and testing requirements, including subsection 10 and any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the Federal Clean Air Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

[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~~ emissions 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 all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

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

[2] ~~The compliance status~~ The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information;

[3] ~~Whether compliance was continuous or intermittent;~~ The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in item 2. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subsection 10 occurred; and

[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~~ emissions 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~~ preventive 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~~ emissions 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~~ emissions 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~~ emissions 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,** permit renewal, reopenings, and revisions.

a. Action on application.

(1) A permit, permit modification, or permit 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 CFR 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~~ emissions 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~~ require 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~~ agency's objection. If the department has issued a permit prior to receipt of the United States environmental protection ~~agency~~ agency's 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]~~ Judicial review of title V permit to operate decisions.

a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain judicial review under North Dakota Century Code section 28-32-15 may obtain judicial review

provided such appeal is filed in accordance with North Dakota Century Code section 28-32-15 within thirty days after notice of the final permit action.

b. The department's failure to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-15 within thirty days after expiration of the applicable timeframes.

c. In accordance with North Dakota Century Code chapter 28-32, the mechanisms outlined in this subsection shall be the exclusive means for judicial review of permit decisions referenced in this section.

d. Solely for the purpose of obtaining judicial review in state court, final permit action shall include the failure of the department to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section.

e. Failure to take final action within ninety days of receipt of an application requesting minor permit modification procedures (or one hundred eighty days for modifications subject to group processing requirements) shall be considered final action and subject to judicial review in state court.

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.

10. Compliance assurance monitoring. Except as noted below, title 40, Code of Federal Regulations, part 64 compliance assurance monitoring, as published in the federal register on October 22, 1997, is incorporated by reference.

a. "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.

b. "Part 70 permit" means a title V permit to operate.

c. "Permitting authority" means the department.

**History:** Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998.
**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 ~~July~~ November 1, 1997, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to ~~the emission~~ an emissions 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; April 1, 1998; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

**33-15-22-03. ~~Emission~~ Emissions standards.**

Subpart A - General provisions.

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

*Sections 63.42(a) and 63.42(b) are deleted in their entirety.

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~~ emissions standards for organic hazardous air pollutants from the synthetic organic chemical manufacturing industry.

Subpart G - National ~~emission~~ emissions 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~~ emissions standards for organic hazardous air pollutants for equipment leaks.

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

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

Subpart N - National ~~emission~~ emissions 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~~ emissions standards for hazardous air pollutants for industrial process cooling towers.

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

Subpart T - National ~~emission~~ emissions standards for halogenated solvent cleaning.

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

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

Subpart W - National ~~emission~~ emissions 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~~ emissions standards for hazardous air pollutants from secondary lead smelting.

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

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

Subpart GG - National ~~emission~~ emissions standards for aerospace manufacturing and rework facilities.

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

Subpart KK - National ~~emission~~ emissions standards for the printing and publishing industry.

Table 1 to subpart KK - Applicability of general provisions to subpart KK.

Appendix A to subpart KK - Data quality objective and lower confidence limit approaches for alternative capture efficiency protocols and test methods.

Subpart OO - National emissions standards for tanks - Level 1.

Subpart PP - National emissions standards for containers.

Subpart QQ - National emissions standards for surface impoundments.

Subpart RR - National emissions standards for individual drain systems.

Subpart VV - National emissions standards for oil-water separators and organic water separators.

Appendix A to part 63 - Test methods.

Appendix B to part 63 - Sources defined for early reduction provisions.

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

Appendix D to part 63 - Alternative validation procedure for environmental protection agency waste and wastewater methods.

authority: 42 U.S.C. 7401 et seq.

**History:** Effective December 1, 1994; amended effective August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 1998.
**General Authority:** NDCC 23-25-03
**Law Implemented:** NDCC 23-25-03

**OCTOBER 1998**

## CHAPTER 33-03-24.1

### 33-03-24.1-02. Certificate of need.

~~1.--A--proposed--facility--shall-obtain-a-certificate-of-need-from the-department-prior-to-applying-for-a-license.~~

~~2.--A--licensed--facility--shall-obtain-a-certificate-of-need-from the-department-prior-to-remodeling-or-expansion-of-its-current facility.~~ Repealed effective October 1, 1998.

**History:** ~~Effective-January-1,-1995.~~
**General Authority:** ~~NDCC-23-09.3-09,-28-32-02(1)~~
**Law Implemented:** ~~NDCC-23-17.2~~

### 33-03-24.1-10. Fire safety.

1. The facility shall comply with the national fire protection association life safety code, 1988 edition, chapter twenty-one, residential board and care occupancy, slow evacuation capability, or a greater level of fire safety.

2. Fire drills must be held monthly with a minimum of twelve per year, alternating with all workshifts. Residents and staff, as a group, shall either evacuate the building or relocate to an assembly point identified in the fire evacuation plan. At least once a year, a fire drill must be conducted during which all staff and residents evacuate the building.

3. Fire evacuation plans must be posted in a conspicuous place in the facility.

4. Written records of fire drills must be maintained. These records must include dates, times, duration, names of staff and residents participating and those absent and why, and a brief description of the drill including the escape path used and evidence of simulation of a call to the fire department.

5. Each resident shall receive an individual fire drill walk-through within five days of admission.

6. Any variation to compliance with the fire safety requirements must be approved in writing by the department.

7. Residents of facilities meeting a greater level of fire safety must meet the fire drill requirements of that occupancy classification.

**History:** Effective January 1, 1995; amended effective July 1, 1996; October 1, 1998.
**General Authority:** NDCC 23-09.3-19
**Law Implemented:** NDCC 18-01-03.2, 23-09.3-09

## CHAPTER 33-07-06

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

1. Nurse aides against whom allegations of abuse, neglect, or theft of resident funds or property are made shall be:

   a. Informed by the department of the allegations;

   b. Informed of the investigation results; and

   c. Provided the opportunity to request a hearing to rebut the charges.

2. If a hearing is requested, the department will apply to the ~~attorney--general's~~ office of administrative hearings for appointment of ~~a-hearing-officer~~ an administrative law judge. The ~~department~~ office of administrative hearings will notify the ~~complainant--and--the~~ accused of the date set for the hearing. If no hearing is requested, the department will submit information specific to validated allegations to the registry.

3. The ~~hearing-officer~~ administrative law judge will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If, through the department's investigation process, there is evidence abuse, neglect, or misappropriation of resident property has occurred, the department shall notify law enforcement officials as determined appropriate.

4. Allegations validated by the department or through the hearing process of abuse, neglect, or misappropriation of resident property by a nurse aide, shall:

   a. Be identified in the nurse aide registry within ten days of the finding; and

   b. Remain on the registry permanently, unless the finding was made in error, the individual was ~~not~~ found not guilty in a court of law, or the department is notified of the nurse aide's death. After a period of one year, an individual with a finding of neglect placed on the individual's registry listing may petition the state to have the finding removed from the individual's registry listing consistent with the process identified in section 33-07-06-11, if determined eligible by the department.

5. The department shall provide the nurse aide, against whom an allegation has been validated, with a copy of all information

which will be maintained in the registry within thirty days following the addition of the information to the registry.

6. Within thirty days of mailing the notification of a finding adverse to a nurse aide, the nurse aide may contact the department and correct any misstatements or inaccuracies in the information being maintained by the registry on that individual.

7. Any medicare or medicaid participating nursing facility, home health agency, hospital, ombudsman, other representative of an official agency, or other individual with a need to know may receive information contained in the registry by making a written request.

**History:** Effective October 1, 1993; amended effective October 1, 1998.
**General Authority:** NDCC 28-32-02(1)
**Law Implemented:** NDCC 23-01-03

33-07-06-11. Review process for findings of neglect placed on an individual nurse aide's registry listing.

1. An individual with a finding of neglect placed on the individual's nurse aide registry listing after January 1, 1995, may petition the department in writing to have the finding removed from the individual's registry listing. The individual must provide the department with authorization for any releases of information the department deems appropriate in conducting the investigation. The department will not consider whether to remove the finding from the registry except upon determination by the department that:

   a. The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect. For the purposes of this section, a pattern is defined as two or more occurrences of abusive or neglectful behavior towards another individual which resulted in the potential for a negative outcome or an actual negative outcome to the other individual;

   b. The neglect involved in the original finding was a singular occurrence that resulted in a potential or actual negative resident outcome; and

   c. A background check, including a criminal history investigation or report, reveals no history of mistreatment findings, including instances of domestic abuse, the granting of a restraining order which has not been overturned, an adverse finding entered on any child abuse information index, or any conviction of any crime involving violence or the threat of violence.

2. Once a determination has been made by the department that the individual has met the criteria identified in subsection 1 and is eligible for review, the following steps will be taken:

a. The individual requesting the review must submit a written statement to the department, in a format prescribed by the department, which includes:

(1) An explanation of the incident;

(2) Why the individual believes the individual would not repeat the incident;

(3) Why the individual believes the individual was a competent nurse aide; and

(4) Why the department should remove the finding from the individual's nurse aid registry listing, including any education or rehabilitation efforts that the individual has completed since the finding of neglect was placed on the individual's registry listing.

b. The original incident, the written information submitted to the department under subdivision a, and any other information collected by the department shall be reviewed by a committee consisting of a staff member of the health department, a nursing facility provider representative, and the state ombudsman.

(1) The committee may consult with the department's attorney as deemed necessary.

(2) Information obtained by the department from sources other than the petitioning individual and the department's file regarding the original incident will be provided to the individual, who will have thirty days after mailing to respond to the committee in writing.

c. The petition, all information contained in the department's file regarding the original incident, and information received by the department will be reviewed by the committee with consideration given to the following factors:

(1) The degree of negligence;

(2) The severity of the potential negative resident outcome;

(3) The severity of the actual negative resident outcome;

(4) The forthrightness and cooperation of the individual;

(5) The opinion of the individual's employer at the time of the incident regarding removing the finding from the individual's registry listing, including the employer's willingness to rehire the individual;

(6) The resident's opinion as to willingness to be cared for by this individual again, if available;

(7) Any rehabilitation or education completed by the individual since the incident; and

(8) Any other factors or considerations the committee determines to be pertinent to its decision. The committee may request additional information from the individual if more information is required to make a determination or deems a matter not addressed by the individual to be relevant.

d. Based on the review by the committee, with consideration given to the factors identified in subdivision c, the committee may:

(1) Remove the finding from the individual's registry listing;

(2) Require the individual demonstrate successful completion of a state-approved training and competency evaluation program prior to the finding being removed from the registry;

(3) Require the individual to complete a rehabilitation or education program as identified by the committee prior to the finding being removed from the registry;

(4) Require the individual to provide the committee with documentation that a nursing facility has offered to employ the individual once the finding is removed from the individual's registry listing and that the nursing facility is willing to monitor the resident care services provided by the individual;

(5) Identify an additional timeframe the finding will remain on the registry. The additional timeframe identified by the committee may range anywhere from one month to permanent placement on the registry;

(6) Take other action as identified appropriate by the committee; or

(7) Implement any combination of the above actions.

3. The department must provide the individual and the registry with written results of the review within one hundred twenty

days from the time the department has determined the individual is eligible for review and has received the written information submitted by the individual consistent with subdivisions a and b of subsection 1 and any additional information collected by the department.

4. The individual has only one opportunity to request the department to review the permanent placement of the neglect finding on their registry and to request the department remove the finding.

5. The review must be conducted based on written documentation submitted to the department. A face-to-face meeting with the individual may be requested by the committee as determined necessary.

6. The committee shall issue a written statement of fact, conclusions of law, and its order based upon findings and conclusions. This statement must be mailed to the individual requesting the review. An appeal from the order must be filed within thirty days from the date the order is mailed. The department may allow a petition for reconsideration of the order if the petition is received within fifteen days after the statement is mailed. If the department is petitioned for reconsideration, the determination upon review will become the final order for purposes of appeal.

7. If a new finding of neglect is placed on the individual's registry listing after the previous finding of neglect has been removed, the new finding will remain on the registry permanently with no opportunity for review.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 28-32-02(1)
**Law Implemented:** NDCC 23-01-03; 28-32-05.2

## ARTICLE 33-39

**STAFF COMMENT:** Article 33-39 contains all new material and is not underscored so as to improve readability.

## ARTICLE 33-39

## LODGING ESTABLISHMENTS



## CHAPTER 33-39-01
## Lodging Establishment Sanitation Standards



**33-39-01-01. Definitions.** For purposes of this chapter:

1. "Approved" means acceptable to the department based on compliance with applicable standards and public health practices.

2. "Communicable disease" means any disease that can be directly or indirectly transmitted from person to person.

3. "Department" means the state department of health.

4. "Guest" means an occupant of a rental unit of a lodging establishment.

5. "Guest room" means any room used or intended to be used by a guest for sleeping purposes.

6. "Health hazard" means a chemical agent, source of filth, cause of sickness, or condition that is a health threat to others or a threat to the public health.

7. "Lodging establishment" means any hotel, motel, resort, building, or structure that is used to provide sleeping accommodations to the public for charge. The term does not include primitive lodging cabins, lodges, or ranches.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-02. Employee health and disease control.** A person, while affected with any communicable disease or a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, may not work in any area of a lodging establishment in any capacity in which there is a likelihood of the person contaminating equipment with pathogenic organisms or transmitting disease to other individuals. If the owner or operator of the lodging establishment has knowledge of any employee who has contracted a communicable disease or has become a carrier of such a disease, the owner or operator shall immediately notify the department.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-03. Ice.** Ice, if provided to guests in a lodging establishment, must be manufactured, stored, transported, and handled in a manner approved by the department. Processes and controls must be designed and monitored to ensure that neither the product nor the product area is subject to contamination. Ice must be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic self-service ice-dispensing equipment. Ice-dispensing utensils must be stored on a clean surface or in the ice with the dispensing handle extending out of the ice. Scooping of ice with a cup, glass, or similar container is prohibited. Ice storage bins must be drained through an air gap. When existing ice storage bins in areas accessible to the public are replaced, automatic self-service ice-dispensing equipment must be used.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-04. Guest room toilet and bathing facilities.** Each lodging establishment must provide toilet, lavatory, and bathing facilities. In lodging establishments providing toilet, lavatory, and bathing facilities shared by more than one guest room, the facilities

must be provided in the ratio of one restroom for each ten guests, must be provided separately for each sex, and must be available on each floor. To determine the number of guests, a single-bed unit is designed for two people, and a double-bed unit is designed for four people. All facilities must be provided with hot and cold running water under pressure to each lavatory, shower, bathtub, and shower and bathtub combination at a maximum temperature of one hundred twenty degrees Fahrenheit [48.9 degrees Celsius] at the tap. Bathing or shower facilities must have a nonslip floor surface, such as a manufactured nonslip bathtub or shower unit, a rubberized throw mat, or adhesive-backed nonslip strips. All toilets, lavatories, and bathing fixtures must be kept clean, sanitary, and in good repair when the guest room is in use and between stays of different guests.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-05. Utensil washing.** Utensil washing must be in compliance with chapter 33-33-04. Sanitizing solutions must comply with 21 CFR section 178.1010. After cleaning and until use, all contact surfaces of equipment and utensils must be wrapped, sealed, or stored in a manner that protects them from contamination.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-06. Single-service items.** Lodging establishments which do not have facilities for cleaning and sanitizing utensils that meet the requirements in chapter 33-33-04 shall use single-service articles. All single-service articles must be stored, handled, and dispensed in a sanitary manner and may be used only once. The use of common drinking containers in public places is prohibited. Single-service articles must be made from clean, sanitary, and safe materials.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-07. Bedding and linen.** Lodging establishments that provide bedding and linen must furnish each guest with clean sheets and pillowcases for the bed, bunk, or cot to be occupied by the guest. Sheets must be of sufficient width and length to cover the mattress completely. All bath, linen, sheets, and pillowcases used by one guest must be washed and mechanically dried before being furnished to another guest. All bedding, including mattresses, mattress pads, quilts, blankets, pillows, sheets, and spreads, and all bath linen must be kept clean, in good repair, and stored in a sanitary manner. Soiled linens,

uniforms, and other garments must be kept separate from clean linens to prevent cross-contamination. All clean linens must be stored on smooth, nonabsorbent, cleanable surfaces located a minimum of six inches [152.4 millimeters] above the floor.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-08. Housekeeping.** All parts of the lodging establishment and its premises must be kept neat, clean, and free from litter and rubbish. Operations or conditions may not constitute a health hazard. Cleaning operations must be conducted in a manner that minimizes contamination of facilities. Cleaning equipment, supplies, insecticides, paints, and other toxic or hazardous products may not be stored above or next to linens. All cleaners, sanitizers, and disinfectants must comply with 21 CFR section 178.1010. An ingredient label and "direction for use" label on each chemical being used must be readily available for reference or inspection. All containers used for dispensing these chemicals must be prominently and distinctively labeled for identification of contents.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-09. Water recreation facilities.** All water recreation facilities, including swimming pools, spas, and water slides operated by a lodging establishment, and used by guests or the public, must be designed, constructed, and maintained to protect the health and safety of its guests. A colorimetric test kit is required for the monitoring and adjusting of disinfectant levels and pH in swimming pools, spas, or other water recreational facilities. A daily log of disinfection levels and pH must be maintained by the owner of the facility.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

**33-39-01-10. Submission of plans.** Whenever a lodging establishment is constructed or extensively remodeled, properly prepared plans and specifications for such construction or remodeling must be submitted to the department for review and approval before construction or remodeling is begun. The plans and specifications must indicate the proposed layout, arrangement, and construction materials, paying particular attention to all fire or life safety provisions required by

law. The department shall approve the plans and specifications if they meet the requirements of this chapter and North Dakota Century Code chapter 23-09.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 23-09-02
**Law Implemented:** NDCC 23-09-02

# TITLE 48

## Board of Animal Health

**OCTOBER 1998**

## CHAPTER 48-01-01

### 48-01-01-01. Organization of board of animal health.

1. **History.** The first law pertaining to the control of contagious and infectious diseases of livestock under veterinary supervision was passed by the territorial assembly of 1887. The livestock sanitary board was created during the 1907 legislative assembly. The five members were appointed by the governor. In 1949 the law was amended to add two additional board members. In 1989, the law was amended to change the name to board of animal health.

2. **Board membership.** The board consists of seven members appointed by the governor for seven-year terms, with one term expiring each year on the first of August. One member shall be engaged in commercial beef cattle production, one engaged in registered purebred beef cattle production, one member in dairy cattle production, one a swine producer, one a sheep producer, and two practicing veterinarians. ~~The head of veterinary science at North Dakota state university~~ A veterinarian in the department of veterinary and microbiological sciences at North Dakota state university as chosen by the board, acts as consulting veterinarian. No person may be appointed to more than two 7-year terms on the board.

3. **Executive officer.** The board elects an executive officer who is not a member of the board, but who is a graduate veterinarian. The board may employ such officers, agents, and assistants as it may deem necessary.

4. **Inquiries.** Inquiries regarding the board may be addressed to the executive officer:

~~Dr. Robert J. Velure~~
Executive Officer and State Veterinarian
Board of Animal Health
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

**History:** Amended effective November 1, 1981; November 1, 1985; April 1, 1988; October 1, 1989; October 1, 1998.
**General Authority:** NDCC 28-32-02.1
**Law Implemented:** NDCC 28-32-02.1

## CHAPTER 48-02-01

**48-02-01-01. Importation - All livestock.** All imported domestic animals and nontraditional livestock must be accompanied by an official certificate of veterinary inspection, except animals originating directly from a producer's premises, not diverted en route, and consigned to an auction market, or stockyards approved by the board of animal health; and livestock consigned to a federally inspected slaughtering establishment.

**History:** Amended effective September 1, 1988; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

**48-02-01-03. Cattle.**

1. **Tuberculosis.** A negative tuberculosis test, within thirty days prior to entry into North Dakota, is required for all cattle originating from any modified accredited state, or any other area, where in the estimation of the board, tuberculosis may exist.

   Nursing calves accompanying negative tested dams are exempted from the test requirement.

   Cattle of Mexican origin must have a negative tuberculosis test, administered by a licensed, accredited United States veterinarian, the test being administered at the proper interval following the Mexican test, which is required for entry into the United States. This last test must be administered within thirty days prior to entry into North Dakota.

2. **Brucellosis.** All cattle must have a negative brucellosis test within thirty days prior to entry into North Dakota or must comply with uniform methods and rules in control of brucellosis as published by USDA/APHIS. Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis test" means ~~the~~ an approved blood ~~agglutination~~ test conducted at ~~the--state-federal~~ a state or federal laboratory ~~in Bismarck. Vaccination--is--required.~~ No female cattle over twelve months (three hundred sixty-five days) of age may be imported unless officially calfhood vaccinated against brucellosis and properly identified. Exempted from this requirement are cattle ~~entering-licensed-monitored-feedlots-or~~ when which, in the estimation of the board, meet the following conditions ~~exist~~:

a. Drought conditions render pasture and feed supplies inadequate for North Dakota producers to maintain their breeding herds;

b. It is necessary that North Dakota cattle producers secure out-of-state grazing or feeding facilities for their breeding herds; and

c. The cattle are owned by legitimate North Dakota cattle producers with the intent to return the cattle to the North Dakota producers' premises upon completion of the grazing or feeding period.

3. **Permits.** Permits shall be required on all female cattle over twelve months (three hundred sixty-five days) of age. Permits shall be required on all cattle originating from any state where scabies may be introduced in shipments originating from such state at the discretion of the board or where emergency disease occurrence warrants special considerations.

4. **Dipping.** Dipping in a solution approved by the board shall be required on all cattle originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on cattle originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with ~~ivermectin~~ an approved avermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 73, is acceptable.

5. **Calves.** Calf permits are required on all imported calves under four months of age. Imported calves are not to be resold in less than sixty days. Purchasers must pick up imported calves at the sellers' premises. Calves accompanying dams are excluded from the requirements of this section.

**History:** Amended effective April 1, 1980; June 1, 1983; September 1, 1984; September 1, 1988; May 16, 1990; November 1, 1992; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

**48-02-01-04. Bison.**

1. **Tuberculosis.** A negative tuberculosis test is required on all bison except nursing calves accompanying negative-tested dams.

2. **Brucellosis.** Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis test" means ~~the~~ an approved blood ~~agglutination~~ test conducted and confirmed in a an

approved state or federal laboratory. A negative preentry test within thirty days will be required on test eligible bison females originating in free or class A states; those test eligible bison females originating from a class B state will require a negative preentry test within thirty days and be placed under quarantine and complete a negative ninety to one-hundred-eighty-day postentry test.

3. **Permits.** Permits shall be required on all bison.

4. **Dipping.** Dipping in a solution approved by the board shall be required on all bison originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on bison originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with ~~ivermectin~~ an approved avermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 73, is acceptable.

**History:** Amended effective September 1, 1988; January 1, 1994; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

**48-02-01-08. Dogs and cats.** Dogs and cats must have a certification of no known exposure to rabies within one hundred days prior to importation ~~and cannot be from an area under quarantine~~. If over three months of age, dogs and cats must be vaccinated for rabies. The state game and fish department requires hunting dogs to have been vaccinated at least thirty days prior to import date. When an area is quarantined for rabies, a certifying statement from an accredited veterinarian that the dog or cat has not been exposed to rabies and has a current rabies vaccination is required. No dogs or cats less than three months of age will be accepted from an area under quarantine for rabies.

**History:** Amended effective September 1, 1988; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

**48-02-01-09.1. Skunks** and raccoons. Skunks and raccoons may not be imported into North Dakota for any purpose.

**History:** Effective September 1, 1988; amended effective October 1, 1998.
**General Authority:** NDCC 36-21.1-12
**Law Implemented:** NDCC 36-21.1-12

**48-02-01-11. Swine - Breeding and feeder purposes - Pseudorabies.**

1. It is the intent of this section to implement the criteria established by the national pseudorabies control board (NPCB) for recognizing pseudorabies (PRV) low prevalence areas as a method by which a state or area could be demonstrated to have a very low prevalence of pseudorabies or no pseudorabies. This method is not an eradication program.

2. All imported swine must test negative for pseudorabies within thirty days prior to entry into North Dakota or comply with one of the following:

   a. Be from a ~~class~~-A Stage V or ~~class~~-B Stage IV state or area, ~~or other approved classification~~, as designated by the national pseudorabies control board;

   b. Be from a qualified pseudorabies negative herd; or

   c. Be from a feeder swine pseudorabies monitored herd as designated by the national pseudorabies control board.

3. All swine for breeding or feeder purposes in North Dakota or imported into North Dakota must be identified by identification approved by the state veterinarian.

4. A pseudorabies vaccination for all swine is prohibited except with written approval of the state veterinarian.

5. All breeding and feeder swine of unknown status must be quarantined until their pseudorabies status is determined by isolation and a pseudorabies test, at the owner's expense, as well as a retest in thirty to sixty days at the owner's expense, or such swine must be shipped direct to slaughter.

6. A pseudorabies infected swine herd, as determined by a board of animal health approved test, must be quarantined and isolated from other susceptible animals on the farm, or other premises where the infected herd is located. All reactor animals must be slaughtered. Then, the infected herd must be retested and receive two negative tests, the tests at least thirty days apart, with the first test occurring not sooner than thirty days after the last reactor animal is removed from the herd. Nursing piglets need not be tested. As an alternative to retest, the entire infected herd may be sent directly to slaughter. The quarantine will be lifted only after the retests required pursuant to this subsection have occurred, or the entire infected herd has been shipped directly to slaughter. Before the quarantine is lifted, the premises of the infected herd must be cleaned and disinfected as approved by the state veterinarian or his assistant, or other agent of the board of animal health.

7. All slaughter sows and boars must receive pseudorabies testing at the first point of sale in North Dakota, if necessary under a mandatory pseudorabies testing program is instituted by the board of animal health. The board of animal health may, pursuant to this section, by board action, at any time, institute a mandatory pseudorabies testing program in North Dakota.

8. ~~All--swine--in-North-Dakota-being-used-for-exhibition-purposes must-meet-all-of-the-requirements-of-this-chapter-for-breeding swine,-until-such-time-as-North-Dakota-achieves-a-pseudorabies class-B-status,-at-which-time-this-requirement-will-no--longer be--required.~~ Disposal of carcasses of swine dying from pseudorabies must be by a method approved by the state veterinarian.

9. Disposal of carcasses of swine dying from pseudorabies must be by a method approved by the state veterinarian.

**History:** Effective March 15, 1988; amended effective September 1, 1988; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08, 36-01-12

**48-04-01-02. Livestock quarantines.** The board may quarantine any domestic animal or nontraditional livestock which is infected with any contagious or infectious disease, which has been exposed to infection, or which may have been exposed to infection. Animals imported for which no certificate of veterinary inspection is produced must be quarantined until the disease status of the animals can be determined and until all vaccination and test requirements can be verified. Upon verification that any animal does not meet North Dakota test and vaccination requirements, the animal must be sent directly to slaughter or returned to the state of origin. The form of notice of official quarantine must be specified by the board and served on the owner or keeper of the animal by sending, by registered or certified mail, a copy of the quarantine notice to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, personally serve a copy of the quarantine notice upon the owner or keeper of the animal.

**History:** Amended effective September 1, 1988; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-12

**48-04-01-06. Cattle scabies.** Scabies affected or exposed cattle must be quarantined and treated with ~~ivermectin~~ an approved avermectin in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 73.

**History:** Amended effective September 1, 1984; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

**48-04-01-07. Sheep scabies.** Scabies affected or exposed sheep must be quarantined and treated with ~~ivermectin~~ an approved avermectin in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR part 74.

**History:** Amended effective September 1, 1984; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08

## CHAPTER 48-10-01

**48-10-01-01. Salaries of agents of the North Dakota board of animal health.** Whenever an agent of the board of animal health is engaged in livestock sanitary work of any kind, the agent shall receive for such services, if paid on a per diem basis, an amount not to exceed two hundred dollars per day and actual expenses. When working only portions of days, however, the agent shall figure the agent's time at twenty-five dollars per hour. When paid on a per head or per job basis, the amount paid will be mutually agreed upon by the state veterinarian and the agent.

**History:** Amended effective February 1, 1985; October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-10

## CHAPTER 48-12-01

**48-12-01-02. Definitions.** For purposes of this chapter:

1. "Board" means the North Dakota board of animal health.

2. "Domestic animal" means dog, cat, horse, bovine animal, sheep, goat, bison, llama, alpaca, or swine.

3. "Herd" means all animals commingled with other animals of the same species owned by the same person, which are confined to specific premises.

4. "Hybrid" means an animal produced by crossing species or subspecies.

5. "License" means a document obtained from the board for the raising or propagation of a species in North Dakota.

6. "Nontraditional livestock" means any wildlife held in a cage, fence, enclosure, or other manmade means of confinement that limits its movement within definite boundaries, or an animal that is physically altered to limit movement and facilitate capture.

   Category 1: Those animals that are similar to but have not been included as domestic species, including turkeys, geese, ducks (morphologically distinguishable from wild turkeys, geese, ducks), pigeons, and mules or donkeys. (These animals are subject to the rules of domestic animals.)

   Category 2: Those species that have been domesticated, including ostrich, emu, chinchilla, guinea fowl, ferret, ranch foxes, ranch mink, peafowl, all pheasants not in category 3, quail, chukar, and Russian lynx. Category 2 species imported must meet the health requirements as set forth in this chapter.

   Category 3: Those species that are indistinguishable from wild, indigenous species or present a health risk to wild and domestic species, or both, including elk, deer (except those listed under subdivisions a and b of subsection 3 of section 48-12-01-03), reindeer, bighorn sheep, fallow deer, ring-necked pheasant, Bohemian pheasant, sichuan pheasant, Canadian lynx, bobcat, and raptor.

Category 4: Those species that are considered inherently or environmentally dangerous, including bears, wolves, wolf hybrids, primates, lions, tigers, and cats (not listed previously).

Category 5: Those species that are not categorized in categories 1 through 4 require a special license, the requirements of which will be established by the board.

7. "Permit" means a document obtained from the board for the importation of animals into North Dakota.

8. "Person" means any individual, partnership, firm, joint stock company, corporation, association, trust, estate, or other legal entity.

9. "Possess" means to own, control, restrain, transport, or keep in captivity.

10. "Zoo" means an organization with a class C exhibitor's permit, which follows United States department of agriculture (USDA) regulations and are inspected by ~~USDA---APHIS~~ USDA/APHIS.

**History:** Effective March 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08, 36-01-12

**48-12-01-03. Permit and license requirements.** All nontraditional livestock premises must be licensed and comply with the administrative rules of the board and applicable statutes. Licenses are not required for categories 1 and 2. An owner of category 2 species must comply with all health requirements as set forth in subdivisions e and f of subsection 1.

1. Category 3, 4, or 5 nontraditional livestock may be imported into North Dakota only after the owner obtains all of the following:

   a. An importation permit from the board.

   b. A North Dakota nontraditional livestock ~~possession~~ license from the board which is valid for the species to be imported or possessed. The license fee is five dollars for each game bird species and ten dollars for all other species. The maximum annual fee for a person holding more than one bird species license is twenty-five dollars. The maximum annual fee for a person holding more than one nonbird species license is seventy-five dollars.

c. Genetic testing for purity is required for all elk or elk hybrids prior to entry into zone 1 or 2, as those zones are described in subdivision c of subsection 7. Only genetically pure elk will be allowed in zone 1 or 2.

d. An animal may not be imported, without approval from the board, if the animal originated in a herd that has been quarantined for a reportable disease.

e. An examination by an accredited veterinarian accompanied by an approved certificate of veterinary inspection. Minimum specific disease test results and health statements that must be included on a certificate of veterinary inspection include:

(1) Animals in the shipment must be tested for any diseases prescribed by the board.

(a) Tuberculosis.

[1] Cervidae - all animals in the shipment must be tested negative within thirty to ninety days and the entire herd of origin within twelve months using the single strength cervical test, or if originating from an accredited free herd, only the animals in the shipment must be tested; or follow uniform method and rules and guidelines for the control of tuberculosis in cervidae as published by USDA/APHIS.

[2] Other species - use recognized approved testing protocol.

(b) Brucellosis.

[1] Cervidae - all animals in the shipment must be tested negative by two official brucellosis tests within thirty days, one of which must be the complement fixation test or follow uniform method and rules in control of brucellosis in cervidae as published by USDA/APHIS.

[2] Other species - use recognized industry testing protocol.

(c) Pseudorabies. Serologic testing methodology must be conducted in accordance with board pseudorabies standards within thirty days prior to entry for the following category, except for suckling piglets accompanying a negative sow:

Suidae: Wild suidae (See also subdivisions c and d of subsection 3.)

(d) Equine infectious anemia. Serologic testing must be conducted in accordance with state equine infectious anemia protocol within twelve months prior to entry for the following category of equidae, except suckling foals accompanying a negative dam:

Equidae: All wild equidae

(e) Rabies. Any native mammal of the order carnivora that has been taken from the wild may not enter the state if a diagnosis of rabies has been made in the past twelve months in the same species in the state of origin.

(f) Johne's disease. The following statement signed by an accredited veterinarian in the state or province of origin: "To the best of my knowledge, animals listed herein are not infected with paratuberculosis (Johne's disease) and have not been exposed to animals infected with paratuberculosis. To the best of my knowledge, the premises of origin have not been the site of a significant disease outbreak in the previous twenty-four months that was not contained and extirpated using recommended disease control".

(g) Diseases of birds.

[1] Pullorum and fowl typhoid.

[a] Captive wild birds as defined in this paragraph, unless going directly to slaughter, must originate from a producer who is participating in the pullorum-fowl typhoid control phase of the national poultry improvement plan (NPIP) plan or the birds must be tested serologically negative for pullorum and fowl typhoid within the past thirty days. In the case of eggs and hatchling birds, the breeder flock must be a national poultry improvement plan participant or must have been tested negative in the past thirty days. Serum testing or national poultry improvement plan active status are required for birds of the order galliformes including prairie chicken

(tympanuchus cupido), quail, pheasants (phasianus colchicus), chukar (alectoris chukar), gray (Hungarian) partridge (perdix perdix), and wild turkey (meleagris gallopavo).

[b] In lieu of pullorum and fowl typhoid testing of other birds, the following statement can be placed on the health certificate: "To my knowledge, birds listed herein are not infected with pullorum or fowl typhoid and have not been exposed to birds infected with pullorum or fowl typhoid during the past twelve months". This statement shall be signed by the owner or the owner's representative.

[2] Avian tuberculosis (mycobacterium avium). The certificate of veterinary inspection must read: "To my knowledge, birds listed herein are not infected with avian tuberculosis and have not been exposed to birds infected with avian tuberculosis during the last twelve months". This requirement applies to all birds, including ratites.

[3] Duck plague (duck virus enteritis, D.V.E.) and avian cholera. The statement, "To my knowledge, birds listed herein are not infected with duck plague or avian cholera and have not been exposed to birds known to be infected with duck plague or avian cholera within the past one hundred eighty days", must be written on the health certificate of all anseriformes entering the state. The statement shall be signed by the owner or the owner's representative. This statement applies to waterfowl (anseriformes).

[4] Exotic Newcastle disease (viscerotropic, velogenic viruses) psittacosis.

[a] The statement, "To my knowledge, birds listed herein are not infected with exotic Newcastle disease or psittacosis and have not been exposed to birds known to be infected with exotic Newcastle disease or psittacosis within the past thirty days", must be written on the health

certificate of all psittacine birds entering the state. The statement shall be signed by the owner or the owner's representative. This statement applies to all psittacine birds.

[b] While in transit or while being offered for sale by a person holding a nontraditional livestock license and nontraditional livestock auction license, the following birds which have been associated with introductions of exotic Newcastle disease should be identified with a numbered leg band or other approved method of identification: yellow naped Amazon parrot (Amazona ochrocephala auropalliata), Mexican double yellow head parrot (Amazona ochrocephala oratrix), Mexican red head parrot (Amazona viridigenalis), spectacled Amazon parrot (Amazona albifrons), yellow cheeked Amazon parrot (Amazon autumnalis), green conure (aratinga holochlora, A. strenua, A. leucophthalmus), military machaw (ara militaris), lilac crowned Amazon parrot, (Amazona finschi).

[5] Mycoplasmosis. All wild turkeys of the species meleagris gallopavo, unless going directly to slaughter, must originate from a producer who is participating in the mycoplasmosis control phase of the national poultry improvement plan or the birds must have been tested serologically negative for mycoplasma gallisepticum and M. synoviae within the past thirty days. In the case of eggs and hatchling birds, the breeder flock must be a national poultry improvement plan participant or must have been tested negative in the past thirty days.

f. Additional disease testing may be required from the board prior to importation or sale if there is reason to believe other diseases, parasites, or other health risks are present.

2. It is a violation of this rule to release or abandon any nontraditional livestock without prior written authorization

from the board. Game bird releases must be stipulated in the license application.

3. The board finds that the following species, hybrids, or viable gametes (ova or semen) are detrimental to existing animals and their habitat through parasites, disease, habitat degradation, or competition. Possession of the following species, hybrids, or viable gametes is restricted to a special license (applies to category 5).

   a. In the family bovidae, subfamily caprinae: chamois (rupicapra), tahr (hemitragus), goats, ibexes (capra), - except domestic goat (capra hircus), barbary sheep or aoudad (ammotragus), mouflon species (ovis musimon), subfamily hippotraginae: oryx and gemsbok (oryx), addax (addax), subfamily redinunae: reed bucks (redunca), subfamily alcelaphinae: wildebeests (connochaetes), hartebeests (alcelaphus), sassabees, blesbok, bontebok, topi (damaliscus), subfamily water buffalo (bubalus).

   b. In the family cervidae, all of the following species and hybrids: moose (alces alces), axis deer (axis axis), rusa deer (cervus timorensis), sambar deer (cervus unicolor), sika deer (cervus nippon), roe deer (capreolus capreolus and capreolus pygarus), red deer (cervus elaphus).

   c. All wild species of the family suidae (Russian boar, European boar) and hybrids.

   d. In the family tayassuidae: the collared peccary or javelina (tayassu tajacu) and hybrids.

4. A special license application will be reviewed by the nontraditional livestock advisory council. The advisory council shall recommend action to be taken by the board.

5. These special license species may not be released, imported, transported, sold, bartered, or traded within the state except as authorized. The special license animals may be transported out of the state in compliance with the nontraditional livestock rules of the receiving state and federal laws.

6. Persons with proof of possession prior to the effective date of these rules may possess special license species.

7. The following nontraditional livestock are "restricted species", on the basis of specific animal health risks that they pose to wildlife and domestic livestock: white-tailed deer (odocoileus virginianus) and reindeer (caribou) (rangifer sp.), red deer and red deer hybrid.

   a. Importation of white-tailed deer into North Dakota is allowed only for nontraditional livestock farms having a

valid license. The only white-tailed deer that may be permitted entry or transported west of the one hundredth meridian are those originating from states west of the one hundredth meridian where meningeal worm has not been reported. This also applies to intrastate movement.

b. Importation of reindeer (rangifer sp.) into North Dakota is prohibited except under the following conditions:

(1) All animals in shipment must be tested negative to four brucellosis serological tests.

(2) All animals in the shipment must originate in a herd located south of the border of Canada and the United States which is certified brucellosis (B. suis and B. abortus) and tuberculosis free as determined by whole herd testing.

(3) Animals must have never been exposed to tuberculosis positive animals.

c. The importation or intrastate movement of red deer and red deer and elk hybrids requires a special license. A license will not be issued for premises in zone 1 or 2. Zone 1 is that area bordered by a line that ~~which~~ begins at the junction of the Montana border and Missouri River, runs east along the Missouri River to highway 49, south to highway 21, west to highway 22, to the Slope-Bowman County line, and west to Montana. Zone 2 is that area bordered by a line that begins at the Minnesota state line on highway 2, runs west to Towner and north along the Souris River to the Canadian border.

8. Reclassification of any species listed as restricted is contingent upon compelling scientific information indicating that risks posed by these species to native wildlife populations and domestic livestock can be eliminated or managed effectively through application of new diagnostic or management technologies.

9. Any diseased, prohibited, or restricted animal determined by the board to pose a significant threat to the state's wildlife resources, domestic animals, or human health must be held in quarantine at the owner's expense until disposition is determined. Possession or transfer of such animals is prohibited if contrary to the determination of the board.

**History:** Effective March 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08, 36-01-12

**48-12-01-07. Revocation of license or denial of license application.** The board may revoke any license or deny any license application and may dispose of any nontraditional livestock imported, possessed, confined, or transported for failing to comply with these rules or with conditions placed on the ~~permit~~ license at the time of issuance. The board may revoke any license or deny any license application if the applicant, or agent, falsified information on the license application or on the certificate of veterinary inspection, or falsified or failed to keep or submit records as required by this chapter. The revocation of a license or denial of a license application must comply with North Dakota Century Code chapter 28-32.

**History:** Effective March 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08, 36-01-12

## CHAPTER 48-12-02

**STAFF COMMENT:** Chapter 48-12-02 contains all new material and is not underscored so as to improve readability.

## CHAPTER 48-12-02
## PRIMATES, WOLVES, AND WOLF HYBRIDS



**48-12-02-01. Purpose.** Primates, wolves, and wolf hybrids, as defined in this chapter, are category 4 nontraditional livestock animals under chapter 48-12-01. Accordingly, all requirements and restrictions pertaining to category 4 nontraditional livestock animals outlined in chapter 48-12-01 and North Dakota Century Code title 36 apply to primates, wolves, and wolf hybrids, in addition to the requirements and restrictions outlined in this chapter.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08.4

**48-12-02-02. Definitions.**

1. "Exposure" means any time the animal is in the presence of persons other than the owner, handler, or immediate family.
2. "Primates" means nonhuman primates.
3. "Wolf" means any animal of the species canis lupis.
4. "Wolf hybrid" means any animal that is any part wolf.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08.4

**48-12-02-03. Housing and handling requirements.**

1. **Primates.** Primates must have a dedicated area, such as a room or cage-type enclosure, separate from other living areas of human occupants. Such an area will be considered a primary enclosure.

   Space requirements:

   a. Indoor primate enclosures must be at least two square feet [.1858 square meters] per pound [.4536 kilograms] of adult body weight per animal. This figure must be increased by fifty percent for each additional animal. The height of the primate enclosure must be at least four times taller than the animal's body length.

   b. Primates kept outdoors must have a dedicated enclosure, which must include a roof, shelter from the elements, fence, and a lock on the enclosure. The dimensions of the outdoor enclosure must be at least as large as required for the indoor enclosure. There must also be a perimeter fence.

   General housing requirements. All primate housing must comply with title 9, Code of Federal Regulations, section 3.75.

   Exposure. Any primate which is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

2. **Wolves and wolf hybrids.**

   Outdoor facilities. If the animal is outdoors it must be contained in an outdoor holding facility that meets the requirements of this section.

   a. Minimum floor space per animal must be two hundred square feet [18.58 square meters] and floor space must be increased by one hundred square feet [9.29 square meters] for each additional animal. The enclosure must be at least eight feet [2.44 meters] high with an additional overhang of fencing angling into the pen or six feet [1.83 meters] high with a ceiling.

   b. The enclosure must be made of steel chain link fencing of at least eleven gauge strength, or fencing of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, an underfencing should extend at least forty-two inches [106.7 centimeters] into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

c. Gates must have locks to prevent unauthorized entry of individuals.

d. Shade and shelter from elements and inclement weather must be provided.

e. A perimeter fence meeting the requirements of title 9, Code of Federal Regulations, sections 3.75, 3.77, and 3.78, must be required if the animal is kept within the city limits or other populated areas as determined by the state veterinarian.

Exposure. Any wolf or wolf hybrid that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08.4

**48-12-02-04. Health requirements.**

1. **Primates.**

   a. Requirements for importation include:

      (1) Health certificate and importation permit from the board, containing the following:

         (a) Negative tuberculosis test within thirty days of importation into the state, with human tuberculin used in testing.

         (b) Negative hepatitis test.

         (c) Fecal sample tested negative for parasites, shigella, and salmonella.

         (d) Statement that primate has not shown signs of or been exposed to infectious disease in the last one hundred eighty days.

   b. Requirements for maintaining a primate after importation:

      (1) Negative tuberculosis test prior to renewal of license.

      (2) Negative tuberculosis test within thirty days of change of ownership.

2. **Wolf and wolf hybrids.**

a. Requirements for importation include:

(1) A health certificate and permit.

(2) A statement or health certificate that the animal has not been exposed to rabies.

(3) The animal cannot come from an area that is quarantined for rabies, unless approved by the state veterinarian.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08.4

# ARTICLE 48-13

**STAFF COMMENT:** Article 48-13 contains all new material and is not underscored so as to improve readability.

# ARTICLE 48-13

# CONFISCATION OF ANIMALS



## CHAPTER 48-13-01
## CONFISCATION OF SKUNKS AND RACCOONS



**48-13-01-01. Confiscation procedures.** If the state veterinarian determines that a skunk or raccoon is being kept in captivity in violation of North Dakota Century Code section 36-01-08.4, the state veterinarian may:

1. Serve upon the owner or keeper of such skunk or raccoon a notice of intent to confiscate the animal. The owner or keeper may request a hearing within ten days of receipt of the notice. Such a hearing, if requested, will be conducted by an administrative law judge, who will make a recommended decision to the board.

2. If the owner or keeper of the animal does not request a hearing within the prescribed time period, the animal will be confiscated and placed at a licensed zoo if feasible, or humanely destroyed.

3. The state veterinarian may rely on the assistance of agents and employees of other state agencies or local law enforcement officials in carrying out this chapter and North Dakota Century Code section 36-01-08.4.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 36-01-08
**Law Implemented:** NDCC 36-01-08.4

# TITLE 67.1

# Education Standards and Practices Board

**OCTOBER 1998**

## CHAPTER 67.1-01-01

### 67.1-01-01-01. Organization of the education standards and practices board.

1. **History.** The autonomous education standards and practices board was established by legislation in 1993. The board came into existence effective January 1, 1995, and assumed its duties on July 1, 1995. The board has its origins in the teacher professional practices commission which served in an advisory capacity to the superintendent of public instruction for teacher certification, teacher preparation program approval, and professional development.

2. ~~Meetings.---The--education-standards-and-practices-board-shall hold-a-minimum-of--four--meetings--annually.---The--year,--for purposes-of-the-board,-begins-July-first-and-ends-the-last-day of-June-during-the-ensuing-calendar-year.--The-meetings--shall be-scheduled-by-the-membership-at-large,-or-at-the-call-of-the chairperson,-or-may-be-held-upon-the-request-in-writing--by--a majority--of-the-board-members.--The-meetings-may-be-held-only after-ten-days--prior--notice.---A--majority--of--the--members constitutes--a-quorum-that-will-have-the-authority-to-act-upon any-items--of--business--properly--placed--before--the--board. Members--should--notify--the--secretary--if--unable-to-attend.~~ Board organization. The education standards and practices board consists of nine members appointed by the governor. The board membership includes four classroom teachers from public schools, one classroom teacher from a private school, one school board member, two school administrators, and one dean of a college of education. The superintendent of public instruction or designee serves as an ex officio, nonvoting

member. The administrator's professional practices board is a subset of the education standards and practices board which includes the two school administrator members, the school board member, and two teacher members selected by the full board. The term of office of the board members is three years, commencing on January first of the year of their appointment. Members may serve only two consecutive terms.

3. a. Officers. The officers are a chairperson, vice chairperson, and secretary, who will be the board executive director. The officers will be elected for one-year terms at the reorganization meeting, which will be the first meeting called following July first of each year.

(a) (1) The duties of the chairperson are to include:

(1) (a) Recognize members, state motions, and confine debate to the motion under discussion;

(2) (b) Call for special meetings upon the request of a majority of the board in writing;

(3) (c) Assist the director in preparing an agenda to be sent with the announcement of the next meeting;

(4) (d) Designate board members to attend special meetings at board expense;

(5) (e) Appoint standing committees and subcommittees;

(6) (f) Be responsible for communicating all statements on the actions of the board in the execution of its duties; and

(7) (g) Perform other duties as deemed necessary by the board.

b. (2) The duties of the vice chairperson are to include:

(1) (a) Preside when the chairperson is absent or when called to the chair by the chairperson;

(2) (b) Perform the duties of the chairperson until a new chairperson is elected in case of a vacancy in the office of the chairperson;

(3) (c) Be acquainted with the duties and responsibilities of the chairperson; and

(4) (d) Perform other duties as deemed necessary by the board.

e. (3) The duties of the executive director ~~are to~~ include:

~~(1)~~ (a) Record attendance of the board members;

~~(2)~~ (b) Keep an accurate record of all proceedings and distribute them to the members;

~~(3)~~ (c) Assist the chairperson in the preparation and distribution of the agenda;

~~(4)~~ (d) Notify all board members ten days in advance of any meeting;

~~(5)~~ (e) Send out all mailings and notices required by the board;

~~(6)~~ (f) Prepare a financial statement for each regular meeting and coordinate vouchers;

~~(7)~~ (g) Release statements to the media, subject to board approval; and

~~(8)~~ (h) In the absence of the chairperson and the vice chairperson, call the meeting to order and preside while a temporary chairperson is elected.

4. b. Board members. Board members will have regular and functional attendance at all regular meetings. ~~They will send materials to the chairperson and director for inclusion in the mailings. They~~ The chairman will recommend to the governor that board members missing three consecutive meetings be replaced. Board members will send any materials for inclusion in mailings to the chairman and director. Members will prepare input for each regular meeting. ~~Members~~ They will file a written report with the director after attending any ~~special~~ subcommittee meetings.

3. Meetings. The education standards and practices board shall hold a minimum of four meetings annually. The year, for purposes of the board, begins July first and ends the last day of June during the ensuing calendar year. The meetings shall be scheduled by the membership at large, or at the call of the chairperson, or may be held upon the request in writing by a majority of the board members. The meetings may be held only after ten days' prior notice. A majority of the members constitutes a quorum that will have the authority to act upon any items of business properly placed before the board. Members should notify the secretary if unable to attend. Meetings will be conducted according to Robert's rules of order.

4. Contact information. Certification application packets and additional information about the rules of certification of the education standards and practices board may be obtained by writing or calling:

Education Standards and Practices Board
600 East Boulevard Avenue
Bismarck, ND 58505-0080
Phone: 701-328-2264
Fax: 701-328-2815

Requests for initial application packets should be made in writing and accompanied by a five dollar initial application packet fee.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-38-17, 28-32-02.1
**Law Implemented:** NDCC 15-38-17

**67.1-01-01-02. Duties of the education standards and practices board.**

1. **Standards for professional ethics, performance, and practices.** The board continuously reviews the North Dakota educator's code of ethics and rules, standards, and procedures pertaining to certification, teacher education program approval, and professional development of educators. As part of the education standards and practices board, the board will solicit input from the teaching profession and representatives of school administrators, school board members, teacher educator professors, and other interested citizens. The board will be responsible for the interpretation of the North Dakota educator's code of ethics with requests for interpretation being placed in writing.

2. **Consideration of written complaints relative to code violations.** ~~Procedures for an inquiry from any interested citizen will be accepted by the board against any North Dakota certificated educator.~~ Requests for an inquiry against any North Dakota certificated educator from any interested citizen will be heard by the board. The inquiry must be requested in writing. Any educator named in an inquiry will be notified and will be informed of the procedures that will be taken.

3. Board-initiated complaints. The education standards and practices board may initiate proceedings against any North Dakota certificated educator for cause as stated in North Dakota Century Code section 15-36-15 or for violations of the educator's code of ethics.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-15, 15-38-17, 28-32-02.1

**Law Implemented:** NDCC 15-38-18, 26-32-02.1

## CHAPTER 67.1-02-01

**67.1-02-01-01. Student teachers.** A student teacher is one who teaches in a regular classroom situation as part of the requirements in professional preparation.

1. All college students in education must have classroom-related preprofessional experience prior to student teaching. This experience must be provided as early as possible. Formal admittance to the teacher education program includes meeting appropriate state program approval requirements.

2. The student teacher should be assigned by a college or university to a cooperating school on a full-time block. A full-time block is construed as a full day for ten consecutive weeks with exceptions documented through program approval. The student teacher must be placed in a classroom where the cooperating teacher is regularly assigned. Additional student teaching experiences shall be determined by the training institution.

3. In the event of an emergency, the student teacher may once during the student teaching semester be placed as a substitute in the student teacher's regularly assigned classroom for a period of time not to exceed two consecutive days.

4. Student teachers may be placed only in accredited schools.

5. Teaching experience cannot be used for a waiver of student teaching.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01, 15-47-41, 15-47-42

**67.1-02-01-02. Cooperating teachers.** A cooperating teacher is the teacher in the local situation who works with, helps, and advises the student teacher.

1. Every cooperating teacher must have acquired a minimum of two semester hours or three quarter hours in a supervision of student teaching course as or an inservice requirement that meets the necessary essentials in preparing cooperating teachers to supervise student teachers. Those cooperating teachers who have served prior to July 1, 1976, may have this requirement waived at the discretion of the host college and cooperating school.

2. The cooperating teacher must have at least two years of teaching experience. The cooperating teacher must have at

least one year of teaching experience in the school system in which the student teacher is being supervised.

3. Before being accepted and approved as a cooperating teacher, the teacher must be recommended by the administration of the school in which student teaching is performed.

4. A cooperating teacher who cannot recommend a student teacher for teaching or certification shall have a conference with the college supervisor and the student teacher prior to the student teaching evaluation and recommendation.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-01-03. College supervisors.** A college supervisor is the college faculty member who is in charge of guiding, helping, and directing the student teacher.

1. The college supervisor must have elementary, middle level, or secondary teaching experience at the level of supervision.

2. A college supervisor, after meeting with the administration of the school in which student teaching is to be done, shall meet with the cooperating teacher and provide a copy of the state student teaching guidelines.

3. The college supervisor shall make a copy of the student teacher's file available to the cooperating teacher prior to the arrival of the student teacher. Such file may contain a brief biography and general information, but may not contain any specific information that would be in violation of a student's right to privacy.

4. A college supervisor shall make at least two visitations during the student's teaching experience. ~~Following each visitation~~, after which the college supervisor shall hold a joint conference with the cooperating teacher and the student teacher, or provide each a written critique of the visitation.

5. The teacher education program staff may provide consultation and assistance for the first year teacher in North Dakota.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-01-04. Program approval of teacher education for certification.** The education standards and practices board shall ~~supervise~~ set procedures for and implement a system of program approval

for teacher education programs for state certification of ~~teachers~~ educators. The education standards and practices board may enter into approval agreements with national accrediting agencies. The procedures for program approval must be reviewed and revised at least every five years with input from state-approved institutions. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32. New procedures become mandatory two years after their adoption by the education standards and practices board. The education standards and practices board shall gather information through the program approval process to determine whether institutions and individual preparation programs meet the North Dakota standards for the preparation of educators for state licensure. The board shall issue decisions of approval, approval with stipulations to be met, approval with probation, or denial or revocation of approval. Full text of the North Dakota procedures for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-38-18

**67.1-02-01-05. Program approval standards.** The education standards and practices board shall adopt a set of North Dakota teacher education program approval standards. The standards will be the criteria used to evaluate undergraduate and graduate education programs leading to North Dakota educational licensure. The standards must be reviewed and revised at least every five years with input from the state-approved institutions and K-12 educators and with consideration of recommendations from professional organizations. Public hearings must be provided in accordance with North Dakota Century Code chapter 28-32. New standards become mandatory two years after their adoption by the education standards and practices board. Full text of the North Dakota standards for program approval may be reviewed in North Dakota Administrative Code title 67.1 or at the office of the education standards and practices board.

Graduates successfully completing all the requirements of programs approved by the education standards and practices board must be recommended by their degree granting institution for North Dakota certification on that basis. Graduates of programs other than those approved by the North Dakota education standards and practices board are subject to meeting the same standards criteria through the review of official transcripts.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-38-18

**67.1-02-02-02. Entrance certificates.**

1. ~~Initial--teacher-certification-for-in-state-graduates-requires completion--of--a--state--agency--approved--teacher--education program--of--a--bachelor's-level-minimum-with-an-overall-grade point-average-of-2.5-or-more-and--a--recommendation--from--the institution.---The--program--must--include-twenty-six-semester hours--or--forty--quarter--hours--for--secondary--professional education-of-thirty-four-semester-hours-or-fifty-quarter-hours for-elementary-professional-education.---This--education--must include--ten--weeks--of--full-time-successful-participation-in student--teaching--at--appropriate--grade--levels--under---the supervision--of-a-teacher-training-institution-approved-by-the education-standards--and--practices--board.~~ Initial teacher certification for in-state graduates requires a minimum of a bachelor's degree from a state agency approved teacher education program. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in the North Dakota standards for teacher education program approval paraphrased below:

   a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.

   b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific K-12 majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcripted by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors.

      (1) The secondary content-specific major must include special methods of teaching at the secondary level and special methods of teaching in the specific content area.

      (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level.

(3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school math, science, social studies, reading, and language arts.

(4) Grade levels K-12 preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include special methods of teaching inclusive of grade levels K-12 and special methods of teaching in the specific content area.

c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a teacher training institution approved by the education standards and practices board.

The applicant must have a minimum overall grade point average of 2.5 and provide three positive recommendations from the institution.

2. ~~An--out-of-state--applicant--must--hold-a-four-year-bachelor's degree-with-twenty-six-semester-hours-or-forty--quarter--hours in--secondary--professional--education-or-thirty-four-semester hours--or--fifty--quarter--hours--in--elementary--professional education--with--a-minimum-overall-grade-point-average-of-2.5. The-professional-education-must-be-part--of--a--state--program approved-for-teacher-education-training-and-include-successful student--teaching--at--the--appropriate--grade--level.---Three recommendations-are-required.--Two-of-the-recommendations-must be-secured-from-the-most-recent-employing-board;--supervisors; and--administrators.---One--of--the--recommendations--may-be-a person-of-the-applicant's-choice.--If-the--applicant--has--not taught--in--the-last-three-years-or-it-is-impossible-to-secure recommendations--from--supervisors--or---administrators;---the recommendations-must-be-secured-from-individuals-who-can-speak with-regard-to-the-teaching-potential--and--character--of--the applicant.----Verification---of--eligibility--for--home--state certification-may-be-requested.--Acceptable--translations--for preparations---received---in---foreign--institutions--will--be requested--at--the--applicant's--expense.~~ An out-of-state

graduate must hold a minimum of a bachelor's degree from a state-approved teacher education institution. The approved program must include a general studies component, a North Dakota recognized program area major, and a professional pedagogy core as defined in the North Dakota standards for teacher education program approval paraphrased below:

a. The general studies component includes liberal arts preparation in the areas of the humanities, fine arts, mathematics, natural sciences, behavioral sciences, and symbolic systems as prerequisite to entrance into the professional education program.

b. North Dakota recognized program area majors are printed on the application form and include content-specific majors at the secondary level, content-specific K-12 majors as listed below, majors in middle level education, or majors in elementary education. Majors that are transcripted by state-approved teacher education programs using terminology not appearing on the application form must be compared to the North Dakota standards for teacher education program approval to determine whether they meet the same criteria as the listed recognized majors.

   (1) The secondary content-specific major must include special methods of teaching at the secondary level and special methods of teaching in the specific content area.

   (2) The middle level major must include study of middle level foundations, adolescent development, reading in the content areas, and special methods of teaching at the middle level.

   (3) The elementary major must include special methods of teaching elementary content areas with a minimum of twelve semester hours specific to teaching elementary school math, science, social studies, reading, and language arts.

   (4) Grade levels K-12 preparation programs in special education, foreign language, art, music, physical education, business education, and computer education must include special methods of teaching inclusive of grade levels K-12 and special methods of teaching in the specific content area.

c. The professional education component includes a minimum of twenty-two semester hours of pedagogical study of teaching and learning in addition to the program-specific major. This coursework must be from the areas of educational foundations, educational psychology, child development, teaching and learning theory, educational diagnosis and

assessment, inclusive education, educational technology, classroom and behavioral management, and human relations specific to teaching. The professional education component must also include classroom professional experience prior to student teaching and a minimum of ten weeks of full-time successful participation in student teaching at appropriate grade levels under the supervision of a state-approved teacher training institution.

The applicant must have a minimum overall grade point average of 2.5. Three positive recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, the recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. Verification of eligibility for home-state certification may be requested. Acceptable translations for preparations received in foreign institutions will be requested at the applicant's expense.

3. An application fee of five dollars must accompany a request for an initial application form.

4. A fee of fifty dollars must accompany the application for initial certification for in-state and out-of-state ~~candidates~~ graduates. An additional fee of thirty-five dollars for transcript review from out-of-state ~~candidates~~ graduates must also accompany the certification application.

5. All initial certificates are valid for only two consecutive school years.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 15-36-18, 28-32-02
**Law Implemented:** NDCC 15-36-01, 15-36-08, 15-38-18

**67.1-02-02-04. Two-year and five-year renewals.**

1. A two-year renewal will be issued to those applicants reentering the profession after an absence of five years, or to applicants with less than eighteen months of contracted teaching in North Dakota ~~and has a fee of thirty dollars per renewal~~, that meet the renewal requirements and pay the required fees. Applicants reentering the profession must complete eight semester hours of reeducation credits during their first two years of contracted employment. Substitute teachers must maintain a valid teaching certificate using the two-year renewal cycle, but are not required to submit

reeducation hours unless they sign a contract. Initial applicants from out of state who have had an absence from the profession of five years or more must meet the requirements of North Dakota initial certification as stated in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section.

2. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota certificate. All five-year certification applications must be accompanied by a fee of seventy-five dollars. Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status. Three recommendations are required. Two of the recommendations must be secured from the most recent employing board, supervisors, and administrators. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from supervisors or administrators, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. ~~If--recommendations are--not--adequate--to--issue--a--five-year--certificate,--the education--standards--and--practices--board--shall--provide--a hearing--following--North--Dakota--Century-Code-chapter-28-32. The-procedure-must-be-as-provided-in-North-Dakota-Century-Code section---28-32-05.---Following--the--hearing--procedure,--the education--standards--and--practices--board---shall---make---a determination-whether-to:~~

   a. ~~Issue--a--five-year--renewal--to--the--applicant;~~ Renewal applicants who have completed the four semester hours of credit but have not been contracted for at least thirty days under the five-year certificate will revert to the two-year renewal cycle.

   b. ~~Issue--a--two-year--probationary--certificate;--or~~ Renewal applicants who have failed to complete the four semester hours of reeducation credit (whether the applicant has been contracted or not), will either not be renewed, or they may agree to be placed on two-year probation. Eight semester hours of reeducation credit must be supplied during the period of the two-year probationary certificate. Applicants failing to complete the probation credit requirements will not be renewed.

   c. ~~Deny-recertification.~~ If recommendations are not adequate to issue a five-year certificate, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. The procedure

must be as provided in North Dakota Century Code section 28-32-05. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny recertification.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01, 15-36-08, 15-38-18

**67.1-02-02-05.** ~~Credit~~ Professional development for certificate renewal. The succeeding renewal of the five-year certificate requires verification of a minimum of four semester hours or six quarter hours of college or university credit earned within the dates of the certificate, contracted teaching of a minimum of thirty days, and three recommendations as outlined in subsection 2 of section 67.1-02-02-04. Applicants not meeting these requirements will be processed as ~~reentry applicants~~ indicated under ~~this~~ that section. Professional development coursework submitted for renewal may be either undergraduate or graduate credit and must be either in professional education or applicable to the applicant's certified major, minor, or endorsement areas. Applicants who are working toward an added degree or endorsement may use coursework applicable to that expanded area of study for renewal.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-02-06. Denial and appeal.** The education standards and practices board may deny an application for the issuance of a certification made by an applicant:

1. Who failed to comply with certification statutes or the educator's code of ethics;
2. Who failed to meet the minimum educational requirements set forth in the rules of certification of the education standards and practices board;
3. Who failed to submit appropriate recommendations;
3. ~~.~~ 4. Who has been convicted of a crime under the laws of the state or the United States, or who has knowingly provided false information to the education standards and practices board;
4. ~~.~~ 5. Who is currently under license suspension; or
5. ~~.~~ 6. Who has had certification revoked.

If the application for the issuance of certification is denied by the education standards and practices board staff, an applicant may request,

in writing, a review of the denial ~~before~~ by the education standards and practices board through written documentation. In the event of denial by the education standards and practices board the applicant may request a public hearing of the matter under North Dakota Century Code chapter 28-32.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 15-38-18, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-02-07. Indian studies.** Any teacher who graduated from a teacher education program after September 1, 1980, is required to meet the North Dakota Native American studies requirement which is two semester hours or three quarter hours of college credit in North Dakota Native American studies, or the equivalent in inservice pursuant to approval by the education standards and practices board. The two-year certificate will be used for compliance for reentry and out-of-state applicants. Substitute teachers are exempt ~~in~~ from the Indian studies requirement until a contracted position is accepted. The course must be completed within the time period of the first two-year certificate under which the educator becomes contracted in North Dakota. If this requirement is not met the certificate may not be renewed until the course is completed.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-02-09. Reentry.** An applicant who has been out of teaching for a period of more than five years must earn a total of eight semester hours or twelve quarter hours of college or university credit in the area in which the teacher wishes to renew certification during the first two years of reentry contracted service. One-half of the required credit hours must be earned before entering the second year of ~~the--renewal-period~~ employment. Substitute teachers are exempt from the eight semester hour requirement until the individual accepts a contracted position.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

## CHAPTER 67.1-02-03

**67.1-02-03-03. Secondary endorsement.** Reeducation for secondary schoolteaching may be accomplished in one of the following two ways:

1. By completing a ~~college major or minor in secondary education~~ the minimum requirements for a degree in secondary education including student teaching in grades seven through twelve and a North Dakota recognized content area major; or

2. By Individuals who already have a North Dakota recognized content area major may complete the secondary endorsement by presenting a minimum of eight semester hours or twelve quarter hours of secondary education professional courses for the endorsement in addition to the major or minor field. The applicant must have a minimum of one year successful teaching experience in grades seven through twelve or have supervised student teaching as part of the above program.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-03-05. Bilingual education or English as a second language** endorsement. Reeducation for a "bilingual education or English as a second language" endorsement for any certified teacher may be accomplished by presenting at least sixteen semester hours or twenty-four quarter hours of college coursework in all of the following areas:

1. **Foundations.** Four semester hours or six quarter hours of college coursework ~~from~~ including the following:

   a. Multicultural education, which involves a knowledge of ethnic groups in North Dakota and the United States;, different instructional methods to use with different ethnic and language groups.

   b. Foundations of bilingual education, which involves models of bilingual education; research on the effectiveness, or lack thereof, of bilingual education; history of bilingual education; and significant laws and court decisions affecting language minority students.

2. **Linguistics.** Six semester or nine quarter hours of college coursework ~~from~~ including the following areas:

   a. Linguistics, which involves the nature of language, organizational principles of language (phonology, morphology, syntax, and semantics), principles of language change, and development of language families.

b. Psycholinguistics, which involves first and second language, oral and written acquisition processes, and learning theories.

c. Sociolinguistics, which involves basic sociocultural variables in language use and language learning, types of bilingual and multilingual educational situations, and social determinants of dialect and style.

3. **Methods.** Two semester or three quarter hours of college coursework ~~from~~ including the following:

a. Methods of teaching English as a second language to students, which involves an exploration of historical and current instructional approaches in teaching English as second language, from the grammar-translation method to the natural method.

b. Methods of teaching bilingual education, which involves an understanding of instructional programs in bilingual education, such as immersion, transitional, early entry, and late entry.

4. **Assessment.** Two semester hours or three quarter hours of college coursework from assessment and testing of culturally diverse students, which involves a study of culturally appropriate assessment tools and methods of identifying and assessing limited English proficient students.

5. **Field experience.** Two semester or three quarter hours of college coursework ~~from~~ in field teaching experience with limited English proficient students in a bilingual or English as a second language setting.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

## CHAPTER 67.1-02-04

**67.1-02-04-01. ~~Emergency~~ Interim certificates.** ~~Emergency~~ Interim certificates will be issued under the following conditions:

1. Consideration for ~~emergency~~ interim certificates will not be granted until after August fifteenth in any year.

2. Interim certificates may be issued only in areas where documented shortages of regularly certified teachers exist as determined by the education standards and practices board. Shortage areas must be determined by the education standards and practices board based upon the ratio of regularly certified teachers in the state who are qualified for the position to the number of schools with open positions requesting interim certification. In cases where near shortages exist, the board must give additional consideration to whether the hiring school has made a diligent effort to attract and hire regularly certified teachers.

3. The request for an ~~emergency~~ interim certificate must be initiated by a school. The school board or administration must make the request in writing to the education standards and practices board for consideration of an ~~emergency~~ interim certificate, indicating intent to offer a contract if certification can be arranged. The request must ~~certify--that it-is-improbable-that~~ document that a diligent effort has been made to employ a regularly certified teacher ~~can--be--employed~~ to fill the position. Documentation of a diligent effort to employ qualified personnel should include information on how and how long the position was advertised, whether schools of education have been contacted in search of applicants, how many qualified applicants applied, how many applicants were interviewed, whether increases in salary or other incentives were offered in an attempt to attract qualified applicants, and whether these incentives are comparable to those offered by other schools of similar size and means.

~~3.~~ 4. The candidate must write a letter indicating willingness to accept the position if offered.

~~4.~~ 5. A--~~complete~~ Complete official ~~transcript~~ transcripts of all college work must be sent to the education standards and practices board.

~~5.~~ 6. The applicant must have proficiency and hold minimal qualifications of a content area bachelor's degree ~~to-teach~~ in the content area to be assigned. If an applicant already qualifies for teacher certification in another content area, interim certification may not be used to teach in a new content area while obtaining new content area requirements.

~~6.~~ 7. Renewal of ~~emergency~~ interim certificates will be reviewed each year and will depend upon the supply of and demand for teachers as evidenced by documented efforts to obtain a certified person for the position.

~~7.~~ 8. ~~The--renewal~~ Renewal of the interim certificate, if permitted, is contingent upon presentation of at least eight semester hours or twelve quarter hours of additional college credit ~~in the--area--of--study--leading--to~~ toward completion of the requirements for regular certification as stated in section 67.1-02-02-02 and the North Dakota standards for teacher education program.

~~8.~~ 9. The fee for the ~~emergency~~ interim certificate is one hundred dollars for each year the certificate is issued.

10. Interim certification is to address documented shortage areas only. Interim certification may not be issued to applicants who have failed to meet the deadlines or conditions of their regular certification renewal.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 15-36-08, 28-32-02
**Law Implemented:** NDCC 15-36-01

## CHAPTER 67.1-02-05

**67.1-02-05-01. Reciprocity** of suspensions and revocations. North Dakota will have reciprocity for suspensions and revocations with other states during the suspension time and will determine acceptance of applicants case by case based on applicable North Dakota laws and denial procedures under section 67.1-02-02-06.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-05-02. Experience.** Teaching experience in approved kindergarten, elementary, middle level, secondary, and postsecondary teacher education programs will be granted as experience for certificate renewal.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-05-03. Reserve officers' training corps instructors.** Reserve officers' training corps instructors must have a military science degree and will receive ~~regular~~ certification with a restriction to that area.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-05-04. Endorsements,** added degrees, **and restrictions.** The North Dakota educator's professional certificate is issued as described in section 67.1-02-02-02. This certificate qualifies the holder for regular classroom teaching or for functioning in areas with the proper endorsements and restrictions as assigned. The endorsements could be recently acquired college granted majors or minors or a new degree, endorsements in kindergarten, elementary, middle school, bilingual, secondary, or any other endorsement issued by the education standards and practices board. The restricted certification is for psychology (master's degree with major in school psychology), speech therapy, mental retardation, deaf education, visually impaired, early childhood education, preschool handicapped, and reserve officers' training corps. All other special education categories require regular elementary or secondary qualifications. Added degrees and endorsements must be obtained through state-approved teacher education programs. If a certificate holder requests the addition of an endorsement to a certificate at any time other than renewal, a fee of thirty-five dollars must accompany the request for the addition ~~if--it--is--any--endorsement~~

~~other--than--a--newly--acquired--major--or--minor--or--new--degree,--and seventy-five-dollars-if-the-request-for-change-is-for--a--new--major--or minor--or--degree.---An--additional--five--years--is--also--added-to-the certificate-at-the-time-of-the-addition-of--the--new--major,--minor,--or~~ degree. No additional fee for an endorsement will be assessed if any endorsement is added at a regularly scheduled renewal.

A newly acquired major or minor or new degree may be added between renewal periods for a fee of seventy-five dollars. An additional five years is also added to the certificate expiration date at the time of the addition of the new major, minor, or degree. No additional fee for an added degree may be assessed if the degree is added at a regularly scheduled renewal.

Official duplicate copies of lost certificates will be provided at a cost to the holder of twenty dollars. Individuals who hold life certificates under section 67.1-02-02-01 may add degrees or endorsements to the education standards and practices board certification records at no charge through the submission of official transcripts. Individuals wishing to obtain an official duplicate of their life certificate including added degrees or endorsements can obtain the copy by paying the twenty dollar duplicate certificate fee.

Programs that include a specialized rather than a regular professional education core are issued certificates that restrict the holder to teaching in that specialty area. Restricted certificates are issued to applicants with master's degrees in school psychology or speech therapy. Restricted certificates are issued to applicants with degrees in mental retardation, deaf education, visually impaired, or preschool or kindergarten handicapped. All other special education categories require regular elementary or secondary qualifications. Restricted certificates are also issued for baccalaureate level programs in vocational technical education, reserve officers' training corps, and Native American language instruction. Teachers with restricted certificates may teach or substitute teach only in the specified area. Certification in early childhood education must be attached to an elementary education certification.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 15-36-08, 28-32-02
**Law Implemented:** NDCC 15-36-01

**67.1-02-05-05.** ~~Alternate~~ Foreign transcripts and special needs. The content of the laws and rules for teacher certification may be fulfilled by providing the required documentation through a third party authorized by the candidate through an affidavit provided by the education standards and practices board in cases where foreign transcripts or adaptations for special needs are involved.

**History:** Effective July 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 15-36-01, 28-32-02
**Law Implemented:** NDCC 15-36-01

# TITLE 72

## Secretary of State

**OCTOBER 1998**

**ARTICLE 72-05**

**STAFF COMMENT:** Article 72-05 contains all new material and is not underscored so as to improve readability.

# ARTICLE 72-05

# ELECTRONIC FILINGS AND SIGNATURES



## CHAPTER 72-05-01
## FACSIMILE FILINGS

**72-05-01-01. Applicability.** These rules are applicable and available to any state agency as defined in North Dakota Century Code section 32-12.1-02 charged by law with the duty of receiving signed, subscribed, or verified documents. Any such document may be submitted by fax as permitted by the state agency and this chapter.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-02. Definitions.**

1. "Facsimile filer" or "filer" means a person who transmits or causes to be transmitted a facsimile filing to a state agency.

2. "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to a state agency that accepts such documents.

3. "Facsimile transmission" means a completed transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.

4. "Fax" is an abbreviation for "facsimile", and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

5. "Transmission cover sheet" means the transmission document which must include the following information from the facsimile filer: the filer's name, address, and telephone number; the facsimile telephone number of the sending machine; the number of pages sent; the transmission time and date; the identification of the documents transmitted; and any applicable filing deadline and whether the fax should be directed to any particular person at the state agency. If a filing fee is required for the document to be filed, the transmission cover sheet must also contain a valid credit card account number to which the filing fee must be charged, signature of the cardholder authorizing the charging of the fee, and the expiration date of the credit card. The state

agency may require additional information to be included in the cover sheet.

6. "Transmission record" means the required document printed or created by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time and date, and an indication of any errors in transmission.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-03. General requirements.** The document used for transmitting a fax other than a transmission cover sheet must be an original legible document. Any document that exceeds eight and one-half inches [21.59 centimeters] by eleven inches [35.56 centimeters] must be reduced in size to not more than eight and one-half inches [21.59 centimeters] by eleven inches [35.56 centimeters] before it is transmitted. In order for a document to be eligible for filing, it must be received by the state agency in a legible, complete form. If applicable law requires the document to be verified, the notary jurat or equivalent language must be completed and included on the document transmitted by fax. Any notary jurat must be accompanied by a discernible seal or stamp. A state agency accepting a fax filing may require a facsimile filer to file an original of any document that has been filed by fax or to retain the original for any period of time up to the time specified for the particular type of document in the records retention schedule of the state agency.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-04. Mandatory transmission cover sheet.** A facsimile filing must be accompanied by a completed transmission cover sheet. The cover sheet must be the first page transmitted. The state agency shall ensure that any credit card information on the transmission cover sheet not be publicly disclosed.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12, 44-04-18.9
**Law Implemented:** NDCC 1-08-12

**72-05-01-05. Notation of fax filing.** Each document transmitted by fax for direct filing with a state agency must contain the phrase "by fax" or "by facsimile" immediately below the title of the document.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12

**Law Implemented:** NDCC 1-08-12

**72-05-01-06. Presumption of filing.** A facsimile filer shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the state agency because of an error in the transmission of the document to the state agency which was unknown to the facsimile filer or a failure to process the facsimile filing when received by the state agency, the facsimile filer may request that the state agency consider the document to be filed on the date transmitted. The request to the state agency must be accompanied by a sworn statement and a proof of transmission in substantially the following form:

At the time of transmission I was at least 18 years of age. On (date) _____ at (time) _____ I transmitted to the (state agency) _____ the following document (name) _____ by facsimile machine, pursuant to North Dakota Administrative Code Chapter 72-05-01. The state agency's fax telephone number that I used was (fax telephone number) _____. The facsimile machine I used complied with the administrative rules and no error was reported by the machine. Pursuant to North Dakota Administrative Code Section 72-05-01-07, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under the pains and penalties of perjury under the laws of the State of North Dakota that the foregoing statement is true and correct.

_____

Subscribed and sworn to before me this _____ day of _____.

_____

Notary Public
My Commission Expires _____.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-07. Payment of filing fee by credit or debit card.**

1. A credit or debit card account acceptable to the state agency may be used to pay for filing fees on facsimile filings made directly to a state agency. The transmission cover sheet for these filings must include the credit or debit card account number to which the fee is be charged, the signature of the

cardholder authorizing the charging of the fees, and the expiration date of the credit or debit card.

2. Rejection of charge. If a charge is rejected by the issuing company, the state agency may notify the facsimile filer that the filing is rejected because of the rejected charge. This provision does not prevent a state agency from seeking authorization for the charge before the filing and rejecting the filing if the charge is not approved by the issuing company.

3. Amount of charge. The amount of credit or debit card charge must be the applicable statutory fee, tax, or other authorized charge. An additional fee may not be charged to the facsimile filer in order to accept payment by credit card.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12, 54-06-08.2
**Law Implemented:** NDCC 1-08-12

**72-05-01-08. Automated clearinghouse payments.** A facsimile filer may pay for filing fees by establishing an automated clearinghouse debit or credit transaction. The facsimile filer shall contact the state agency to establish the payment procedure prior to the initial automated clearinghouse transaction. The facsimile filer must sign an authorization to be filed with the state agency before an automated clearinghouse debit transaction may be completed. The facsimile filer must contact the state agency for automated clearinghouse credit transfer instructions to the Bank of North Dakota.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-09. Signatures.**

1. **Possession of original document.** A facsimile filer who files a signed document pursuant to these rules represents that the original signed document is in the filer's possession or control and available for inspection by or delivery to the state agency at any reasonable time and place within the number of years of the filing specified by the agency upon demand by the agency.

2. **Validity of signature.** A signature on a document accepted for filing by the state agency and filed by facsimile in accordance with these rules has the same validity and consequence as the manually signed signature.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12

**Law Implemented:** NDCC 1-08-12

**72-05-01-10. Availability of state agency fax.** A state agency agreeing to accept fax filings shall make its fax machine generally available for receipt of documents during normal business hours on normal business days. This provision does not prevent the state agency from utilizing the fax machine to transmit documents or providing for normal repair and maintenance of the fax machine during these hours.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-01-11. Records of fax filings.** A state agency may maintain a manual or other log to record incoming fax filings. The log or record may contain a description of the received document and the state agency staff person to whom the document was assigned for filing.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

# CHAPTER 72-05-02
# TANGIBLE MEDIA FILINGS (DISKETTE AND CD-ROM)



**72-05-02-01. Applicability.** These rules apply to any state agency as defined in North Dakota Century Code section 32-12.1-02 charged by law with the duty of receiving signed, subscribed, or verified documents. Such a state agency may accept documents transmitted via tangible media such as 3.5 inch [8.89 centimeter] diskettes or CD-ROMs.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-02. Definitions.**

1. "Mandatory cover sheet" means a form developed by a state agency which must accompany any tangible media filing. The form must identify the filer and list the filer's full post-office address and telephone number. The form may also contain any filing fee information or other pertinent information inserted by the state agency and must identify the documents contained on the tangible media. The form must also contain a statement that the filer filing via the tangible medium has examined it and that it contains true and correct copies of the documents to be filed and that by signing the form acknowledges that the filer is intending to sign, subscribe, or verify documents contained on the tangible medium. The form must contain a line for a manual signature of the filer, any representative capacity, and the date the form was executed. If applicable law requires the document to be verified, the form must also contain a notary jurat or equivalent language.

2. "Tangible media" means any tangible media other than paper, which is capable of storing documents and converting the documents into readable usable form by a state agency through the use of existing state agency equipment and associated

software. Tangible media include 3.5 inch [8.89 centimeter] diskettes and compact discs - read-only memory (CD-ROMs) and any other tangible media that may exist and which meet the requirements of this chapter.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-03. General requirements.** The tangible media employed by the filer must be of a type acceptable to the state agency and usable by the state agency utilizing its current electronic equipment and software. It must be of a type and format that produces a clear readable usable document.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-04. Mandatory cover sheet.** A tangible media filing must be accompanied by the mandatory filing cover sheet as defined in this chapter. In addition, the tangible media object or any case or container in which it is contained or enclosed must be labeled with the filer's name, address, and a brief description of the documents contained therein.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-05. Tangible media to be inspected by a state agency.** Any tangible media submitted for filing under this chapter must be examined by the state agency within a reasonable time after presentment. The examination may include any virus check or security check to ensure the safety and security of the state agency's systems, equipment, and software. If the tangible media cannot produce a readable usable form of the document, the state agency shall notify the filer filing the tangible media in writing informing the filer that the tangible media is unreadable, damaged, or not usable by the state agency and requesting that the filer submit a new tangible media object. If the new tangible media object is received not later than thirty days from the date the written notice is sent by the state agency, the new tangible media object will be deemed to have been filed as of the date originally submitted. A tangible media filing submitted other than in conformity with this chapter may be rejected by the agency and may not be deemed filed for any purpose.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-06. Records retention.** Any tangible media object that has been accepted for filing by a state agency must be retained in conformity with its records retention schedule.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

**72-05-02-07. Signatures.**

1. **Possession of original document.** Any filer filing by tangible media pursuant to these rules represents that the original signed document is in the filer's possession or control and is available for examination and inspection by or delivery to the state agency at any reasonable time and place within the number of years of the filing specified by the agency.

2. **Signature on mandatory cover sheet deemed an original valid signature.** A manual signature on a mandatory cover sheet accompanying any tangible media filing under this chapter that is accepted by the state agency and which complies with this chapter has the same validity and consequence as if the signature had been appended to the document contained on the tangible media.

**History:** Effective October 1, 1998.
**General Authority:** NDCC 1-08-12
**Law Implemented:** NDCC 1-08-12

## CHAPTER 72-05-03

## PASSWORD AND PIN FILINGS

[Reserved]

## CHAPTER 72-05-04

## DIGITAL SIGNATURES

[Reserved]

## CHAPTER 72-05-05

## BIOMETRIC AUTHENTICATION

[Reserved]

# TITLE 75

# Department of Human Services

**SEPTEMBER 1998**

**CHAPTER 75-03-17**

**AGENCY SYNOPSIS:** Regarding proposed amendments to North Dakota Administrative Code Chapter 75-03-17 Residential Treatment Centers for Children

A public hearing was conducted on June 11, 1997, in Bismarck concerning proposed amendments to North Dakota Administrative Code Chapter 75-03-17, Residential Treatment Centers for Children.

The purpose of North Dakota Administrative Code Chapter 75-03-17 is to reflect an additional provider responsibility for the safety of children.

The department proposed rules amending North Dakota Administrative Code Chapter 75-03-17, Residential Treatment Centers for Children, and conducted a public hearing on those rules on June 11, 1997, and received written comment on those proposed rules until the end of the day on July 14, 1997.

75-03-17-01. Definitions. Adds definitions of terms related to requirement for an individual treatment plan. Adds definitions of terms to identify mental health professionals.

75-03-17-02. Procedure for Licensing. Corrects grammar.

75-03-17-03. Organization and Administration. Adds a requirement that the governing body establish standards and practices, makes safety and licensing assurances with respect to vehicles, and obtains insurance. Also makes grammatical corrections.

75-03-17-04. Admissions. Makes grammatical corrections and shortens decisionmaking time for admissions.

75-03-17-05. Diagnosis and Treatment While at the Center. Makes grammatical corrections, relaxes requirements for involvement of resident's family in treatment, requires minimum available time for psychiatrists and nursing staff, and limits the use of resident's image or information for the purpose of fundraising, publicity, or illustration.

75-03-17-06. Special Treatment Procedures. Replaces procedures concerning use of seclusion and restraints with procedures concerning safety holds and locked timeout.

75-03-17-07. Medical Care. Specifies that a resident who has not had a recent medical examination will receive one shortly after admission, requires staff training in crisis training intervention and universal infection control precautions, corrects requirements concerning prescription labels, and corrects consent requirements for use of psychotropic medications.

75-03-17-08. Dental Care. Corrects grammar and spelling.

75-03-17-09. General Health. Corrects grammar.

75-03-17-10. Education and Training. Requires center to consider the child's wishes, and the wishes of the child's parent or guardian, concerning attendance at religious ceremonies. Also prohibits certain conduct masquerading as discipline.

75-03-17-11. Residence as Employees Prohibited. Corrects grammar.

75-03-17-12. Discharge. Corrects grammar and requires a discharge plan to include a psychiatric update and recommendations.

75-03-17-13. Responsibility for Notification of Runaway Residents. Corrects grammar.

75-03-17-14. Employee Health Qualifications. Requires personnel to have a health screening. Requires measures to prevent transmission of communicable diseases. Requires center to treat employee medical records as confidential.

75-03-17-15. Staff to Resident Ratio. Corrects grammar.

75-03-17-16. Personnel Policies. Requires personnel policies to be written and provided to employees. Identifies crimes for which convictions have a direct bearing on the individual's ability to serve the public as a center operator or employee, and otherwise implements N.D.C.C. Section 12.1-33-02.1. Requires prospective employees to consent to background checks. Requires a center to maintain individual personnel record on each employee.

75-03-17-16.1. Child Abuse and Neglect Reporting. Requires center employees to be knowledgeable of the requirements of N.D.C.C. Chapter 50-25.1. Requires center to adopt procedures requiring the report of suspected child abuse and neglect.

75-03-17-17. Center Staff. Corrects grammar and requires the center have available services from an alcohol and drug addiction counselor and a nurse.

75-03-17-18. Safety, Buildings, and Grounds. Corrects grammar.

75-03-17-19. Interstate Compact on the Placement of Children. Corrects grammar.

75-03-17-20. Rights and Obligations of the Applicant. Corrects grammar and grants "deemed status" for providers with programs accredited by a national accreditation body based on standards that exceed the standards of the licensure rules.

**75-03-17-01. Definitions.**

1. "Applicant" means the entity requesting licensure as a residential treatment center for children ~~("center")~~ under this chapter.

2. ~~"Child"--means-a-person-who-is-a-minor-as-that-term-is-defined in-North-Dakota-Century-Code-section-14-10-01,--or--who--is--a child--within--the--meaning--of--subsection-1--of-North-Dakota Century-Code-section-27-20-02.~~ "Center" means a residential treatment center for children.

3. "Clinical ~~supervision,---diagnostic--assessment,--individual treatment--plan,---qualified---mental---health---professional, residential--treatment,--and--residential-treatment-center-for children"-mean-the-same-as-defined--in--North--Dakota--Century Code--section--25-03.2-01~~ supervision" means the oversight responsibility for individual treatment plans and individual service delivery provided by qualified mental health professionals.

4. "Department" means the department of human services.

5. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.

6. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.

7. "Mental health professional" means:

a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners;

b. A social worker with a master's degree in social work from an accredited program;

c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program;

d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse, as defined by subdivision c, or an expert examiner;

e. A licensed addiction counselor; or

f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond a master's degree, as required by the national academy of mental health counselors, or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

8. "Mentally ill person" means ~~the same as is defined in subsection 10 of North Dakota Century Code section 25-03.1-02~~ an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is mentally retarded may suffer from a mental illness. Chemical dependency does not constitute mental illness, although an individual suffering from that condition may be suffering from mental illness.

~~6.~~ 9. "Program plan" means a center's plan for delivering its services and providing treatment.

10. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomat in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.

11. "Residential treatment" means a twenty-four-hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

12. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents, a total, twenty-four-hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-01, 25-03.2-03

**75-03-17-02. Procedures for licensing.**

1. **Application.** An application for, license or for renewal ~~of, a license as a residential treatment center for children~~ must be submitted to the department which shall determine the suitability of the applicant for licensure under this chapter. The application must contain any materials that the department may require, including:

   a. An architectural plan;

   b. A comprehensive description of the program plan which includes:

      (1) A plan demonstrating compliance with this chapter;

      (2) The treatment modalities offered, ~~such as~~ including milieu therapy, family therapy, chemotherapy, and psychotherapy;

      (3) Prohibited treatment modalities; and

      (4) The services provided directly by the facility and those provided by other community resources including special education as required by law;

   c. The funding base for building and operating the center including a projected twelve-month budget based on predictable funds; and, for a new center ~~must have~~, a

statement of available funds or documentation of available credit sufficient to meet the operating costs for the first twelve months of operation; and

d. A copy of all policies required by this chapter.

2. **License renewal.** An application for license renewal must be submitted sixty days before the license expires and must describe any changes that have modified the physical plant, program plan, funding base, or professional competence since the granting or previous renewal of the license.

3. **Initial license.** An initial license is in effect for ~~up-to~~ one year. When a license is renewed, it may be issued for ~~up to~~ two years, at the discretion of the department. The license must identify the number and age groupings of ~~children~~ residents who may receive care, is valid only on the premises indicated, and is not transferable.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-02, 25-03.2-03, 25-03.2-05

**75-03-17-03. Organization and administration.**

1. **Governing body.** The applicant must have a governing body that is responsible for the operation, policies, program, and practice of the center. The governing body shall:

   a. Define ~~its-philosophy,-purpose,-function,-the-geographical area-served,-the-ages-and-types-of-children--accepted--for care,-and-the-clinical-disorders-addressed-by-the-program:~~

      (1) The center's philosophy;

      (2) The center's purpose;

      (3) The center's function;

      (4) The geographical area served by the center;

      (5) The ages and types of residents accepted for care by the center; and

      (6) The clinical disorders addressed by the center's program;

   b. Ensure that all policies required by this chapter are in writing and on file at the center;

c. Develop a records retention policy consistent with state and federal law;

d. Assure that all vehicles transporting ~~clients~~ residents are: ~~subject to routine inspection and maintenance; licensed by the state motor vehicle department; equipped with seatbelts for every passenger; equipped with a first-aid kit and a fire extinguisher; carry no more individuals than the manufacturer's recommended maximum capacity; handicapped accessible where appropriate; and driven by individuals who hold a valid state driver's license appropriate to the vehicle driven; and~~

(1) Subject to routine inspection and maintenance;

(2) Licensed by the state motor vehicle department;

(3) Equipped with seatbelts for every passenger;

(4) Equipped with a first-aid kit and a fire extinguisher;

(5) Carrying no more individuals than the manufacturer's recommended maximum capacity;

(6) Disability accessible where appropriate; and

(7) Driven by an individual who holds a valid driver's license, of a class appropriate to the vehicle driven, issued by the driver's jurisdiction of residence; and

e. Obtain sufficient ~~property insurance; liability insurance covering bodily injury, property damage, personal injury, professional liability; and automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault~~, including:

(1) Liability insurance covering bodily injury, property damage, personal injury, professional liability; and

(2) Automobile or vehicle insurance covering property damage, comprehensive, collision, uninsured motorist, bodily injury, and no fault.

2. **Legal status.** The applicant ~~must~~ shall provide to the department:

a. A copy of the articles of incorporation, bylaws, partnership agreement, or articles of organization and any ~~other~~ evidence of required legal registration of the entity;

b. A current list of partners or members of the governing body and any advisory board, including the address, phone number, principal occupation, and term of office of each listed person; and

c. A statement disclosing the owner of record of any building, facility, or major piece of equipment occupied or used by the applicant, the relationship of the owner to the applicant, ~~and, if any,~~ the cost of such use, if any, to the applicant, and the identity of the entity responsible for the maintenance and upkeep of the property.

3. **Financial plan.** The applicant ~~must~~ shall have a financing plan which includes a twelve-month budget, and which shows the center's financial ability to carry out its purposes and function. A new applicant ~~must~~ shall have sufficient funds available ~~to carry it through its~~ for the first year of operation.

4. **Audits.** All financial accounts must be audited annually by a certified public accountant. The report must be made a part of the center's records and contain the accountant's opinion about the center's present and predicted financial solvency. The report must be submitted with an application for license renewal.

5. **Quality assurance.** The applicant ~~must~~ shall have a quality assurance program that monitors and evaluates the quality and appropriateness of ~~client~~ resident care;, and provides a method for problem identification, corrective action, and outcome monitoring. The quality assurance program must include:

   a. A plan for ~~client~~ resident and staff safety and protection;

   b. A method to evaluate personnel performance and the utilization of personnel;

   c. A system of credentialing, granting, and withholding staff privileges;

   d. A method to review and update policies and procedures assuring the usefulness and appropriateness of policies and procedures;

   e. A method to review the appropriateness of admissions, care provided, and staff utilization;

   f. A plan for the review of individual treatment plans;

g. A plan for program evaluations that includes measurements of progress toward the centers' stated goals and objectives; and

h. A method to evaluate and monitor standards of ~~client~~ resident care.

6. ~~Client's~~ Resident's **case records.** The applicant ~~must~~ shall maintain a confidential ~~client~~ resident record for each resident ~~child~~ which must be current and reviewed monthly. Each record must contain:

a. An application for service;

b. A social history;

c. ~~Medical~~ A medical treatment consent form signed by ~~parents or legal guardian~~ a person who may lawfully act on behalf of the resident and any consent for the use of psychotropic medications as required under subdivision d of subsection 10 of section 75-03-17-07~~.~~;

d. ~~Name~~ The name, address, and phone number of ~~persons~~ individuals to be contacted in an emergency;

e. Reports on medical examinations, including immunizations, any medications received, allergies, dental examinations, and psychological and psychiatric examinations;

f. An explanation of custody and legal responsibility for the ~~child~~ resident and relevant court documents ~~such as~~ including custody or guardianship papers; and

g. A written agreement between ~~parents or guardian~~ a person who may lawfully act on behalf of the resident and the center ~~to be prepared and signed by the center's representative and by the parents or guardian~~; and a record that the ~~parents or guardian~~ person who acted on behalf of the resident received a copy. The agreement must include:

(1) A statement as to who has financial responsibility;

(2) How payments are to be made to cover the cost of care;

(3) Which items are covered by the normal or regular center charges for care;

(4) Medical arrangements including the cost of medical care;

(5) Visiting arrangements and expectations;

(6) Arrangements for clothing and allowances;

(7) Arrangements for vacations;

(8) Regulations about gifts permitted;

(9) Arrangements for ~~parental--or--the-legal-guardian's~~ participation by the person who acted on behalf of the resident through regularly scheduled interviews with designated staff;

(10) The center's policy on personal monetary allowance to be provided the ~~child~~ resident at the center; and

(11) Records of special treatment orders.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-04. Admissions.**

1. The center may admit only those ~~children~~ prospective residents who are found eligible according to the center's admission policies. Every center shall have specific admission policies that describe which professional staff have ~~the~~ admission authority ~~to-admit-a-child;~~ and describe the membership of the center's admission committee or committees. Admission committee membership must include ~~one---mental--health professional~~ a psychiatrist.

2. a. Admission decisions must be based upon:

(1) A social history which includes presenting problems, family background, developmental history, educational history, and employment;

(2) A medical history which includes current status, any relevant findings of previous physical or psychiatric evaluations, and a list of the ~~child's~~ prospective resident's current medications and allergies; and

(3) Prior psychological and addiction evaluations.

b. The history and prior evaluations must be obtained before ~~a-child-is-admitted;~~ admission, except when emergency care must be given, and then the information must be obtained within three working days after admission.

3. The center ~~must determine whether a child may be admitted for care~~ shall grant or deny admission within ~~thirty~~ fourteen days of receipt of a completed application.

4. If ~~a child is not admitted~~ admission is denied, the center ~~must~~ shall indicate the reason ~~for nonadmission~~ in writing.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-06

**75-03-17-05. Diagnosis and treatment while at the center.**

1. **Duties of the center.** The center ~~must~~ shall:

   a. Keep the ~~child~~ resident in contact~~, where appropriate and possible,~~ with the ~~child's~~ resident's family and relatives if possible;

   b. Involve the parents~~, where appropriate and possible,~~ in the treatment plan if possible;

   c. ~~When necessary, provide~~ Provide or arrange for family therapy when necessary;

   d. Provide ~~appropriate~~ conferences involving the center, the ~~parents~~ person who may lawfully act on behalf of the resident, the referring agency, and when appropriate, the ~~child~~ resident, to review the case status and progress ~~every six months. For a child placed in a center for a period of less than six months, the reviews must occur at monthly intervals~~ on a monthly basis; and

   e. Provide a progress report to the referring agency, and the ~~parent or legal guardian~~ person who acted on the resident's behalf every three months.

2. **Specialists.** The services of specialists in the fields of medicine, psychiatry, nursing, psychology, and education must be used as needed. Each center shall provide a minimum of one-half hour per week per bed of psychiatric time and twenty hours per week of nursing time.

3. **Individual treatment plan.**

   a. The center shall develop and implement an individual treatment plan, and provide clinical supervision for the individual treatment plan. To the extent possible, the ~~client~~ resident, and the ~~client's parents or legal guardian~~ person who acted on the resident's behalf, must

be involved in all phases of developing and implementing the individual treatment plan.

b. The plan must be:

(1) Based on a determination of a diagnosis using the first three axes of the multiaxial classification of the Diagnostic and Statistical Manual of Mental Disorders ~~(1987 3d ed. revised)~~ ~~(DSM-III-R)~~ (DSM-IV), which must be completed within five days of admission. In cases where a diagnosis by a mental health professional based on a ~~DSM-III-R~~ DSM-IV classification has been completed within thirty days preceding admission, only updating is necessary;

(2) Developed within five business days of admission; and

(3) Reviewed monthly~~,~~ and amended, as deemed necessary, by an interdisciplinary team including one qualified mental health professional.

c. The plan must identify:

(1) Treatment goals to address the problems of the resident and family;

(2) Timeframes for achieving the goals;

(3) Indicators of goal achievement;

(4) The ~~persons~~ individuals responsible for coordinating and implementing ~~the~~ resident and family treatment goals;

(5) Staff techniques for achieving the resident's treatment goals;

(6) The projected length of stay and next placement; and

(7) When referrals are made to other service providers, and the ~~conditions under which~~ reasons referrals are made.

4. **Work experience.**

a. ~~Where~~ If a center has a work program, it ~~must~~ shall:

(1) Provide work experience that is appropriate to the age and abilities of the ~~child~~ resident;

(2) Differentiate between the chores that ~~children~~ residents are expected to perform as their share in the process of living together, specific work

assignments available to ~~children~~ residents as a means of earning money, and jobs performed in or out of the center to gain vocational training; and

(3) Give ~~children~~ residents some choice in their chores and offer change from routine duties to provide a variety of experiences.

b. Work may not interfere with the ~~child's~~ resident's time for school study periods, play, sleep, normal community contacts, or visits with the ~~child's~~ resident's family.

5. **Solicitation of funds.** A center may not use a ~~child~~ resident for advertising, soliciting funds, or in any other way that may cause harm or embarrassment to a ~~child~~ resident or the ~~child's~~ resident's family~~;-and--the--written--consent--of--the parent--or--guardian--must--be--obtained-prior-to-the-center's using-a-child's-picture,--person,--or--name--in--any--form--of written,---visual,--or--verbal--communication;--and--prior--to obtaining-consent,-a-center-must-advise-the-parent-or-guardian of--the--purpose--for--which--it--intends--to--use-the-child's picture,-person,-or-name,-and-of-the-times-and-places-when-and where--such--use-would-occur~~. A center may not make public or otherwise disclose by electronic, print, or other media for fundraising, publicity, or illustrative purposes, any image or identifying information concerning any resident or member of a resident's immediate family, without first securing the resident's written consent and the written consent of the person who may lawfully act on behalf of the resident. The written consent must apply to an event that occurs no later than ninety days from the date the consent was signed and must specifically identify the image or information that may be disclosed by reference to dates, locations, and other event-specific information. Consent documents that do not identify a specific event are invalid to confer consent for fundraising, publicity, or illustrative purposes. The duration of an event identified in a consent document may not exceed fourteen days.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-06. Special treatment procedures.**

1. ~~Special--treatment--procedures.---Special-treatment-procedures include--the--use--of--restraints,--seclusion,--and---timeout. Special--treatment--orders--must--be--issued-in-writing-by-the program-director-or-previously-authorized-staff.---If--special treatment--procedures--are--ordered,--the-following-conditions must-prevail:~~

a.--The--proximity--of--the--staff--must--allow-for-visual-and auditory-contact-with-the-child-at-all-times;

b.--All--dangerous--objects--must--be-removed-from-the-child's presence;

c.--Rooms--must--have--doors-that-open-out,-which-have-keyless locks-with-immediate-release-mechanisms;

d.--All--fixtures--within--the--room-must-be-tamperproof,-with security-mattresses-of-fire-resistant-material.---Switches must-be-located-outside-the-room;

e.--Smoke-monitoring--or--fire-monitoring--devices--must-be-an inherent-part-of-the-seclusion-room,-and-the-room-must--be properly-ventilated;

f.--Appropriate-entries-must-be-made-in-the-child's-file;-and

g.--A--child--under--special-treatment-orders-must-be-provided the-same-diet--that--other--children--in--the--center--are receiving.

2. **Timeout.** Timeout procedures must be supervised by staff, and appropriate entries must be made in the child's resident's file.

3.--Restraints.---A--center-must-apply-the-following-procedures-in using-restraint:

a.--A--child--may--be--restrained--only--when-withholding-this intervention-would-be-contrary-to-the-best-interest-of-the child,-and-when-less-restrictive-alternatives-have-failed;

b.--All-restraints-must-be-applied-by-staff-trained-in-the-use of-restraints;

c.--Entries-must-be-made-in-the-child's-file-as-to-date,-time, staff--involved,--reasons--for--the--use,--and--extent--of physical-restraint;

d.--Only--a--qualified-mental-health-professional-staff-member may-order-physical-restraint.--The--order--shall--identify the-type-of-restraint-to-be-used-and-the-circumstances-and duration-of-use;-and

e.--A--child--in-physical-restraint-must-be-visually-monitored every-fifteen-minutes-by-a-trained-staff-member.

2. Safety holds. A center shall apply the following procedures in using safety holds:

a. A resident may be held only when:

(1) Withholding this intervention would be contrary to the best interest of the resident; and

(2) Less restrictive alternatives have failed;

b. All safety holds must be applied by staff trained in the use of safety holds;

c. Staff shall:

(1) Make entries in the resident's file as to the date, time, staff involved, reasons for the use of, and the extent of safety holds;

(2) Notify the individual who may lawfully act on behalf of the resident; and

(3) Educate the resident, providing instructions on alternative behaviors that would have allowed the staff to avoid the use of safety holds with the resident.

3. Seclusion or locked timeout. If seclusion or locked timeout is indicated, the center shall ensure that:

a. The proximity of the staff allows for visual and auditory contact with the resident at all times;

b. All objects are removed from the resident's presence;

c. All fixtures within the room are tamperproof, with switches located outside the room;

d. Smoke-monitoring or fire-monitoring devices are an inherent part of the seclusion room;

e. Mattresses are security mattresses of fire-resistant material;

f. The room is properly ventilated;

g. Applicable entries are made in the resident's file;

h. A resident under special treatment orders is provided the same diet that other residents in the center are receiving;

i. No resident remains in isolation for more than:

(1) Four hours in a twenty-four-hour period;

(2) One-half hour without supervisory approval; or

(3) Two hours without physician approval; and

j. Physicians review the use of procedures.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 50-11-03, 50-11-03.2

**75-03-17-07. Medical care.**

1. **Medical examination.** ~~Prior--to--admission,--each-child-must receive-a-medical-examination.~~ Each resident shall have a medical examination within thirty days prior to admission or within seventy-two hours of admission.

2. **Immunizations.** A ~~child--must~~ resident shall have current immunizations as required by North Dakota Century Code section 23-07-17.1.

3. **Medical care arrangements.** A center ~~must~~ shall make arrangements with a physician and a psychiatrist for medical and psychiatric care of ~~clients~~ residents.

4. **Annual medical examination.** Every ~~child-must~~ resident shall have a medical examination annually.

5. **Staff instruction.** The center ~~must~~ shall inform staff members as to what medical care, including first aid, may be given by staff without specific orders from a physician. Staff ~~must~~ shall be instructed as to how to obtain further medical care and how to handle emergency cases.

   a. At least one staff member on duty ~~must~~ shall have satisfactorily completed current first aid, crisis prevention intervention, universal infection control precautions, and cardiopulmonary resuscitation training and have on file at the center a certificate of satisfactory completion.

   b. Each staff member ~~must~~ shall be able to recognize the common symptoms of illnesses of ~~children~~ residents and to note any marked physical defects of ~~children~~ residents. A sterile clinical thermometer and a complete first-aid kit must be available.

6. **Hospital admission.** Arrangements must be made with a hospital for the admission of ~~children~~ residents from the center in the event of serious illness or an emergency.

7. **Medical records.** A ~~child's~~ resident's medical records must include:

a. Current medical, psychological, or psychiatric records;

b. A record of the ~~child's~~ resident's immunizations;

c. ~~Consent of parents or guardian~~ The consent for medical care by a person with lawful authority to act on behalf of the resident;

d. Records of the annual medical examination; and

e. A record of the medical care given at the center, including:

(1) Hospitalization records;

(2) Prescriptions used with the quantity directions, physician's name, date of issue, and ~~the~~ name of the pharmacy indicated; and

(3) Significant illnesses or accidents.

8. **Hospitalization or death reports.** Any accident or illness requiring hospitalization must be reported ~~to the parents or guardian~~ immediately to an individual who may lawfully act on behalf of the resident. Deaths must immediately be reported to the department, ~~parents or guardian~~ an individual who may lawfully act on behalf of the resident, a law enforcement agency, and the county coroner.

9. **Prescription labels.** Prescribed drugs and medicines must be obtained on an individual prescription basis with the following labeling:

a. ~~Name~~ The name of the pharmacy;

b. ~~Patient's~~ The resident's name;

c. ~~Prescription~~ The prescription number;

d. ~~Prescribing~~ The prescribing practitioner;

e. ~~Directions~~ The directions for use;

f. ~~Date~~ The date of original issue or renewal;

g. ~~Name~~ The name of the drug;

h. ~~Potency~~ The potency of the drug;

i. ~~Quantity~~ The quantity of the drug; and

j. ~~Expiration~~ The expiration date, when applicable.

10. **Administration of medications.**

a. Medications must be administered by a designated staff person in accordance with medical instructions. All medications must be stored in a locked cabinet, with the keys for the cabinet kept under the supervision of the designated staff person assigned to administer the medications. The medication cabinet must be equipped with separate cubicles, plainly labeled with the ~~client's~~ resident's name.

b. Medications belonging to the client must be returned to the ~~client's parents or guardian~~ person who may lawfully act on behalf of the resident upon discharge, or must be destroyed in the presence of a witness by the designated person in charge of medication storage by flushing the medications into the sewer system and removing and destroying the labels from the container.

c. The center may possess a limited quantity of nonprescription medications and administer them under the supervision of designated staff.

d. The center ~~must~~ shall have policies governing the use of psychotropic medications. ~~Parents or the guardian of a client~~ A person with lawful authority to act on behalf of a resident who receives psychotropic medication must be informed of benefits, risks, side effects, and potential effects of medications. ~~A parent or legal guardian's written~~ Written consent for use of the medication must be obtained from that person and filed in the ~~client's~~ resident's record.

e. A ~~child's~~ resident's psychotropic medication regime must be reviewed by the attending psychiatrist every seven days for the first thirty days and every thirty days thereafter.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-08. Dental care.** Each ~~child must~~ resident shall have an annual dental examination. If a ~~child~~ resident has not had an examination in the twelve months prior to admission, an examination must occur within ninety days of admission.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-09. General health.**

1. **Sleep.** Each ~~child~~ resident shall have enough sleep for the ~~child's~~ resident's age at regular and reasonable hours, and under conditions conducive to rest. While ~~children~~ residents are asleep, at least one staff member ~~must~~ shall be within hearing distance.

2. **Personal hygiene.** ~~Children must~~ Residents shall be encouraged and helped to keep themselves clean.

3. **Bathing facilities.** Bathing and toilet facilities must be properly maintained and kept clean.

4. **Personal articles.** Each ~~child--must~~ resident shall have a toothbrush, comb, an adequate supply of towels and washcloths, and personal toilet articles.

5. **Daily diet.** Menus must provide ~~for~~ a varied diet that meets a ~~child's~~ resident's daily nutritional requirements.

6. **Clothing.** Each ~~child--must~~ resident shall have clothing for the ~~child's~~ resident's exclusive use. The clothing must be comfortable and appropriate for current weather conditions.

7. **Play.** The center ~~must~~ shall provide safe, age-appropriate equipment for indoor and outdoor play.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-10. Education and training.**

1. **Public education.** Any primary or secondary program offered by a facility must be in compliance with standards established by the department of public instruction. The center shall ensure that ~~resident children~~ residents comply with all state school attendance laws.

2. **Religious education.** ~~Children must be provided an opportunity to receive instruction in their religion. No child may be required to attend religious services or to receive religious instruction if the child chooses not to attend services or receive religious instruction.~~ The center shall make a reasonable effort to make opportunities available for residents to attend religious ceremonies within the area in which the facility is located, giving reasonable consideration to requests by the resident or a person with lawful authority to act on behalf of the resident. The center shall respect the religious beliefs of the resident and the resident's family.

3. **Discipline.** ~~Discipline must be diagnostic and remedial, rather than punitive. Corporal punishment, verbal abuse, and derogatory remarks about the child, the child's family, religion, or cultural background are prohibited; a child may not be slapped, punched, spanked, shaken, pinched, or struck with an object by any staff of the center; and only staff members of the center may discipline children.~~ Discipline must be constructive or educational in nature. Discipline may include diversion, separation from a problem situation, discussion with the resident about the situation, praise for appropriate behavior, and safety holds. A center shall adopt and implement written policies for discipline and behavior management consistent with the following:

   a. Only adult staff members of the center may prescribe, administer, or supervise the discipline of residents. Authority to discipline may not be delegated to residents.

   b. A resident may not be slapped, punched, spanked, shaken, pinched, roughly handled, struck with an object, or otherwise receive any inappropriate physical treatment.

   c. Verbal abuse and derogatory actions or remarks about the resident, the resident's family, religion, or cultural background may not be used or permitted.

   d. A resident may not be locked in any room or other enclosure unless seclusion is indicated and the procedures under section 75-03-17-06 are followed.

   e. The center shall request that a person with lawful authority to act on behalf of the resident to assist the center in the development of effective means of discipline.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-11. ~~Children~~ Residents as employees prohibited.** ~~Children~~ Residents may not be solely responsible for any major phase of the center's operation or maintenance, ~~such as~~ including cooking, laundering, housekeeping, farming, or repairing.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-12. Discharge.**

1. The decision that a ~~child~~ resident no longer needs or cannot benefit from the center's treatment must be made by a discharge committee comprised of three staff or consultants involved in the ~~child's~~ resident's care and treatment and a person with lawful authority to act on behalf of the resident.

2. The center ~~must~~ shall assist the ~~child~~ resident and the ~~child's parents or legal guardian~~ person with lawful authority to act on behalf of the resident in preparing for termination of placement in the center, whether the move is to return the ~~child~~ resident home ~~or~~, to a foster family, adoptive family, an institution, or to the home of relatives.

3. Prior to discharge, the ~~facility must~~ center shall complete a discharge plan. The plan must include:

   a. ~~Progress~~ A progress report including a psychiatric update and recommendations;

   b. ~~Reason~~ The reason for discharge;

   c. ~~Future services recommended for the child and child's family;~~

   ~~d.~~ An assessment of the ~~child's~~ resident's and the family's needs ~~which remain to be met~~ and recommended services;

   ~~e.~~ d. A statement that the discharge plan recommendations have been reviewed with the ~~child~~ resident and ~~parent or guardian~~ a person with lawful authority to act on behalf of the resident;

   ~~f.~~ e. ~~Potential~~ The potential for readmission; and

   ~~g.~~ f. The name and title of the ~~person~~ individual to whom the resident was discharged.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-13. Responsibility for notification of runaway ~~children~~ residents.** When a center confirms that a resident's whereabouts are unknown, the center shall immediately notify law enforcement officials and the ~~parents or guardian~~ individual who may lawfully act on behalf of the resident. The ~~child's~~ resident's return must be reported immediately to law enforcement and the ~~child's parents or guardian~~ individual who may lawfully act on behalf of the resident.

**History:** Effective December 1, 1989; amended effective September 1, 1998.

**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-14. Employee** health **qualifications.** ~~Staff--must--be mentally-and--physically--capable--of--performing--assigned--duties--and demonstrate--basic--professional--competencies--as--required--by-the-job description.---Every--staff--member--shall--have--an---annual---physical examination,--and--obtain--a--statement-that-no-medical-condition-exists that-may-interfere-with-his-or-her-ability-to-perform-assigned-duties.~~

1. All personnel, including volunteers and interns, must be in good health and physically and mentally capable of performing assigned tasks.

2. Except as specified in subsection 4, the good physical health of each employee must be verified by a health screening, including a test for tuberculosis, performed by or under the supervision of a physician not more than one year prior to or thirty days after employment. The individual performing the screening shall sign a report indicating the presence of any health condition that would create a hazard to residents of the center or other staff members.

3. Unless effective measures are taken to prevent transmission, an employee suffering from a serious communicable disease shall be isolated from other employees and residents of the center who have not been infected.

4. Information obtained concerning the medical condition or history of an employee must be collected and maintained on forms and in medical files separate from other forms and files and must be treated as a confidential medical record.

5. The center shall develop a policy regarding health requirements for volunteers, interns, and student placements that addresses tuberculin testing.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-04, 25-03.2-07

**75-03-17-15. Staff to ~~children~~ resident ratio.**

1. The ratio of staff to ~~children~~ residents during waking hours is dependent on the needs of the ~~children~~ residents and the requirements of the individualized treatment plans, but may not be less than two staff members. At night other staff must be available to be summoned in an emergency.

2. The ratio of professional staff to ~~children~~ residents is dependent on the needs of the ~~children~~ residents.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-16. Personnel policies.** ~~Policies related to employment at a center must include:~~

~~1. A description of the specific duties each employee is expected to perform, when they are to be performed, and other persons involved in their performance;~~

~~2. The qualifications required for each position, and how the qualifications are verified when an individual is hired;~~

~~3. A criminal background check for each person hired;~~

~~4. A requirement that all employees receive both oral and written instructions as to their individual responsibility for preserving confidentiality;~~

~~5. The type and duration of the center's inservice training program related to each position in the center;~~

~~6. Procedures for notifying all employees as to whom to consult and how to do so, in the event of an emergency;~~

~~7. Opportunities for attendance at workshops, institutes, or continuing education; and~~

~~8. Procedures for reporting suspected child abuse and neglect in compliance with state law and regulations.~~

1. The center shall have clearly written personnel policies. The policies must be made available to each employee and must include:

   a. A staff training and development plan;

   b. Procedures for reporting suspected child abuse and neglect;

   c. Procedures for staff evaluation, disciplinary actions, and termination;

   d. A prohibition of sexual contact between staff and residents;

   e. Procedures for employee grievances;

f. Both oral and written instructions regarding employee responsibility for preserving confidentiality;

g. Evaluation procedures that include a written evaluation following the probationary period for new staff and at least annually thereafter; and

h. A plan for review of the personnel policies and practices with staff participation at least once every three years, or more often if necessary.

2. A center operator may not be, and a center may not employ, in any capacity that involves or permits contact between the employee and any resident of the center, any individual who has been found guilty of, pled guilty to, or pled no contest to:

a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting - prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

b. An offense, other than an offense identified in subdivision a, if the department, in the case of the center operator, or the center, in the case of an employee, determines that the individual has not been sufficiently rehabilitated.

3. A center shall establish written policies, and engage in practices that conform to those policies, to effectively implement subsection 2.

4. For purposes of subdivision b of subsection 2, an offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.

5. The department has determined that the offenses enumerated in subdivision a of subsection 2 have a direct bearing on the

individual's ability to serve the public as a center operator or employee.

6. Interns, volunteers, and student placement workers are subject to the provisions of this section.

7. A prospective employee shall consent to background checks in criminal conviction records and child abuse or neglect records. Where a position involves transporting residents by motor vehicle, the prospective employee shall authorize release of a complete motor vehicle operator's license background report.

8. If a prospective employee has previously been employed by one or more group homes, residential child care facilities, or centers, the center shall request a reference from all previous group home, residential child care facility, and center employers regarding the existence of any determination or incident of reported child abuse or neglect in which the prospective employee is the perpetrator subject.

9. The department may perform a background check for reported suspected child abuse or neglect each year on each center employee.

10. A center shall maintain an individual personnel file on each employee. The personnel file must include:

    a. The application for employment, including a record of previous employment, and the applicant's answer to the question, "Have you been convicted of a crime?";

    b. Annual performance evaluations;

    c. Annual staff development and training records, including first-aid training, cardiopulmonary resuscitation training, universal infectious disease training, and crises prevention and intervention training records. "Record" means documentation, including with respect to development or training presentations the:

        (1) Name of presenter;

        (2) Date of presentation;

        (3) Length of presentation; and

        (4) Topic of presentation;

    d. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records;

e. Any other evaluation or background check deemed necessary by the administrator of the center; and

f. Documentation of the existence of any license or qualification for position or the tasks assigned to the employee.

11. A center shall maintain an individual personnel file on each volunteer, student, and intern. The personnel file must include:

a. Personal identification information; and

b. Results of background checks for criminal conviction records, motor vehicle violations, and child abuse or neglect records.

12. The center shall adopt a policy regarding the retention of personnel records.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

75-03-17-16.1. Child abuse and neglect reporting.

1. All center employees, interns, volunteers, and student placement workers shall certify having read the law requiring the reporting of suspected child abuse or neglect, North Dakota Century Code chapter 50-25.1, and having read and received a copy of the center's written child abuse and neglect reporting procedures.

2. The center shall adopt written procedures requiring an employee to report cases of suspected child abuse and neglect. The procedures must include the following statements:

All employers shall comply with North Dakota Century Code chapter 50-25.1, child abuse and neglect. It is the policy of this center that an employee who knows or reasonably suspects that a child in residence has been, or appears to have been, harmed in health or welfare as a result of abuse, neglect, or sexual molestation shall immediately report this information to the regional human service center in the region in which the center is located.

Failure to report this information in the prescribed manner constitutes grounds for dismissal from employment and referral of the employee to the office of the state's attorney for investigation of possible criminal violation.

3. The center's procedure must address:

   a. To whom a report is made;

   b. When a report must be made;

   c. The contents of the report;

   d. The responsibility of each individual in the reporting chain;

   e. The status of an employee who is the alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;

   f. The discipline of an employee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and

   g. The status and discipline of an employee who fails to report suspected child abuse or neglect.

4. The center shall cooperate fully with the department throughout the course of an investigation of an allegation of child abuse or neglect concerning care furnished to a resident. The center shall, at a minimum, provide the investigators or reviewers with all documents and records available to the center and reasonably relevant to the investigation, and shall permit confidential interviews with both staff and residents.

**History:** Effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-17. Center staff.**

1. The center's staff ~~must~~ shall include:

   a. An executive director who has a bachelor's degree in a behavioral science, or a bachelor's degree in any field and two years of experience in administration;

   b. A program director who has a master's degree in social work, psychology, or in a related behavioral science with two years of professional experience in the treatment of children and adolescents suffering from mental illnesses or emotional disturbances;

   c. ~~Child~~ Resident care staff who are at least twenty-one years of age and have sufficient training and demonstrated

skills experience ~~sufficient~~ to ~~equip--them--for-their~~ perform assigned duties;

d. The clinical services of a psychologist, psychiatrist, alcohol and drug addiction counselor, nurse, and physician which may be obtained on a consultation basis; and

e. Educators, where onsite education is provided.

2. Volunteer services may be used to augment and assist other staff in carrying out program or treatment plans. Volunteers ~~must~~ shall receive orientation training regarding the program, staff, and ~~children~~ residents of the center, and the functions ~~they can perform~~ to be performed.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-18. Safety, buildings, and grounds.**

1. **Compliance with fire, sanitation, and zoning standards.** An applicant ~~must~~ shall demonstrate compliance with applicable state or local fire, sanitation, and zoning standards.

   a. Fire. For fire safety, the center ~~must~~ shall meet the applicable life safety standards established by the city. If the city has not established life safety standards, the center ~~must~~ shall comply with chapter 21 of the Life Safety Code of the national fire protection association, 1985 edition, and amendments thereto.

      (1) Compliance is shown by submitting the written report of an authorized fire inspector, following an initial or subsequent inspection of a building which states the:

         (a) Rated occupancy and approval of the building for occupancy; or

         (b) Existing hazards, and recommendations for correction which, if followed, would result in approval of the building for occupancy.

      (2) All electrical and heating equipment must be approved by underwriters laboratories, incorporated or another nationally recognized testing laboratory.

   b. Sanitation. Compliance with sanitation standards is shown by submitting a statement prepared by a licensed environmental health professional or authorized public

health officer, following an initial or subsequent annual inspection, that the building's plumbing, sewer disposal, water supply, milk supply, and food storage and handling comply with the applicable rules of the state department of health ~~and consolidated laboratories~~.

c. Zoning. Compliance with zoning requirements is shown by submitting a statement prepared by the appropriate county or municipal official having jurisdiction that the premises are in compliance with local zoning laws and ordinances.

2. **Safety.** Safety requirements of a center must include:

a. Prohibition of smoking on the premises;

b. Procedures for water safety where swimming facilities are on the grounds;

c. A copy of the Red Cross manual on first-aid measures, or a book of its equivalent, and first-aid supplies;

d. Prohibiting a ~~child's~~ resident's possession and use of any firearms while at the center;

e. Advising ~~children~~ residents of emergency and evacuation procedures upon ~~their~~ admission and thereafter every two months;

f. Training in properly reporting a fire, in extinguishing a fire, and in evacuation from the building in case of fire. Fire drills must be held monthly. Fire extinguishers must be provided and maintained throughout each building in accordance with standards of the state fire marshal; and

g. Telephones with emergency numbers posted by each telephone in all buildings that house ~~children~~ residents.

3. **Buildings and grounds.** The center must have sufficient outdoor recreational space, and the center's buildings must meet the following standards:

a. Bedrooms. Each ~~child~~ resident must have: eighty square feet [7.43 square meters] in a single sleeping room, and sixty square feet [5.57 square meters] per individual in a multiple occupancy sleeping room; ~~his or her~~ the resident's own bed, and bed covering in good condition; and a private area to store ~~his or her~~ the resident's personal belongings. A center may not permit: more than two ~~children~~ residents in each sleeping room; ~~children~~ residents to sleep in basements or attics; nonambulatory ~~children~~ residents to sleep above the first floor; and a

~~child~~ resident six years of age or older to share a bedroom with a ~~child~~ resident of the opposite sex.

b. Bathrooms. The center's bathroom facilities must have an adequate supply of hot and cold water; be maintained in a sanitary condition; have separate toilet and bath facilities for male and female residents, and employees; and have one bathroom that contains a toilet, washbasin, and tub or shower with hot and cold water for every four ~~children~~ residents.

c. Dining and living rooms must have suitably equipped furnishings designed for use by ~~children~~ residents within the age range of ~~children~~ residents served by the center.

d. The center ~~must~~ shall provide sufficient space for indoor quiet play and active group play.

e. Adequate heating, lighting, and ventilation must be provided.

f. Staff quarters must be separate from those of ~~children~~ residents, although near enough to assure proper supervision of ~~children~~ residents.

g. A center ~~must~~ shall provide a quiet area for studying.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-07

**75-03-17-19. Interstate compact on the placement of children.**

1. The center ~~must~~ shall comply with the interstate compact on the placement of children and the interstate compact for juveniles.

2. All placements from any state which has not adopted the interstate compact on the placement of children or the interstate compact on juveniles must comply with all North Dakota laws and rules prior to the arrival of a child at a center.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10
**Law Implemented:** NDCC 25-03.2-03, 25-03.2-06

**75-03-17-20. Rights and obligations of the applicant.**

1. **Right to apply for license.** An applicant has the right to apply to receive a license to operate a center under this chapter.

2. **Entry and inspection.** The applicant ~~must~~ shall allow authorized representatives of the department to enter any of the applicant's buildings or facilities in order to determine the extent to which the applicant is in compliance with the rules of the department, to verify information submitted with an application for licensure or license renewal, and to investigate complaints. Inspections must be scheduled for the mutual convenience of the department and the center unless the effectiveness of the inspection would be substantially diminished by prearrangement.

3. **Access to records.** The applicant ~~must~~ shall allow duly authorized representatives of the department to inspect the records of the applicant, to facilitate verification of the information submitted with an application for licensure, and to determine the extent to which the applicant is in compliance with the rules of the department.

4. **Denial of access to facilities and records.** Any applicant or licensee which denies access, by the authorized representative of the department, to a facility or records for the purpose of determining the applicant's or licensee's state of compliance with the rules of the department shall have its license revoked or application denied.

5. **License refusal or revocation.** Failure to comply with any of the standards of this chapter or other state law or regulation is cause for refusal or revocation of a license.

6. **Appeal.** An applicant may appeal a license denial in accordance with North Dakota Century Code chapter 28-32 and North Dakota Administrative Code chapter 75-01-03.

7. Deemed status. The department recognizes "deemed status" for those providers who have accreditation of nationally recognized bodies who review and certify providers of residential treatment services for children. When applying for licensure or licensure renewal, proof of accreditation or "deemed status" in the form of the accreditation agency's most recent review and certification must be submitted to the department. "Deemed status" means status conferred on a program accredited by a national accreditation body based on standards that exceed the standards set forth in these licensure rules.

**History:** Effective December 1, 1989; amended effective September 1, 1998.
**General Authority:** NDCC 25-03.2-10

**Law Implemented:** NDCC 25-03.2-02, 25-03.2-03, 25-03.2-07, 25-03.2-08, 25-03.2-09

# TITLE 92

## Workers Compensation Bureau

**OCTOBER 1998**

**CHAPTER 92-01-02**

**92-01-02-27. Medical and hospital fees** - Reimbursement for out-of-state and foreign medical providers. ~~Medical~~ Maximum medical and hospital fees paid by the bureau and rules of procedure ~~must be those fees and procedures~~ are contained in the most current edition of ~~that~~ the publication entitled "North Dakota Workers Compensation Medical and Hospital Fees", adopted by reference ~~thereto~~ and incorporated within this section as though set out in full ~~herein. Maximum fees that were in effect in 1992 will be increased by the percentage change in North Dakota's average weekly wage between 1991 and 1993, which is seven and two tenths percent, to establish maximum fees effective January 1, 1994. The bureau may adjust certain procedures more or less than the percentage change in the state's average weekly wage to correct data base deficiencies.~~

1. ~~Maximum allowable fees may be adjusted annually.~~ The fees adopted in this section apply to all services rendered on or after ~~January 1, 1994~~ October 1, 1998.

~~This section and schedules apply to all health care providers and practitioners regardless of specialty, area, limitation of practice, state, or country where service is provided.~~

~~Services permitted under out of state workers' compensation programs, but not allowed under the North Dakota fees and procedures, may not be reimbursed. Questionable services will be addressed at the bureau's discretion at the request of a provider or practitioner.~~

2. Reimbursement for services and procedures not addressed within this section will be determined on a "by report" basis. A description of the nature, extent and need for the procedure

or service, including the time, skills, equipment, and any other pertinent facts necessary to furnish the procedure or service, ~~should~~ must be ~~furnished~~ provided to the bureau, as ~~well as~~ with the following, where appropriate:

~~1.~~ a. Postoperative diagnosis.

~~2.~~ b. Size, location, and number of lesions or procedures.

~~3.~~ c. Major surgical procedure with supplementary procedures.

~~4.~~ d. Nearest similar procedure, by code, according to the North Dakota Workers Compensation Medical and Hospital Fees publication.

~~5.~~ e. Estimated followup.

~~6.~~ f. Operative time.

~~"By report" services or procedures must be adjusted as provided in this section.~~

3. Inpatient hospital services must be paid on the basis of hospital specific per diem rates, based upon costs reported in the ~~latest available~~ medicare cost report available in 1989 for that hospital. Per diem rates will be established for the following services, if available from the hospital: medical and surgical ~~stay~~ stays; intensive care unit and coronary care unit stays; psychiatric stays; chemical dependency stays; and rehabilitation stays. Specialty services will also be allocated a per diem rate for a hospital performing that type of service (e.g., a burn unit stay). Per diem rates will be calculated by aggregating salary expenses for routine services, allocated overhead (general services) costs and expenses for ancillary services, and dividing such aggregation by related patient days. Expenses will be adjusted for each hospital to a common base of 1989, using adjustment factors specific to the regions in which hospitals are located.

4. Rates will be adjusted to ~~1992~~ 1998 values, using the same inflationary factors applied to adjusting North Dakota workers' compensation temporary disability payments. The maximum payable amount on an inpatient hospital charge will be computed by multiplying the eligible days or units reported on the hospital bill by the appropriate per diem rate. Where the submitted amount is less than the approved amount, payment will be based on the lesser amount. ~~North Dakota and border states' hospitals for which recent medicare cost reports are not available will be paid at the lesser of the median of the per diem rates or the actual billed charges.~~

5. Hospital outpatient ~~services~~ service charges, for outpatient clinic and emergency room services, will be based on a

cost-to-charge ratio for each hospital. The cost-to-charge ratio will be computed by comparing the costs to charges for the hospital based on the ~~latest available~~ medicare-audited cost report available in 1989. A maximum payable amount on an outpatient hospital charge will be computed by multiplying the submitted charge by the cost-to-charge ratio. If a medicare cost report is not available for a hospital, the median cost-to-charge ratio for all eligible hospitals will be applied. ~~The workers compensation bureau may apply additional percentage discounts from the cost-to-charge ratio.~~

6. For an out-of-state medical provider, reimbursement is based on the reasonable and customary rate for the city where the medical provider is located. Medical providers who are not located in North Dakota, Minnesota, South Dakota, and Montana are out-of-state medical providers.

7. Foreign medical providers include those located in Canada and are to be reimbursed based on the reasonable and customary rates for that area if those rates can be established. If the information on which to establish those rates is not available, the medical provider will be reimbursed according to the North Dakota fee schedule. The amount of the reimbursement must reflect the proper exchange rate between the United States dollar and the foreign currency involved.

8. For Minnesota, South Dakota, and Montana providers, the following rules for reimbursement apply:

   a. Any medical provider in Minnesota in a city west of United States highway fifty-nine and north of Minnesota state highway twenty-eight will be reimbursed according to the North Dakota fee schedule. If United States highway fifty-nine or Minnesota state highway twenty-eight runs through the city where the medical provider is located, the North Dakota fee schedule applies.

   b. Any medical provider in Minnesota in a city east of United States highway fifty-nine or south of Minnesota state highway twenty-eight is an out-of-state medical provider for reimbursement purposes.

   c. Any medical provider in South Dakota in a city within ten miles of the North Dakota state line will be reimbursed according to the North Dakota fee schedule.

   d. Any medical provider in South Dakota in a city further than ten miles from the North Dakota state line is considered an out-of-state medical provider for reimbursement purposes.

e. Any medical provider in Montana in a city within forty miles of the North Dakota state line will be reimbursed according to the North Dakota fee schedule.

f. Any medical provider in Montana in a city further than forty miles from the North Dakota state line is considered an out-of-state medical provider for reimbursement purposes.

**History:** Effective January 1, 1992; amended effective January 1, 1994; October 1, 1998.
**General Authority:** NDCC 65-02-08
**Law Implemented:** NDCC 65-02-08

92-01-02-28. Health care advisory board.

~~1.--Membership.---The-executive-director,-in-consultation-with-the appropriate--medical,--chiropractic--or---other---professional associations,-shall-appoint-a-health-care-advisory-board-which shall-serve-at-the-executive-director's-pleasure--and--consist of--fourteen--members.---Membership--to--this-board-will-be-as follows:~~

~~a.--The--North-Dakota-state-medical-association-shall-nominate eight-members-from-the-following-specialty-groups:--family or----general----practice,---orthopedics,---neurology---or neurosurgery,--general--surgery,--physical--medicine---and rehabilitation,--occupational--medicine,--psychiatry,--and internal-medicine.~~

~~b.--The--North--Dakota--state--chiropractic--association-shall nominate-two-members-who-have-completed-advanced--training in--orthopedics--or--neurology--or--who--have-obtained-the designation-of-diplomat-in-chiropractic.~~

~~c.--The---North--Dakota--physical--therapy--association--shall nominate-two-members-who-have-completed-advanced--training in--physical--therapy-or-who-have-obtained-a-masters-level training-in-physical-therapy.~~

~~d.--The--North--Dakota-hospital-association-shall-nominate-two members.~~

~~2.--Function.--The-board-will-function-as-an-advisor-to-the-bureau with-respect-to-policies-affecting-health--care--and--physical rehabilitation,--quality--control--and--supervision--of-health care,-and-the-establishment--of--rules--and--regulations.---It shall--also--advise-and-assist-the-bureau-in-the-resolution-of controversies,-disputes,-and-problems-between-the-bureau,--the bureau's-managed-care-vendor,-and-the-providers-of-health-care through-a-peer-review-process.--It-will-also-advise-and-assist the--department-in-the-education-of-members-of-the-health-care~~

provider-community-with-regard-to-the--roles--of--health--care providers,-the-bureau,-and-the-employer-in-providing-the-needs and-care-of-injured-workers.

3.--Meetings--and-reimbursement.--The-board-shall-normally-meet-on a-monthly-basis-or-as-necessity--dictates.---The--bureau--will reimburse--members--of--the-board-for-each-meeting-at-the-same rate--state--employees--are--reimbursed--expenses. Repealed effective October 1, 1998.

History: Effective-January-1,-1994.
General Authority: NDCC-65-02-08,-65-02-20,-65-05-07
Law Implemented: NDCC-65-02-20,-65-05-07

**92-01-02-29. Medical services - Definitions.** The-purpose-of these-rules-is-to-establish-uniform--guidelines--for--administering--the delivery--of--and-payment-for-medical-services-to-injured-workers-within the-workers'-compensation-system.--These--rules--are--also--intended--to prohibit--health--care--providers--treating--employees--with-compensable injuries-from-receiving-reimbursement-above-that-allowed-by-the-bureau's fee-schedule.--These-rules-define-the-medical-and-hospital-fee-schedules and-also-define-when-medical-services-are-not-medically-necessary.

These--rules--and-fee-schedules-are-adopted-under-the-authority-of North-Dakota-Century-Code-sections-65-02-08,-65-02-20,-and-65-05-07.

These--rules--are--to--carry--out--the--provisions-of-North-Dakota Century--Code---title-65,--Workers--Compensation--Act,--and--govern--all providers--of--medical--services--licensed--or--authorized--to-provide-a product-or--service--who--provide--medical--services--on--or--after--the effective-date-of-these-rules.--The-following-are-subject-to-these-rules and-medical-and--hospital--fee--schedules:---all--providers--of--medical services-or-supplies-for-compensable-injuries-pursuant-to-subsections-13 and-22-of-North-Dakota-Century-Code--section-65-01-02.

For The definitions found in North Dakota Century Code title 65 apply to terms contained in this title. In addition, unless the context otherwise requires, for purposes of sections 92-01-02-29 92-01-02-27 through 92-01-02-47,-the-following-terms-have-the-meanings-given-in--the medical--service-rules-and-the-medical-and-hospital-fee-schedules-unless the-context-clearly-indicates-a-different-meaning:

1. "Ambulatory--review"--means--the--managed-care-vendor-monitors designated-services--received--by--the--injured--employee--for medical--necessity,--appropriateness,-and-efficiency.--Certain ambulatory-services-require-preservice-review-from-the-managed care--vendor--prior-to-providing-the-service.--All-health-care providers-are-required-to-cooperate-with--the--managed--vendor prior-to-providing-the-service.--All-health-care-providers-are required-to--cooperate--with--the--managed--care--vendor--for, ambulatory--review--of-designated-services-and-are-required-to provide,-without--additional--charge--to--the--bureau--or--the

~~managed--care-vendor,-the-medical-information-requested-by-the managed-care-vendor-in-relation-to-the-reviewed-service.~~

2. "Appropriate record" means a legible medical record or report which substantiates the nature and necessity of a service being billed and its relationship to the work injury. ~~Providers--must--maintain--documentation--in--the---employee's medical-records-adequate-to-verify,~~ including the level, type, and extent of services provided to ~~employees~~ claimants.

~~3.~~ 2. "Attending ~~physician"--and--"attending~~ doctor" means a doctor who is primarily responsible for the treatment of an ~~employee's~~ a claimant's compensable injury ~~or-illness~~.

~~4.--"Bill--or-billing"-means-a-provider's-statement-of-charges-and services-rendered-for-treatment-of-a-work-related-injury.~~

~~5.~~ 3. "Bill ~~review"--or--"bill~~ audit" means the review of medical bills ~~or~~ and associated medical ~~records,--or--both,~~ by the bureau or the ~~bureau's~~ managed care vendor, ~~which-may-include~~ including review for duplications, omissions, actual delivery of billed services and items, accuracy of charges and associated coding, ~~and~~ improper concurrent billing for services involving evaluation ~~or~~ and treatment, ~~or-both,~~ of ~~both~~ work-related and non-work-related problems, and application of fee schedules.

~~6.~~ 4. "Case ~~management"--and--"disability~~ management" means the ongoing coordination of medical services provided to an ~~injured-employee~~ a claimant, including:

a. Developing a treatment plan to provide appropriate medical services to ~~an-injured-employee;~~ a claimant.

b. Systematically monitoring the treatment rendered and the medical progress of the ~~injured-employee;~~ claimant.

c. Assessing whether alternative medical services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards;.

d. Ensuring the ~~injured--employee~~ claimant is following the prescribed medical plan;~~-and~~.

e. Formulating a plan for keeping the ~~injured--employee~~ claimant safely at work or expediting a safe return to work.

~~7.--"Charge"--means--the-payment-requested-by-a-provider-on-a-bill for-a-particular-service.---Nothing--in--the--medical--service rules-or-fee-schedules-prohibits-a-provider-from-billing-usual and-customary-charges-which-are-in-excess-of-the-amount-listed in-the-fee-schedule.~~

~~8.--"Claim"--means--a--written--request--for--compensation-from-an employee--or--someone--on--the--employee's--behalf,--for---any compensable--injury-or-illness-of-which-an-employer-has-notice or-knowledge.~~

~~9.--"Claimant"-means-the-employee-making-a-claim.~~

~~10.--"Chart-note"-means-a-notation-made-in-chronological-order-in-a medical-record-in-which-the-medical-service--provider--records such--things--as-subjective-and-objective-findings,-diagnosis, treatment--rendered,--treatment--objectives,--functional---job limitations,-and-return-to-work-goals-and-status.~~

~~11.--"Code"---means--the--alphabetical--or--numerical--designation, including-code-modifiers-if-appropriate,-for-a-particular-type of--service,--or--supply,--to-categorize-provider-charges-on-a bill.~~

~~12.--"Compensable--injury"--means--an-injury-or-condition-for-which the-bureau--is--liable--under--subsection-8--of--North--Dakota Century-Code--section-65-01-02.~~

~~13.~~ 5. "Concurrent review" means ~~that~~ the monitoring by the managed care vendor for medical necessity and appropriateness, throughout the period of time in which designated medical services are being provided to the ~~injured-employee~~ claimant, ~~the--managed--care--vendor--monitors~~ of the ~~injured-employee's~~ claimant's condition, treatments, procedures, and length of stay ~~for--medical--necessity-and-appropriateness.--All-health care-providers-are-required-to-cooperate-with-the-managed-care vendor--for--concurrent--review-of-designated-medical-services and-are-required-to-provide,-without-additional-charge-to--the bureau--or--the--managed--care-vendor,-the-medical-information requested-by-the--managed--care--vendor--in--relation--to--the reviewed-service.~~

~~14.~~ 6. "Consulting doctor" means a licensed doctor who examines an ~~employee~~ a claimant, or the ~~employee's~~ claimant's medical record, at the request of the attending doctor to aid in diagnosis or treatment. A consulting doctor may, at the request of the attending doctor, may provide specialized treatment of the compensable injury ~~or-illness~~ and give advice or an opinion regarding the treatment being rendered, or considered, for ~~an-employee's~~ a claimant's injury.

~~15.--"Current--procedural--terminology"--or-"CPT"-means-the-current procedural-terminology-most-recently-published-by-the-American medical-association.~~

~~16.--"Customary--fee"--means--a--fee-that-falls-within-the-range-of fees-normally-charged-for-a-given-service.~~

~~17.--"Days"-means-calendar-days-and-a-twenty-four-hour-period.~~

~~18.--"Direct--control--and--supervision"-means-the-doctor-is-on-the same-premises,-at-the-same-time,-as--the--person--providing--a medical-service-ordered-by-the-doctor.--The-doctor-can-modify, terminate,-extend,-or-take-over-the--medical--service--at--any time.---A--medical-service-provided-at-a-site-removed-from-the doctor,-or-provided-when-the-doctor--is--not--present--on--the premises,--is--not-under-the-direct-control-and-supervision-of the-doctor.~~

~~19.~~ 7. "Director" means the executive director of the workers compensation bureau or the director's designated representatives.

~~20.~~ 8. "Elective surgery" means surgery that may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function, or health. Pain, of itself, does not constitute a surgical emergency.

9. "Emergency" means an injury or accident so severe it requires immediate surgery or services to preserve life, function, or health.

~~21.--"Excessive--charge"--means--a-charge-for-a-service-rendered-to treat-a-compensable-injury,-which-meets-any-of--the--following conditions:~~

~~a.--If--not--specified-in-the-fee-schedule,-the-charge-exceeds that-which-prevails-in-the-same-geographic--community--for similar-services-or-treatment;~~

~~b.--The--charge--wholly-or-partially-duplicates-another-charge for-the-same-service,-such-that-the-charge-has--been--paid or-will-be-paid-in-response-to-another-billing;~~

~~c.--The--charge--exceeds-the-provider's-current-charge-for-the same-type--of--service--in--cases--unrelated--to--worker's compensation-injuries;~~

~~d.--The-charge-does-not-comply-with-standards-and-requirements concerning-the-cost-of-treatment-pursuant-to--the--medical service-rules-adopted-by-the-bureau;-or~~

~~e.--The--charge--is--described-by-a-billing-code-that-does-not accurately-reflect-the-actual-service-provided.~~

~~22.--"Excessive--service"--means--any--service--rendered-to-treat-a compensable-injury-which-is-excessive-to-the-degree--that--any of-the-following-standards-apply-to-the-service:~~

~~a.--The--service--does--not--comply--with--the--standards--and requirements--adopted--under--the--North--Dakota---medical service-rules-concerning-the-reasonableness-and-necessity, quality,-coordination,-and-frequency-of-services;~~

b.--The--service--was--performed-by-a-provider-prohibited-from receiving-reimbursement-under-North--Dakota--Century--Code title-65;-or

c.--The--service--is--not--usual,--customary,--and--reasonably required-for-the-healing-or-relief-of--the--effects--of--a compensable-injury.

10. "Fee schedule" means the North Dakota workers compensation bureau medical and hospital fees publication which outlines the list of codes, service descriptions, and level of reimbursement allowed-pursuant-to-section-92-01-02-27.

24.--"HCFA--form--1450"--or--"UB--82"--or--"UB-92"-means-a-hospital insurance-claim-form--approved--by--the--federal--health--care financing--administration--(HCFA),-and-other-organizations-for billing-of-hospital-services.

25.--"HCFA--form-1500"-means-a-health-insurance-claim-form-approved by-the-federal-health-care--financing--administration--(HCFA), the--American--medical-association-council-on-medical-service, and-other-organizations-for-billing-of-health-care-services.

26.--"HCFA-form-2552"-(hospital-care-complex-cost-report)-means-the annual-report-a-hospital-makes-to-medicare.

27.--"Initial--claim"--means--the--first--open--period-on-the-claim immediately-following-the-original-filing-of-the--occupational injury--or--disease-claim-until-the-employee-is-first-declared to-be-medically-stationary-or-at-maximum--medical--improvement by-an-attending-doctor.

28.--"Injury"-is-as-defined-in-subsection-8-of-North-Dakota-Century Code--section-65-01-02.

11. "Inpatient stay" means an-injured-employee-who one in which a claimant is admitted to a hospital prior to and extending past midnight for treatment and lodging which the doctor has not classified as an observation stay.

30.--"Insurer"--means-the-North-Dakota-workers-compensation-bureau.

31.--"International--classification--of-diseases-(ICD-9-CM)-means-a set-of-numerical-diagnostic-codes-based--on--the--standardized coding-system-published-as-the-International-Classification-of Diseases,--clinical--modification,--ninth---revision,---fourth edition,-or-any-revised-edition.

12. "Managed care services" and-"managed-care-program" means those services performed by a managed care vendor, including fee schedules, utilization review, preservice reviews, disability management services, case management services, ambulatory reviews, concurrent reviews, retrospective reviews,

preadmission reviews, and medical bill ~~reviews performed by--a managed care vendor~~ audit.

~~33.~~ 13. "Managed care vendor" means ~~organizations--contracted~~ an organization that is retained by the bureau to provide managed care services ~~to injured employees~~.

~~34.~~ 14. "Medical service" means ~~any~~ a medical, surgical, chiropractic, dental, hospital, nursing, ambulance, and other related ~~services~~ service, and drugs, medicine, crutches, ~~and~~ a prosthetic ~~appliances~~ appliance, braces, and supports, and ~~where necessary~~, physical restoration and diagnostic services ~~and services~~, or a service outlined in section 92-01-02-30.

~~35.~~ 15. "Medical service provider" means a doctor, health care provider, a hospital, medical clinic, or vendor of medical services.

~~36. "Medically necessary" means those medical services which are, in the opinion of the director:~~

~~a. Reasonable, appropriate, proper, and necessary for the diagnosis and healing or rehabilitative treatment of an accepted condition;~~

~~b. Reflective of accepted standards of good practice within the scope of the provider's license or certification;~~

~~c. Not delivered primarily for the convenience of the employee, the employee's attending doctor, or any other provider; and~~

~~d. Provided at the least cost and in the least intensive setting of care consistent with the other provisions of this definition in section 92-01-02-29.1.~~

~~37.~~ 16. "Medically stationary" means ~~that~~ the "date of maximum medical improvement" as defined in North Dakota Century Code section 65-01-02 has been reached ~~and that no further material improvement would reasonably be expected from medical treatment or the passage of time~~.

~~38. "Nonattending doctor" means a doctor who does not have primary responsibility for treating the patient.~~

~~39.~~ 17. "Notice of nonpayment" means the form ~~in~~ by which ~~an injured employee~~ a claimant is notified of charges denied by the bureau ~~and~~ which are the ~~employee's~~ claimant's personal responsibility.

~~40. "Objective findings" means those findings reproducible on examination including range of motion, atrophy, muscle~~

~~strength;--muscle--spasm;--loss--of--sensation;-and-diagnostic evidence-(test-results)-substantiated-by-clinical-findings.~~

~~41.~~ 18. "Observation stay" means a hospital stay of less than forty-eight hours with no more than one overnight stay and which the doctor has not classified as an inpatient stay.

~~42.~~ 19. "Outpatient stay" means ~~an-employee~~ one in which a claimant is not admitted to a hospital prior to and extending past midnight for treatment and lodging. ~~Medical-services-provided by-a-health-care-provider-such--as--emergency~~ Emergency room services, observation ~~room~~ stays, or short stay surgical treatments which do not result in admission are also outpatient services.

~~43.~~ 20. "Palliative care" ~~or--"maintenance--care"~~ means a medical service rendered to ~~temporarily--reduce--or--moderate---the intensity--of--an--otherwise-stable-medical~~ alleviate symptoms without curing the underlying condition ~~as-compared--to--those medical--services--rendered--to-diagnose;-heal;-or-permanently alleviate-or-eliminate-an-undesirable-medical-condition.~~

~~44.--"Payer"----refers----to---the---bureau---or---its---designated representatives.~~

~~45.~~ 21. "Peer review" means ~~an--individual~~ a case-by-case review of services for medical necessity and appropriateness, conducted by a health care provider licensed in the same profession, and preferably in the same specialty, as the health care provider whose services are being reviewed. ~~For-purposes-of-these rules;-hospitals-are-not-subject--to--peer--review.---However; professional--services--provided--by--a--health--care-provider within-a-hospital-setting-are-subject-to-peer-review.~~

~~46.~~ 22. "Physical capacity evaluation" means an objective, directly observed, measurement of ~~an-injured--employee's~~ a claimant's ability to perform a variety of physical tasks combined with subjective analyses of abilities by the ~~employee~~ claimant and the evaluator. Physical tolerance screening, Blankenship's functional evaluation, and functional capacity assessment ~~shall-be-considered-to-have~~ are the same ~~meaning~~ as a physical capacity evaluation.

23. "Physical conditioning" means an individualized, graded exercise program designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the claimant prior to or in conjunction with the claimant's return to any level of work. Work conditioning is the same as physical conditioning.

~~47.~~ 24. "Preadmission review" means the ~~managed--care--vendor--has evaluated~~ evaluation by a managed care vendor of a proposed hospital admission for medical necessity, appropriateness, and

efficiency, and length of stay prior to the ~~provider admitting the injured employee~~ claimant being admitted. ~~All health care providers are required to cooperate with the managed care vendor for preadmission review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service.~~

~~48.~~ 25. "Preservice review" means ~~the managed care vendor has evaluated~~ evaluation by a managed care vendor of a proposed medical service for medical necessity, appropriateness, and efficiency prior to the ~~provider performing the~~ services being performed. ~~All health care providers shall cooperate with the managed care vendor for preservice review and shall provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service.~~

~~49. "Provider" is as defined in North Dakota Century Code section 65-01-02 and the medical service rules adopted by the bureau.~~

~~50. "Reasonable charge" means a charge or portion of a charge for treatment of a compensable injury which is not excessive under these rules.~~

~~51. "Reasonable service" means a service for treatment of a compensable injury that is reasonable, appropriate, and efficient as defined under these rules.~~

~~52.~~ 26. "Remittance advice" means the form used by the bureau to inform ~~providers~~ payees of the reasons for payment, reduction, or denial of medical services.

~~53. "Report" means medical information transmitted in written form containing relevant subjective and objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.~~

~~54.~~ 27. "Residual functional capacity" means ~~an employee's~~ a claimant's remaining ability to perform work-related activities despite medically ~~determinable~~ determined limitations resulting from the ~~accepted compensable condition~~ injury. A residual functional capacity evaluation includes capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, stooping, kneeling, crouching, crawling, and reaching.

~~55.~~ 28. "Retrospective review" means ~~the~~ a managed care ~~vendor has reviewed~~ vendor's review of a medical service for medical necessity, appropriateness, and efficiency after treatment has ~~taken place~~ occurred. ~~Retrospective review is limited to these situations where the provider can prove, through a~~

~~preponderance of the evidence, that the injured employee did not inform the provider the condition was covered under workers' compensation. All health care providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service.~~

~~56. "Service or treatment" means any procedure, operation, consultation, supply, product, or other thing performed or provided for the purpose of healing or relieving an injured employee from the effects of a compensable injury under North Dakota Century Code title 65.~~

~~57.~~ 29. "Special report" means a health care provider's ~~preparation of~~ a written response to a specific request from the bureau for information, including information on causation, aggravation, preexisting conditions, and clarification of complex medical conditions, requiring the creation of a new document or the previously unperformed analysis of existing data. The explanatory reports required for procedures designated as "by report" under section 92-01-02-27 are not special reports.

~~58. "Unbundling" means coding and billing separately for procedures that do not warrant separate identification because they are an integral part of a total or principal service for which a corresponding current procedural terminology code exists.~~

~~59.~~ 30. "Usual, customary, and reasonable fee" means ~~the~~ a fee that falls within the range of fees normally charged the general public for a given service.

~~60.~~ 31. "Utilization review" means an evaluation of the necessity, appropriateness, efficiency, and quality of medical services provided to ~~an injured employee~~ a claimant, based on medically accepted standards and an objective evaluation of the medical services ~~provided and as defined in North Dakota Century Code section 65-01-02~~.

~~61.~~ 32. "Work capacity evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work tolerance screening ~~shall be considered to have~~ means the same ~~meaning~~ as work capacity evaluation.

~~62. "Work conditioning" and "physical conditioning" means an individualized, graded exercise program, usually supervised and monitored by a physical therapist, which is designed to improve the overall cardiovascular, pulmonary, and neuromuscular condition of the injured employee prior to or in conjunction with the employee's return to any level of work.~~

~~Such--a--program--may-be-used-to-eliminate-lost-time-from-work altogether.~~

~~63.~~ 33. "Work hardening" means an individualized, medically prescribed, and monitored, work-oriented treatment process. ~~The-process~~ which involves the ~~employee~~ claimant participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the ~~employee~~ claimant to a specified job. ~~This--program--may--be--completed--on-the worksite-to-progress-the-injured-employee-from-limited-to-full duty.~~

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-29.1. Medical necessity.**

1. ~~The--concept--of--medical--necessity--is-the-foundation-of-all reimbursement-made-under-these-rules.--For-reimbursement-to-be made,--services--and--supplies--must--meet--the--definition-of "medically-necessary".~~

2. ~~--For--the--purposes-of-the-workers'-compensation-program,-any~~ A medical service or supply used necessary to ~~identify~~ diagnose or treat ~~an--occupational~~ a compensable injury, ~~disease,-or work-related-illness~~ which is appropriate to the ~~patient's~~ symptoms and diagnosis, ~~consistent--with~~ the location of service, and with the level of care provided, is ~~considered~~ medically necessary. The service must also be widely accepted by the practicing peer group, and must be determined to be safe and effective based on published, peer-reviewed, scientific ~~criteria,-and-determined-to-be-reasonably-safe.--It must--not--be--of--an-experimental,-investigative,-or-research nature-unless-specifically-approved-by-the-bureau~~ studies.

3. ~~2.~~ Services that ~~are-inappropriate-to-the-accepted-condition-or which-presents~~ present a hazard in excess of the expected medical benefits ~~may~~ are not ~~be--considered~~ medically necessary. Services that are controversial, obsolete, experimental, or ~~investigational--are--presumed--to--be--not medically--necessary,--and--shall--be~~ investigative are not reimbursable unless specifically preapproved or authorized ~~only-as-preapproved--by--the--bureau--or--recommended~~ by the ~~bureau's---managed---care---vendor~~ bureau. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.

4. ~~3.~~ The bureau will not ~~allow~~ authorize or pay for the following treatment:

a. ~~Use of diapulse, thermatic (standard model only), speetrowave, superpulse, and medex machines.~~

~~b.~~ Massage therapy except when provided by a licensed physical therapist, chiropractor, or medical doctor.

~~c.~~ b. Thermography; chemonucleolysis; prolotherapy; acupuncture; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).

~~d.~~ c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking). Over-the-counter medications may be allowed in lieu of prescription medications when approved by the bureau and prescribed by the attending doctor. Dietary supplements including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.

~~e. Continued treatment beyond medically stationary state (i.e., maintenance or palliative care) except as described under section 92-01-02-40 or when the bureau orders otherwise.~~

~~f. After consultation and advice to the bureau, any treatment measure deemed to be dangerous or inappropriate for the injured employee in question.~~

~~g. Treatment measures of an unusual, controversial, obsolete, or experimental nature. Under certain conditions, treatment in this category may be approved by the bureau. Approval must be obtained prior to the treatment. Requests must contain a description of the treatment, reason for the request with benefits, and results expected.~~

d. Articles such as beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report that establishes that the "nature of the injury or the process of recovery requires" that the item be furnished. The report must specifically set forth why the claimant requires an item not usually considered necessary in the majority of claimants with

similar impairments. If the bureau does not feel the report justifies the need for the item in the treatment and recovery of the claimant and the sole issue is whether the treatment is inappropriate, ineffective, excessive, or in violation of the rules regarding the performance of medical services, the issue shall be resolved under section 92-01-02-46.

~~5.--The--bureau--employs--a-managed-care-vendor-to-review-care-for medical-necessity.--Cooperation-with-this-program-is--required to-maximize-reimbursement.--This-program-allows-for-an-appeals process-when--agreement--has--not--been--reached--between--the provider,-the-bureau,-and-the-managed-care-vendor.~~

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-29.2. Acceptance of rules and fees.**

~~1.--Pursuant--to-subsection-7-of-North-Dakota-Century-Code-section 65-05-07,-rendering-treatment-to-an-injured-employee-who-comes under--the-bureau's-jurisdiction-constitutes-acceptance-of-the bureau's-rules-and-fees.~~

2.--~~Providers~~ Medical service providers rendering treatment of any kind, including inpatient and outpatient services, to an ~~injured--employee~~ a claimant who comes under the bureau's jurisdiction must comply with managed care services as ~~defined by~~ under these rules. All providers shall cooperate with the managed care vendor for its review services and shall provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service. Review services include concurrent reviews, preadmission reviews, preservice reviews, and retrospective reviews.

~~3.--The-bureau's-rules-and-fee-schedules-are-applied-regardless-of state-or-country-where-services-are-actually-provided.~~

~~4.--When--the--bureau--receives-notice-that-an-injured-employee-is receiving-medical-treatment-out-of--state,--the--bureau--shall notify--the--employee--and--the--health--care--provider-of-the following:~~

~~a.--The-North-Dakota-fee-schedule-requirements;~~

~~b.--The--manner--in-which-they-can-provide-compensable-medical services-to-North-Dakota's-injured-employees;~~

~~c.--The-requirements-that-billings-for-compensable-services-in excess-of-the-maximum-allowed-under-the--fee--schedule--or~~

these--rules--are--not-to-be-paid-for-by-the-bureau-or-the injured-employee,-the-employer-or-another-insurer;-and

d.--If--the--provider-does-not-comply-with-these-requirements, the-bureau-may-object-to-the-worker's-choice-and-select--a new--provider--to--render--the--necessary-care-under-North Dakota-Century-Code-section-65-05-28.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-30. Medical services.**

1. Medical services.

   a. Medical--services,-including-diagnostic-services,-provided to-the-injured-employee-shall-not-be-more-than-the--nature of--the--compensable--injury--or--the--process--of--injury requires.--Services Medical services that are unnecessary or---inappropriate--according--to--accepted--professional standards,-or-to-these-rules,-or-which--are--unrelated--to the--compensable--injury not medically necessary are not reimbursable.

   b. When--there--is--a--question--regarding--the-competency-or ethical-behavior-of-a-medical-provider,-the--director--may refer-the-matter-to-the-appropriate-licensing-board.

   c. Frequency and extent of treatment may not be more than the nature of the injury or process of recovery requires, and must be provided in accordance with utilization and treatment standards as prescribed by the bureau, or the bureau's managed care vendor. The bureau has-the-right-to may require evidence of the efficacy of treatment. Unless otherwise---provided--for--by--statutes,--utilization--and treatment-standards--established--by--the--bureau--or--the bureau's--managed--care--vendor,--the--usual--range-of-the utilization-of-medical-services-does--not--exceed--fifteen office--visits--by--any--and--all-attending-doctors-in-the first-sixty-days-from-the-first-date-of-treatment,-and-two visits--per-month-thereafter.--This-statement-of-fact-does not-constitute-authority-for-an-arbitrary-provision-of--or limitation--of--services,--but--is--a-guideline-to-be-used concerning-requirements-of-accountability-for-the-services being---provided.----The---process---outlined--in--section 92-01-02-46-should-be-followed-when--the--bureau--believes the--treatment--plan--is--inappropriate--and-the-attending doctor-disagrees.

2. Chiropractic services.

a. Chiropractic services may be reimbursed only when ~~carried out under~~ provided according to a written treatment plan that must include objectives, modalities, frequency of treatment, and duration. A copy of the treatment plan, signed by the attending doctor, must be provided to the bureau within fourteen days of beginning the treatment or within fourteen days of learning that the treatment is claimed to be work-related, whichever occurs later.

~~b. Unless otherwise provided for within utilization and treatment standards prescribed by the bureau or the bureau's managed care vendor, the usual range of therapy visits does not exceed twenty visits in the first sixty days, and four visits per month thereafter. This statement of fact does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline to be used concerning requirements of accountability for the services being provided. The attending doctor shall document the need for services in excess of these guidelines when submitting a written treatment plan. The process outlined in section 92-01-02-46 should be followed when the bureau believes the treatment plan is inappropriate and the attending doctor disagrees.~~

3. Ancillary services.

a. Ancillary services including physical therapy or occupational therapy by a medical service provider other than the attending doctor may be reimbursed only when ~~carried out under~~ provided according to a written order prescribed prior to ~~the commencement of~~ beginning treatment and signed by the attending doctor within fourteen days of the beginning of treatment or within fourteen days of learning that the treatment is claimed to be work-related, whichever occurs later. A treatment plan, ~~completed by the ancillary service provider,~~ must include:

~~(1)~~ a. Objectives - the degree of restoration anticipated~~;~~.

~~(2)~~ b. Measurable goals~~;~~.

~~(3)~~ c. Modalities and specific therapies to be used~~;~~.

~~(4)~~ d. Frequency and duration of treatments to be provided~~;~~ ~~and~~.

~~(5)~~ e. Condition of the ~~employee~~ claimant which may ~~periodically~~ require periodic modification in the plan of care based on:

~~(a)~~ (1) Improvements in the ~~employee's~~ claimant's status.

~~(b)~~ (2) Failure of the ~~patient~~ claimant to improve as expected.

~~(c)~~ (3) Intervention of care rendered, including education of the ~~employee~~ claimant, when appropriate.

~~(d)~~ (4) Specific operative reports, test results, and consultation reports.

~~The treatment plan must be cosigned by the attending doctor and the plan shall be provided to the bureau within fourteen days of the beginning of treatment or within fourteen days of learning that the treatment is claimed to be work related, whichever occurs later.~~

~~b. Unless otherwise provided for within utilization and treatment standards prescribed by the bureau or the bureau's managed care vendor, the usual range of therapy visits does not exceed twenty visits in the first sixty days, and four visits per month thereafter. This statement of fact does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline to be used concerning requirements of accountability for the services being provided. The attending doctor shall document with the need for services in excess of these guidelines when submitting a written treatment plan. The process outlined in section 92-01-02-46 should be followed when the bureau believes the treatment plan is inappropriate and the attending doctor disagrees.~~

4. The ~~preparation~~ cost of preparing a written treatment plan and ~~the~~ supplying ~~of~~ progress notes under this section are ~~integral parts of~~ included in the fee for the medical service.

5. The treatment plan requirements of this section may be modified or waived ~~in accordance with the contract provisions of the managed care vendor~~ by the bureau.

6. ~~Dietary supplements including minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured employee. Vitamin B-12 injections are not reimbursable unless necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.~~

~~7.~~ X-ray films must be of diagnostic quality. Billings for x-rays are not reimbursable without a report of the findings. Upon request of either the ~~director~~ bureau or the ~~bureau's~~

managed care vendor, original x-ray films must be forwarded to the ~~director~~ bureau or the ~~bureau's~~ managed care vendor. Films must be returned to the vendor. A reasonable charge may be made for the costs of delivery of films.

~~8.--Articles--such--as--beds,--hot--tubs,--chairs,--Jacuzzies,-and gravity-traction-devices-are-not-compensable-unless-a-need--is clearly--justified--by--a--report--that--establishes--that-the "nature-of-the-injury-or-the--process--of--recovery--requires" that--the-item-be-furnished.--The-report-must-specifically-set forth-why-the-patient-requires-an-item-not-usually--considered necessary--in--the--great--majority--of-employees-with-similar impairments.--If-the-bureau-does-not-feel-the-report-justifies the--need--for--the--item-in-the-treatment-and-recovery-of-the employee-and-the-sole-issue-to-be-addressed-in-the--matter--is whether---the---treatment---is---inappropriate,---ineffective, excessive,--or--in--violation--of--the--rules--regarding---the performance-of-medical-services,-the-issue-must-be-resolved-as provided-by-section-92-01-02-46.~~

~~9.--The--bureau,--or--its--designated--agent,-may-request-from-the provider,-any-and-all-necessary-records-needed-to--review--the efficacy--of--treatment,--frequency-and-necessity-of-care,-and accuracy-of-billings.--If-the-evaluation-of-the--records--must be--conducted--onsite,-the-provider-shall-furnish-a-reasonable worksite-for-the-records-to-be-reviewed--at--no--cost.---These records--must--be-provided-or-made-available-for-review-within thirty-days-of-a-request.--Failure-to-provide-the-records-in-a timely---manner--may--result--in--a--penalty--as--provided--in subsection-6-of-North-Dakota-Century-Code-section-65-05-07.~~

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-31. Who may treat.**

1. Only ~~that~~ treatment ~~which~~ that falls within the scope and field of the treating health care provider's license to practice ~~will--be-allowed-as-treatment-to-an-injured-employee~~ is reimbursable.

2. Paraprofessionals, who are not independently licensed, must practice under the direct supervision of a licensed health care ~~professional~~ provider whose scope of practice and specialty training includes the service provided by the paraprofessional.

3. Health care providers may be ~~formally~~ refused permission to treat cases under the jurisdiction of the bureau ~~for--reasons that--are,--in--the--opinion--of-the-bureau-or-the-health-care~~

~~advisory-board,-in-the-best-interest-of-the-employees-and--the fund-created-for-their-protection.~~

4. Reasons for holding a health care provider ineligible to treat ~~workers'-compensation-cases~~ claimants include ~~any~~ one or a ~~combination~~ more of the following:

   a. Failure, neglect, or refusal to submit complete, adequate, and detailed reports.

   b. Failure, neglect, or refusal to respond to requests by the bureau for additional reports.

   c. Failure, neglect, or refusal to observe and comply with the bureau's orders and medical service rules, including cooperation with the bureau's managed care vendor.

   d. ~~Persistent---failure~~ Failure to notify the bureau immediately and prior to burial in any death where the cause of death is not definitely known or where there is question of whether death ~~being--due--to--occupational~~ resulted from a compensable injury.

   e. ~~Persistent--failure~~ Failure to recognize emotional and social factors impeding recovery of ~~injured--employees~~ claimants.

   f. ~~Persistent--unreasonable~~ Unreasonable refusal to comply with the recommendations of board-certified or qualified specialists who have examined the ~~employee~~ claimant.

   g. Submission of false or misleading reports to the bureau.

   h. Collusion with ~~any~~ other persons in submission of false or misleading information to the bureau.

   i. Submission of inaccurate or misleading bills.

   j. ~~Persistent--submission~~ Submission of false or erroneous diagnosis.

   k. Knowingly submitting bills to ~~an--injured--employee~~ a claimant for treatment of a work-related condition for which the bureau has accepted liability, charging or attempting to charge claimants fees in addition to the fee paid by the bureau for care of the occupational injury, or billing the difference between the maximum allowable fee set forth in the bureau's fee schedule and usual and customary charges.

   l. ~~Persistent-use~~ Use of:

(1) Treatment of a controversial or, experimental, or investigative nature.

(2) Contraindicated or hazardous treatment measures.

(3) ~~Continuation---of---unreasonable~~ Unreasonable and inappropriate treatment ~~measures---past---medically stationary--status~~ of the ~~occupational~~ work-related condition ~~or-after-maximum--medical--improvement--has been-obtained~~.

(4) Nonspecific treatment measures.

(5) Treatment ~~terminating--in~~ yielding unsatisfactory results.

(6) ~~Treatment--with--a--consistent--pattern--of-disabling injured-employees-to--maximize--financial--recoveries for~~ Certifying disability in excess of the actual medical limitations of the ~~employee~~ claimant or provider.

m. ~~Charging--or--attempting--to-charge-occupationally-injured employees-fees-in-addition-to-the-fee-paid-by--the--bureau for--care--of--the--occupational--injury--or--billing--the difference-between-the-maximum-allowable-fee-set-forth--in the-bureau's-fee-schedule-and-usual-and-customary-charges.~~

~~n.~~ Conviction in any court of any offense involving moral turpitude, in which case the record of ~~such~~ the conviction ~~shall-be~~ is conclusive evidence.

~~o.~~ n. The excessive use, or excessive or inappropriate prescription for use, of narcotic, addictive, habituating, or dependency inducing drugs ~~in-any-way-other-than-for therapeutic-purposes~~.

~~p.--Repeated--acts--of-gross-misconduct-in-the-practice-of-the profession.~~

~~q.~~ o. Declaration of mental incompetency by a court of competent jurisdiction.

~~r.~~ p. ~~The--finding--of--any-peer-group-disciplinary~~ Disciplinary action by a licensing board ~~of-reason-to-suspend-or-revoke a-health-care-provider's-practice-privilege-temporarily-or permanently~~.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-32. ~~Physician's~~ Physician assistant and nurse practitioner rules.**

1. ~~Physician's~~ Physician assistants and nurse practitioners may perform ~~only those~~ medical services in occupational injury cases~~, for which the physician's assistant, or nurse practitioner is trained and licensed~~, under the control and supervision of a licensed physician. Such control and supervision may not be construed to require the personal presence of the supervising physician.

2. ~~Physician's~~ Physician assistants and nurse practitioners may perform only those medical services that are within the scope of their license or certification for occupational injury cases and those services must be performed within the limitations listed in the following ~~section~~ subsection.

3. ~~Advance approval must be obtained from the bureau to treat occupational injury cases.~~ To be eligible to treat occupational injuries, the ~~physician's~~ physician assistant or nurse practitioner must provide the bureau with:

   a. ~~Provide the bureau with a~~ A copy of ~~their~~ the person's license or certification;

   b. ~~Provide the~~ The name and, address, and specialty of ~~their~~ the person's supervising physician; and

   c. ~~Provide the bureau with the evidence~~ Evidence of a reliable and rapid system of communication with the supervising physician.

4. ~~Physician's assistants, and nurse practitioners may prepare reports of accident, time loss cards, and progress reports for the supervising physician's signature. Physician's assistants and nurse practitioners may not submit such information under their own signatures.~~

5. The bureau must be notified of any change in supervising physician.

6. ~~Reimbursement for these services will be in accordance with subsection 12 of section 92-01-02-45.1.~~

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-33. Utilization review and quality assurance.** ~~To ensure that injured workers receive good quality health care, provided in an efficient, cost effective and appropriate manner and in the most appropriate setting,~~ the The bureau has instituted a program of

utilization review and quality assurance. ~~This program is designed to monitor and control the use of health care services, and includes the following:~~

1. Prior authorization for services must be obtained from a ~~qualified representative of~~ the bureau ~~prior to the provision of certain medical treatment, equipment, or supplies~~ or its managed care vendor at least twenty-four hours or the next business day in advance of ~~the proposed service~~ providing certain medical treatment, equipment, or supplies. Medical services requiring prior authorization or preservice review are outlined in section 92-01-02-34. Emergency medical services may be provided without prior authorization, but notification is required within twenty-four hours of, or by the end of the next business day following, initiation of emergency treatment ~~or the next business day is required or reimbursement~~. Reimbursement may be withheld, or recovery of prior payments made, if utilization review ~~fails to~~ does not confirm the medical necessity of ~~such~~ emergency medical services.

2. Documentation of the need for and efficacy of continued medical care by the health care provider is required at regular intervals while a claim is open. ~~Such documentation enables the bureau to review the plan of treatment, assess the quality and medical necessity of services, authorize or deny reimbursement for continued provisions of services, evaluate eligibility for time loss compensation and pay medical bills.~~

3. The bureau may require second opinion consultations prior to the authorization of reimbursement for some types of surgery of uncommon nature, and for conservative care which extends past one hundred twenty days following the initial visit.

4. Hospitalization will be reimbursed only when it is determined to be medically necessary for the diagnosis and healing or rehabilitative treatment of accepted conditions. Hospital bills and supporting medical documents may be audited to verify the accuracy or appropriateness of charges, and recovery of overpayment will be made.

5. ~~Medical treatment, equipment, and supplies provided for the diagnosis and healing or rehabilitative treatment of a condition unrelated to the accepted medical condition will not be reimbursed unless prior authorization has been obtained from the bureau pursuant to subsection 18 of section 92-01-02-45.1.~~

6. The bureau's outpatient surgery program requires that certain diagnostic and surgical procedures be reimbursed only if they are performed in an outpatient setting. ~~If~~; however, if a worker's medical condition necessitates performance of ~~such~~ a

the procedure in an inpatient setting, preservice review must be obtained from the bureau's managed care vendor.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

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

1. Certain treatment procedures require prior authorization or preservice review, by the bureau or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; ICD-9-CM codes; their relationship, to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, procedure codes and expected prognosis.

2. Requesting prior authorization or preservice review is the responsibility of the health care provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Health care providers shall request prior authorization directly from the bureau rather than through the managed care vendor for:

   a. Diagnostic or therapeutic injection. Epidural or caudal injection of substances other than anesthetic or contrast solution may be authorized only under the following conditions:

      (1) When the claimant has experienced acute low back pain or acute exacerbation of chronic low back pain of not more than six months' duration.

      (2) When the claimant will receive no more than three injections in an initial thirty-day period, followed by a thirty-day evaluation period. If significant pain relief is demonstrated, one additional series of three injections may be

authorized. No more than six injections may be authorized per acute episode.

~~e.~~ b. Home nursing or convalescent center care ~~must--be authorized per provisions outlined in section 92-01-02-43.~~ When the attending doctor believes special or attendant (home nurse) care is needed the following information must be submitted:

(1) A description of the care required including estimated time required (i.e., catheterization, three times per day, thirty minutes; bathing, two times per day, one hour; toilet transfers as needed; dressing change, four times per day, two hours).

(2) The skill level or special training required to administer care (i.e., R.N.; L.P.N.; family member who has received special training; or no special training required).

(3) If known, the name and address of a person or facility willing to provide care.

(4) The length of time special or home nursing care will be required.

Approval of fees for home nurse or attendant care is negotiable based upon the care provided and the level of training of the provider. The bureau may authorize and pay for visiting nurse care needed to evaluate or instruct a home health care provider. When the claimant or the claimant's family makes arrangements for caregivers, reimbursement will be issued directly to the claimant. The claimant is responsible for reimbursing the home nursing care provider. Payment to individuals for services pursuant to this rule does not constitute an employer and employee relationship between the bureau and the individual.

~~d.~~ c. Durable medical equipment ~~must be authorized in accordance with section 92-01-02-42.~~

(1) The bureau will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The bureau shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the bureau. If the equipment is needed on a long-term basis, the bureau

may purchase the equipment. The bureau shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The bureau shall purchase the equipment from the most cost-efficient source.

(2) The bureau will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the bureau will reimburse the doctor or the provider the actual cost for the item. In addition, a handling fee, not to exceed ten percent of the wholesale cost of the item, will be paid. Providers and doctors shall supply the bureau with a copy of their original invoice showing actual cost of the item upon request of the bureau. The bureau will repair or replace originally provided damaged, broken, or wornout prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement or repair is needed. Prior authorization for replacements is required.

(3) Equipment not requiring prior authorization includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics of minimal cost. Personal appliances such as vibrators, heating pads, home furnishings, hot tubs, waterbeds, exercise equipment, Jacuzzis, and similar appliances, will not be authorized or paid unless the bureau orders otherwise.

~~e.--Biofeedback--programs,--pain--clinics,--psychotherapy,-and physical-rehabilitation-programs,--including--health--club memberships--and--work--hardening--programs,--chronic-pain management-programs,-and-other-programs-designed-to--treat special-problems-must-be-authorized-prior-to-beginning-the service.~~

~~f.~~ d. Injections of anesthetic or ~~antiinflammatory~~ anti-inflammatory agents~~,--or--both,~~ into the vertebral facet joints. These injections will be authorized to qualified specialists in orthopedics, neurology, and anesthesia, or other doctors who can demonstrate expertise in the procedure and who can provide certification that their facility privileges include the procedure requested ~~under-the~~. The following conditions must be met:

(1) Rationale for procedure, treatment plan, and request for authorization must be presented in writing to the bureau;

(2) Procedure must be performed in an accredited facility under radiographic control; and

(3) Not more than four facet injection procedures will be authorized in any one patient.

~~g.~~ e. Intramuscular and trigger point injections of steroids and other nonscheduled medications beyond the first three injections per patient regardless of location or change in condition. These injections are limited to a series of three injections in each location per patient. The attending doctor must submit justification for an additional series of three injections if indicated with a maximum of six injections to be authorized per acute episode.

f. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

g. Concurrent care. In some cases, treatment by more than one practitioner may be allowed. The bureau will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the bureau with the name, address, discipline, and specialty of all other practitioners assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the bureau will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved practitioners; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The bureau will approve concurrent care on a case-by-case basis. The managed care vendor must be notified of all requests for concurrent care. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

4. Notwithstanding the requirements of this subsection, the bureau may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers. Health care providers shall request preservice review from the ~~bureau's~~ managed care

vendor ~~as----to----medical---necessity,---efficiency,---and appropriateness-of-treatment-in--the--following--circumstances~~ for:

a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery, ~~(a----surgery----or hospitalization--is--considered--inpatient--if-the-patient spends-at-least-one-night-in-the-facility,-or-has--a--stay greater---than--twenty-four--hours--providing--it--is--not designated-as-an--observation--stay);~~ inpatient physical therapy~~;~~, and outpatient surgical procedures~~,-including arthroscopic-procedures-and-carpal-tunnel-release.--Hernia repairs--and--hardware--removal-procedures-scheduled-on-an outpatient-basis-do-not-require-preservice-review.~~

b. ~~Concurrent--review--of--emergency--admissions--is-required within-twenty-four-hours,-or-the--next--business--day,--of emergency-admission.~~

c. All nonemergent major surgery ~~must-be-authorized-prior-to surgery-date. Some-surgical-procedures-require-concurring opinions-prior-to-authorization.--See-section-92-01-02-36, relating-to--elective--surgery,--for--details.~~ When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the managed care vendor actual notice at least twenty-four hours prior to the proposed surgery. Notice must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed. When elective surgery is recommended, the bureau or the managed care vendor may require an independent consultation with a doctor of the bureau's choice. The bureau shall notify the doctor who requested approval of the elective surgery, whether or not a consultation is desired. When requested, the consultation must be completed within thirty days after notice to the attending doctor. Within seven days of the consultation, the bureau shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the bureau may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the bureau believes the proposed surgery is excessive, inappropriate, or ineffective and the bureau cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46. An attending doctor or health care provider who proceeds to perform elective surgery and fails to comply with the notice requirements of this rule may not be reimbursed for the

services and may not request retrospective review of those services unless the attending doctor or health care provider can prove, by a preponderance of the evidence, that the claimant did not inform the provider the condition was covered under workers' compensation. If after reviewing the evidence, the bureau denies retrospective review, the health care provider may request binding dispute resolution in accordance with section 92-01-02-46. Surgery that must be performed promptly, i.e., within twenty-four hours, because the condition is life-threatening or there is rapidly progressing deterioration without surgical intervention, is not considered elective surgery. In such cases, the attending doctor should endeavor to notify the managed care vendor of the need for emergency surgery. Elective surgery unrelated to the compensable injury may be permitted through prior agreement and approval by the bureau provided the unrelated surgery is not more extensive than the procedure for the compensable injury. The requesting doctor must submit a written request and identify which services are needed due to the compensable injury and which are needed due to the unrelated conditions, along with an estimate of what effect, if any, the unrelated surgery will have on the compensable injury and recovery time from surgery. The bureau may not reimburse charges associated with the unrelated procedure unless otherwise approved by the bureau.

~~d.~~ c. All ~~high-tech~~ imaging procedures including CAT scan, magnetic resonance imaging, myelogram, and discogram ~~require preservice review~~. Tomograms, bonescans, and EMGs are reviewable if requested in conjunction with one of the above imagingprocedures. The bureau may waive preservice review requirements for these procedures when requested by a physician who is performing an independent medical examination or permanent partial impairment evaluation at the request of the bureau.

~~e.~~ d. ~~All--physical~~ Physical therapy treatment beyond ~~two weeks when the injured employee is working--when--the--treatment begins--or--immediately--when--the injured employee is off work--when--the--treatment--begins.---The--evaluation---to determine--a-treatment-plan-is-not-subject-to-review~~ first ten treatments or beyond thirty days after first prescribed, whichever occurs first.

~~f.~~ e. ~~All--chiropractic~~ Chiropractic treatment beyond ~~twelve~~ the first eighteen treatments ~~when--the--injured--employee--is working--when-the-treatment-begins-or-immediately-when-the injured-employee-is-off-work-when-the-treatment-begins~~ or beyond ninety days after the injury, whichever occurs first. The evaluation to determine a treatment plan is not subject to review. The bureau may waive this

subdivision in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured claimants or providers.

5. Concurrent review of emergency admissions is required within twenty-four hours, or the next business day, of emergency admission.

6. Hospitalization will be paid when medically necessary for treatment of the compensable injury. Unless the claimant's condition requires special care, ward or semiprivate accommodations will be paid. When the claimant's condition requires special nurses, a private room, or intensive care, the attending doctor may order these services subject to documentation supporting this need. Hospitalization solely for physical therapy, bed rest, or administration of injectable drugs will be paid only when admission has been recommended as approved by the managed care vendor. Discharge from the hospital must be at the earliest date possible consistent with proper health care. If transfer to a convalescent center or nursing home is indicated, prior arrangements should be made with the bureau or the managed care vendor. The bureau may designate diagnostic and surgical procedures that will be reimbursed only if performed in an outpatient setting when outpatient services are reasonably available and accessible to the claimant. When procedures so designated must be performed in an inpatient setting for reasons of medical necessity, preservice review must be obtained through the managed care vendor. Medical equipment, supplies, or hardware will be reimbursed at the actual cost of the item. In addition, a handling fee of ten percent of the actual cost will be paid. Upon request of the bureau, the hospital must supply a copy of its original invoice showing the actual cost of the item.

7. The bureau may designate those diagnostic and surgical procedures that can be performed in other than a hospital inpatient setting. ~~If an employee has a medical condition that necessitates a hospital admission, preservice review or approval of the bureau must be obtained.~~

~~6. If a health care provider fails to request preservice review as required in subsection 4, with knowledge that the treatment is related to a work related condition, the health care provider may not be paid for the treatment under any circumstances and may not request retrospective review unless the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider that the condition was covered under workers' compensation. If, after reviewing the evidence, the bureau denies retrospective review, the health care provider may request binding dispute resolution in accordance with section 92-01-02-46.~~

~~7.~~ 8. The ~~bureau's--contracted~~ managed care vendor must respond orally to the health care provider and the bureau within twenty-four hours, or the next business day, of receiving the necessary information to complete a review and make a recommendation on the service. Within ~~the-twenty-four-hours~~ that time the managed care vendor must either recommend approval or denial of the request, request additional information, request the ~~employee~~ claimant obtain a second opinion, or request an examination by the ~~employee's~~ claimant's doctor. A recommendation to deny medical services must specify the reason for the denial ~~recommendation~~. The managed care vendor must respond to the bureau in writing ~~to the--bureau~~ to a each request for preservice review of medical services within seven days of receiving the necessary information to complete a review and make a recommendation.

~~8.~~ 9. Retrospective review is limited to those situations where the provider can prove, through a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not in fact know, that the condition was, or likely would be, covered under workers' compensation. All health care providers are required to cooperate with the managed care vendor for retrospective review and are required to provide, without additional charge to the bureau or the managed care vendor, the medical information requested by the managed care vendor in relation to the reviewed service.

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

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-35. Determining medically stationary status.**

~~1.--A--claimant's--condition--must--be--determined-to-be-medically stationary-when-the-attending-doctor--or--a--preponderance--of medical--evidence--indicates-the-claimant-is-either-"medically stationary"-or-uses-other-language-meaning-the-same-thing.~~

~~2.--When--there-is-a-conflict-in-the-medical-opinions,-more-weight must-be-given-to-medical-opinions-that-are-based-on--the--most accurate--history,--on--the--most-objective-findings,-on-sound medical-principles,-and-on-clear-and-concise-reasoning.~~

~~3.--When--expert-analysis-is-important,-deference-must-be-given-to the-opinion-of-the-doctor-with-the-greatest-expertise-in,--and understanding-of,-the-claimant's-condition.~~

4. The date a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the examination, not the date of the report, controls the medically stationary date.

5. When a specific date is not indicated but the medical opinion states the claimant is medically stationary, the claimant is presumed medically stationary on the date of the last examination. Repealed effective October 1, 1998.

History: Effective January 1, 1994; amended effective January 1, 1996; April 1, 1997.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

**92-01-02-36. Elective surgery.**

1. When the attending doctor or consulting doctor believes elective surgery is needed to treat a compensable injury or illness, the attending doctor or the consulting doctor with the approval of the attending doctor, shall give the bureau's managed care vendor actual notice at least twenty-four hours prior to the date of the proposed surgery. Notification must give the medical information that substantiates the need for surgery, an estimate of the surgical date and the postsurgical recovery period, and the hospital where surgery is to be performed.

2. When elective surgery is recommended, the bureau or the bureau's managed care vendor may require an independent consultation with a doctor of the bureau's choice. The bureau shall notify the doctor who requested approval of the elective surgery whether or not a consultation is desired. When requested, the consultation must be completed within thirty days, if possible, after notice to the attending doctor.

3. Within seven days of the consultation, the bureau shall notify the surgeon of the consultant's findings. If the attending doctor and consultant disagree about the need for surgery, the bureau may request a third independent opinion pursuant to North Dakota Century Code section 65-05-28. If, after reviewing the third opinion, the bureau believes the proposed surgery is excessive, inappropriate, or ineffectual and cannot resolve the dispute with the attending doctor, the requesting doctor may request binding dispute resolution in accordance with section 92-01-02-46.

4. An attending doctor or health care provider who prescribes or proceeds to perform elective surgery and fails to comply with the notification requirements of this rule, may not be reimbursed for the services and may not request retrospective review of those services unless the attending doctor or health

care provider can prove, by preponderance of the evidence, that the injured employee did not inform the provider the condition was covered under workers' compensation. If after reviewing the evidence, the bureau denies retrospective review, the health care provider may request binding dispute in accordance with section 92-01-02-46.

5. Surgery that must be performed promptly, i.e., before twenty-four hours, because the condition is life threatening or there is rapidly progressing deterioration without surgical intervention, is not considered elective surgery. In such cases, the attending doctor should endeavor to notify the bureau's managed care vendor of the need for emergency surgery.

6. Elective surgery for an unrelated condition is not normally permitted during hospitalization for a compensable injury. Under some circumstances unrelated elective surgery may be permitted through prior agreement and approval by the bureau provided the unrelated surgery is not more extensive than the procedure for the compensable injury. The requesting doctor must submit a written request and identify which services are needed due to the compensable injury and which are needed due to the unrelated conditions, along with an estimate of what effect, if any, the unrelated surgery will have on the compensable injury and recovery time from surgery. Charges associated with the unrelated procedure may not be reimbursed by the bureau unless the bureau had ordered otherwise.
Repealed effective October 1, 1998.

History: Effective January 1, 1994.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

**92-01-02-37. Concurrent care.**

1. In some cases, treatment by more than one practitioner may be allowed. The bureau will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care.

2. When requesting consideration for concurrent treatment, the attending doctor must provide the bureau with the following:

   a. The name, address, discipline, and specialty of all other practitioners assisting in the treatment of the injured employee; and

   b. An outline of their responsibility in the case and an estimate of the length of the period of concurrent care.

3.--When---concurrent---treatment--is--allowed,--the--bureau--will recognize--one--primary--attending---doctor,---who---will---be responsible--for--prescribing--all--medications;-directing-the overall-treatment-program;-providing-copies-of-all-reports-and other--data--received-from-the-involved-practitioners;-and,-in time-loss-cases,-providing-adequate-certification-evidence--of the-employee's-ability,-or-inability,-to-perform-work.

4.--The--bureau--will--approve--concurrent--care-on-a-case-by-case basis.--Consideration-will-be-given-to-all-factors-in-the-case including-availability-of-providers-in-the-worker's-geographic location.--The-bureau's-managed-care-vendor-must--be--notified of--all--requests--for--concurrent-care.--Except-for-emergency services--as--otherwise--provided--for--in--these--rules,--all treatments--must--be--authorized--by--the--injured--employee's attending--doctor--to--be--reimbursable. Repealed effective October 1, 1998.

**History:** Effective-January-1,-1994.
**General Authority:** NDCC-65-02-08,-65-02-20,-65-05-07
**Law Implemented:** NDCC-65-02-20,-65-05-07

**92-01-02-39. Hospitalization.**

1.--Hospitalization--will--be--paid--when--medically-necessary-for treatment-of-the-compensable-injury.---Unless--the--employee's condition---requires---special---care,---ward--or--semiprivate accommodations-will-be-paid.--When--the--employee's--condition requires--special--nurses,--a-private-room,-or-intensive-care, the-attending-doctor--may--order--these--services--subject--to documentation-supporting-this-need.

2.--Hospitalization--solely--for--physical--therapy,--bed-rest,-or administration-of-injectable-drugs-will-be-paid-only-when-such admission--has--been--recommended--as-approved-by-the-bureau's managed-care-vendor.

3.--Discharge--from--the--hospital--must--be--at-the-earliest-date possible-consistent-with-proper-health-care.--If-transfer-to-a convalescent--center--or--nursing--home--is--indicated,--prior arrangements-should-be-made-with-the-bureau--or--the--bureau's managed-care-vendor.

4.--The---bureau--may--designate--those--diagnostic--and--surgical procedures-that-will-be-reimbursed-only--if--performed--in--an outpatient--setting.---When--procedures--so-designated-must-be performed-in-an--inpatient--setting--for--reasons--of--medical necessity,--preservice--review--must--be--obtained-through-the bureau's-managed-care-vendor.

5.--Medical-equipment,-supplies,-or-hardware-will-be-reimbursed-at the-actual-cost-of-the-item.--In-addition,-a-handling--fee--of

ten--percent-of-the-actual-cost-will-be-paid.--Upon-request-of the-bureau,-hospitals-must-supply-a--copy--of--their--original invoice--showing--actual-cost-of-the-item. Repealed effective October 1, 1998.

History: Effective-January-1,-1994.
General Authority: NDCC-65-02-08,-65-02-20,-65-05-07
Law Implemented: NDCC-65-02-20,-65-05-07

**92-01-02-40. Palliative care.**

1. For--the--purposes--of--this--rule,--employees--are--medically stationary-or-at-maximum-medical-improvement-or-recovery--when determined--to--be-so-by-the-employee's-attending-doctor-or-as established-in-accordance-with-section-92-01-02-35. After the employee has become medically stationary, palliative care is compensable without prior approval by from the bureau in--the following-instances:

   a.--When only when it is necessary to monitor administration of prescription medication required to maintain the employee claimant in a medically stationary condition; or

   b.--To to monitor the status of a prosthetic device.

2. Review--of--disputes--relating--to-palliative-care-provided-in accordance-with-subsection-1,-where-the-bureau,--employer,--or the--bureau's-managed-care-vendor-believes-the-palliative-care is-excessive,-inappropriate,-ineffectual,-or-in--violation--of the--rules--regarding--the-performance-of-medical-services, If the bureau's or its managed care vendor believes palliative care provided under subsection 1 is excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services, review must be processed-in accordance-with performed according to section 92-01-02-46.

3. When the employee's claimant's doctor believes that palliative care,-which-would-otherwise--not--be--compensable, after the claimant has reached medically stationary status is appropriate--to--enable--the--employee--to--continue---current employment necessary, the doctor shall request authorization, in writing, for such-treatment-may-be--requested.---To--obtain such--authorization,--the--attending-doctor-shall-first-mail-a written-request-for-approval-of-such-treatment-to--the--bureau palliative care. The written request must be in a form and format-as prescribed by the director bureau and must be submitted to the bureau prior to the commencement of the treatment. If the palliative care request is approved, services are payable from the date the approved treatment begins. The request must:

a. Contain all objective findings, and specify if there are none~~;~~.

b. Identify the medical condition by ICD-9-CM diagnosis for which the palliative treatment is proposed~~;~~.

c. Provide a proposed treatment plan that includes the specific treatment modalities, the name of the provider who will perform the treatment, and the frequency and duration of the care to be given, not to exceed one hundred eighty days~~;~~.

d. Describe how the requested palliative care is related to the accepted compensable condition~~;~~.

e. Describe how the proposed treatment will enable the ~~injured-employee~~ claimant to continue employment or to perform the activities of daily living, and what the adverse effect ~~on~~ would be to the ~~injured--employee~~ claimant if the palliative care is not approved~~;-and~~.

f. Any other information the ~~director,-by-bulletin,~~ bureau may ~~prescribe~~ request.

4. The bureau shall ~~date--stamp--all~~ approve palliative care ~~requests-upon-receipt.--Within-thirty-days-of-the-receipt-of-a written---request---from---the--attending--doctor--to--provide palliative-care-as-described-in-subsection-3,-the-bureau-shall send-written-notification-to-the-doctor,-the-employee,-and-the employee's-attorney-approving-or-disapproving-the-request~~ only when:

a. Other methods of care including patient self-care, structural rehabilitative exercises, and lifestyle modifications are being utilized and documented;

b. Palliative care reduces both the severity and frequency of exacerbations that are clinically related to the compensable injury; and

c. Repeated attempts have been made to lengthen the time between treatments and clinical results clearly document that a significant deterioration of the compensable condition has resulted.

5. If the attending doctor does not receive written notice from the bureau ~~approving-or-disapproving~~ within thirty days of the receipt of the request for palliative care, which approves or disapproves the care ~~within--thirty--days--as--set--forth--in subsection-4~~, the ~~attending-doctor-may~~ request ~~approval-from the-director-in-the-manner-prescribed-in-subsection-9~~ will be considered approved.

6. ~~Subsequent--requests--for--palliative--care-are-subject-to-the same-process-as-the-initial-request.--However,-the-bureau--may waive--the--requirement--that--the--attending--doctor-submit-a supplemental-palliative-care-request.~~

~~7.--When--the--palliative--care-request-is-approved,-the-bureau-is responsible-for-providing-payment-for-palliative-care-provided as--prescribed--in--the--proposed--treatment--plan--or--in-the modified-plan-as-approved-by-the-bureau.~~

8. When the request for palliative care is not approved, the bureau shall provide, in writing, specific reasons for not approving the care. ~~The-bureau,-in-writing,-shall-do-any-or all-of-the-following:~~

~~a.--Identify--any--disagreement--with--the--attending-doctor's diagnosis-for-which-the-palliative-treatment-is--proposed.~~

~~b.--Provide-any-reasons-why-the-proposed-treatment-plan-is-not acceptable.~~

~~c.--Identify--why--the--proposed-treatment-will-not-enable-the injured-employee-to-continue-current-employment.~~

~~d.--Provide--any--other--reasons--they--believe--the--proposed palliative-care-is-not-appropriate.~~

9. 7. When the bureau approves or disapproves the requested palliative care, the attending doctor, employer, or claimant may request binding dispute resolution ~~in-accordance-with~~ under section 92-01-02-46. ~~Such-requests--must--be--submitted within--thirty--days--of--the--date--of-the-bureau's-notice-of disapproval.--The-request-must-include-an--explanation--as--to why-the-bureau's-stated-reasons-for-disapproval-are-incorrect, and-may-include-any-other-supporting-information-the-attending doctor-wishes-to-present.~~

8. For the purposes of this section only, a claimant's condition must be determined to be medically stationary when the attending doctor or a preponderance of medical evidence indicates the claimant is "medically stationary" or uses other language meaning the same thing. When there is a conflict in the medical opinions, more weight must be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and on clear and concise reasoning. When expert analysis is important, deference must be given to the opinion of the doctor with the greatest expertise in the diagnosed condition. The date a claimant is medically stationary is the earliest date that a preponderance is established under this section. The date of the examination, not the date of the report, controls the medically stationary date. When a specific date is not indicated but the medical opinion states the claimant

is medically stationary, the claimant is presumed medically stationary on the date of the last examination. This subsection does not govern determination of maximum medical improvement relating to a permanent impairment award.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

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

1. The bureau may request an independent medical examination ~~(IME)~~ pursuant to North Dakota Century Code section 65-05-28. ~~Reasons--for--requesting--an--independent--medical-examination include-the-following:~~

   a. To establish a diagnosis or to clarify a prior diagnosis. ~~Prior-diagnosis~~ that may be controversial or ill-defined~~;~~.

   b. To outline a program of rational treatment, where treatment or progress is controversial~~;~~.

   c. To establish medical data from which it may be determined whether the medical condition is related, or not related, to the injury~~;~~.

   d. To determine ~~the--extent--and-duration-of-aggravation-of~~ whether and to what extent a preexisting medical condition is aggravated by an occupational injury ~~or-exposure~~;.

   e. To establish when the ~~compensable--medical--condition~~ claimant has reached maximum medical improvement or when ~~medical~~ medically stationary status ~~has-been-reached~~;.

   f. To establish a percentage of rating for permanent impairment~~,-based-on-the-loss-of,-or-loss-of-use-of,--body function-when-maximum-medical-improvement-is-reached~~;.

   g. To determine ~~the--medical--indications--for-reopening-of~~ whether a claim should be reopened for further treatment on the basis of aggravation of a compensable injury or significant change in a medical condition~~,--based--upon objective-findings~~;.

   h. To determine whether overutilization by a health care provider has occurred~~;~~.

   i. To determine whether a change in health care provider is indicated~~;~~.

j. To determine whether treatment is necessary if the ~~employee~~ claimant appears ~~not~~ to be making no progress in recuperation~~;-or~~.

k. ~~In--instances--when~~ When the attending doctor has not provided current medical reports.

2. It is the bureau's intention to ~~purchase~~ obtain objective examinations to ensure that ~~sure---and---certain~~ correct determinations are made of all benefits to which the injured ~~employee~~ claimant might be entitled.

3. ~~A--report--of--an-independent-medical-examination-must-include the-following-items:~~

~~a.--A-detailed-chronology-of-the-injury-or-condition-including mechanism-of-injury,-diagnostic--studies,--and--treatments attempted.---The--chronology--must--mention-the-results-of treatments-and-diagnostic-studies;~~

~~b.--An--opinion--as-to-whether-treatment-actual-or-proposed-is or-will-be-healing-or-palliative-in-nature;~~

~~c.--An--assessment--of--whether-the-condition-is-caused-by-the claimed-injury,-on-a-more-probable-than-not-basis;~~

~~d.--Specific-diagnoses-sorted-into-the-following-categories:~~

~~(1)--The-compensable-injury;~~

~~(2)--Preexisting-conditions,-and-a-statement-as-to-whether they-are-worsening-on-their-own-or-are-aggravated--by the-compensable-condition;-and~~

~~(3)--Conditions-acquired-after-the-work-injury.~~

~~e.--Answers--to--written--questions--posed-by-the-bureau,-or-a description--of--what--would--be--needed--to--address--the questions;-and~~

~~f.--Conclusions--and--a--summary--statement--of--the-objective medical-findings-upon-which-the-conclusions-are-based.~~

4. Examiners must be willing to testify or be deposed on behalf of the ~~employee~~ claimant, employer, or the bureau.

5. 4. The bureau must provide a ~~minimum-of~~ at least fourteen days' notice to the ~~injured--employee--regarding~~ claimant of an independent medical examination. The bureau must also reimburse the ~~injured--employee's~~ claimant's expenses for attending the independent medical examination pursuant to North Dakota Century Code section 65-05-28.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-42. Durable medical equipment.**

~~1.--The--bureau-will-authorize-and-pay-rental-fee-for-equipment-or devices-if-the-need-for-the-equipment--will--be--for--a--short period-of-treatment-during-the-acute-phase-of-the-condition.~~

~~2.--The--decision-to-grant-or-deny-authorization-for-reimbursement of-selected-services-or-items-will-be-based-on--the--following criteria:~~

~~a.--The-employee-is-eligible-for-coverage;-and~~

~~b.--The---service---or--item--prescribed--is--appropriate--and medically--necessary--for--treatment--of--the--compensable injury.~~

~~3.--Rental---extending---beyond---thirty---days---requires---prior authorization-from-the-bureau.~~

~~4.--If--the--equipment--will--be--needed-on-a-long-term-basis,-the bureau-will-consider-purchase-of-the-equipment-or-device.--The bureau's--decision--to--rent--or--purchase--an-item-of-medical equipment-will-be-based--on--a--comparison--of--the--projected rental--costs-of-the-item-with-its-purchase-price.--The-bureau will--decide--whether--to--rent--or--purchase--certain--items, provided--they--are--appropriate--and--medically-necessary-for treatment-of-the-compensable-injury.---Decisions--to--rent--or purchase-items-will-be-based-on-the-following-information:~~

~~a.--Purchase-price-of-the-item.~~

~~b.--Monthly-rental-fee.~~

~~c.--The--prescribing--doctor's--estimate--of-how-long-the-item will-be-needed.~~

~~5.--The--bureau--reserves--the--right-to-purchase-the-equipment-or item-from-the-most-cost-efficient-source.~~

~~6.--The---bureau--will--authorize--and--pay--for--prosthetics--and orthotics--as--needed--by--the--injured--employee---and---when substantiated--by--the--attending--doctor.---If-such-items-are furnished-by-the-attending-doctor--or--another--provider,--the bureau--will--reimburse--the-doctor-or-the-provider-the-actual cost-for-the-item.--In-addition,-a-handling-fee,-not-to-exceed ten--percent--of-the-wholesale-cost-of-the-item,-will-be-paid. Providers-and-doctors-must-supply-the-bureau-with--a--copy--of~~

~~their--original--invoice--showing-actual-cost-of-the-item-upon request-of-the-bureau.~~

~~7.--The-bureau-will-repair-or-replace-originally-provided-damaged, broken,--or--worn-out--prosthetics,---orthotics,---or---special equipment--devices--upon-documentation-and-substantiation-from the--attending---doctor.----Prior---authorization---for---such replacements-is-required.~~

~~8.--Equipment-not-requiring-prior-authorization-includes-crutches, cervical-collars,-lumbar-and-rib--belts,--and--other--commonly used--orthotics--of--minimal--cost,--usually--less--than-fifty dollars.~~

~~9.--Personal--appliances--such--as--vibrators,--heating-pads,-home furnishings,-hot-tubs,--waterbeds,--exercise--bikes,--exercise equipment,--jacuzzies,--and--similar--appliances,--will-not-be authorized--or--paid--unless--the--bureau--orders---otherwise.~~ Repealed effective October 1, 1998.

~~**History:** Effective-January-1,-1994.~~
**General Authority:** ~~NDCC-65-02-08,-65-02-20,-65-05-07~~
**Law Implemented:** ~~NDCC-65-02-20,-65-05-07~~

**92-01-02-43. Home nursing care.**

1. When the attending doctor believes special or attendant (home nurse) care is needed the doctor shall submit the following information ~~must-be-submitted~~:

   a. A description of the special or home nursing care required ~~to-include~~ including the estimated time required (i.e., catheterization, three times per day, thirty minutes; bathing, two times per day, one hour; toilet transfers as needed; dressing change, four times per day, two hours).

   b. The skill level or special training required to administer care (i.e., R.N.; L.P.N.; family member who has received special training; or no special training required).

   c. If known, the name and address of a person or facility willing to provide care.

   d. The length of time special or home nursing care will be required.

2. Approval of fees for home nurse or attendant care is negotiable based upon the care provided, and the level of training of the provider.

3. The bureau may authorize and pay for visiting nurse care necessary for evaluation or instruction of a home health care provider.

4. When the ~~injured--employee~~ claimant or ~~injured-employee's~~ claimant's family makes arrangements for caregivers, ~~reimbursement--will--be--issued--directly--to~~ the bureau shall reimburse the ~~injured-employee-who~~ claimant directly and the claimant is responsible for reimbursing those providing the home nursing care.

5. Payment to individuals ~~for~~ who provide services ~~pursuant-to~~ under this ~~rule~~ section does not constitute an employer and employee relationship between the bureau and the provider of care.

**History:** Effective January 1, 1994; amended effective October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-44. Special programs.** The bureau may enter into special agreements for services provided by, or under the direction of, licensed providers authorized to bill the bureau. Special agreements are may be made for services not covered under the fee schedule, and may include multidisciplinary or interdisciplinary programs such as pain management, work hardening, and physical conditioning. Special programs include new programs and pilot projects to streamline, waive, or modify selected managed care rules to provide medical care for claimants with greater efficiency.

The bureau shall establish payment rates for special agreements, and may establish outcome criteria, measures of effectiveness, minimum staffing levels, certification requirements, special reporting requirements, and other criteria to ensure claimants receive good quality and effective services at a reasonable cost. The bureau may terminate special agreements and programs upon thirty days' notice to the provider.

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

**92-01-02-45. Bureau responsibilities.**

1. ~~Determinations--of--excessiveness--and--medical--necessity-are subject--to---a---determination---of---the---bureau---or---its representatives--and--must--be--determined--by--evaluating-the charge--and---service---according---to---the---conditions---of excessiveness--and--medical--necessity--as--specified--in--the medical-service-rules.~~

2. As soon as reasonably possible after receiving a bill the bureau shall:

a. Pay the charge or any portion of the bill that is not denied.;

b. Deny all or a portion of the bill on the basis that the injury is not compensable, or the service or charge is excessive or not medically necessary.; or

c. Request specific additional information to determine whether the charge or service is excessive or not medically necessary or whether the condition is compensable.

3.--If--a--service--is--not--included--in-the-fee-schedule-and-the charge-is-not-otherwise-excessive-and-is--medically--necessary the--bureau--shall--evaluate--the-charge-against-the-usual-and customary-charges-prevailing-in-the-same-geographic--community for-similar-services.

4.--If--the--charge--submitted--is--less--than--or--equal--to--the prevailing-and-customary-charges,-the--bureau--shall--pay--the charge-in-full.--If-the-charge-exceeds-the-usual-and-customary charges,-the-bureau-shall-pay-an-amount-equal-to-the-usual-and customary-charge-for-similar-services.

5. 2. The bureau shall provide written notification-through-a notice of nonpayment to the claimant when the claimant is personally responsible for the payment of a charge and. The bureau shall provide written notice of nonpayment to the provider through a remittance advice of denial of part or all of a charge, or shall provide written notice to the provider for any request for additional information. Written-notification The written notice must include:

a. The basis for denial-of denying all or part of a charge that-the-payer-has-determined-is because the treatment was not for a compensable injury under-North-Dakota-Century Code-title-65.

b. The basis for denial denying or reduction-of-each-charge reducing excessive charges and the specific amounts being denied or reduced for-each-charge-meeting-the-conditions of-excessive-charge.

c. The basis for denial-of-each denying the charge meeting the-conditions-of for an excessive service.

d. The basis for denial--of--each denying a charge as not meeting-the-conditions-of being medically necessary.

e. A request for ~~an--appropriate--record~~ records or ~~the specific~~ other information ~~requested~~ needed to allow proper determination of the bill~~,-or-both~~.

6. 3. Any payment incorrectly made to a provider ~~which-is-determined to--be--wholly--or--partially--excessive--or---not---medically necessary,--according-to-the-conditions-prevailing-at-the-time of-payment,~~ may be ~~collected~~ recovered from the provider by the bureau ~~in-the-amount-that-the-reimbursement-was-excessive~~.

7. 4. ~~If--the~~ The bureau ~~requests~~ will pay a reasonable fee for a special report as defined in section 92-01-02-29~~,--asking--the health---care--provider--or--doctor--to--respond--to--specific questions--regarding---causation,---aggravation,---preexisting conditions,--or-to-clarify-complex-conditions,-or-other-issues not-required-to-be-included-in-standard--reports,--the--bureau will--pay--a--reasonable--fee--for-responding-to-such-requests~~ prepared at the request of the bureau. The health care provider or doctor ~~should~~ shall include in the special report the time ~~involved-in-responding-to-such-requests~~ required to prepare the report or the bureau may not pay for the report. ~~Both-time-factors~~ Time spent and the complexity of the issues will be considered when determining the reasonableness of ~~fees for-such-service~~ the fee. Such services should be billed under current procedural terminology code 99080 with a ~~descriptor~~ description of "special report".

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07

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

1. A provider may not submit a charge for a service which exceeds the amount ~~which~~ the provider charges for the same ~~type--of~~ service in cases unrelated to workers' compensation injuries.

2. All bills must be fully itemized, including ICD-9-CM codes, and services must be identified by code numbers and descriptions found in the fee schedules or as ~~otherwise~~ provided ~~for~~ in these rules. The definitions of commonality in the guidelines found in the current procedural terminology must be used as guides governing the descriptions of services, except as ~~otherwise~~ provided in the fee schedules or in these rules.

3. All health care providers shall submit bills referring to one claim only for medical services on current form UB ~~82~~ 92 or form HCFA 1500, except for dental billings which must be submitted on American dental association ~~J512~~ J510 dental claim forms. Bills and reports must include:

a. The ~~employee's~~ claimant's full name and address;

b. The ~~employee's~~ claimant's claim number and social security number;

c. Date and nature of injury;

d. Area of body treated, including ICD-9-CM code identifying right or left, as appropriate;

e. Date of ~~services~~ service;

f. ~~Place~~ Name and address of facility where the service was rendered;

g. Name of practitioner providing the service;

h. Physician's or supplier's billing name, address, zip code, phone number; physician's unique physician identification number (UPIN); physician assistant's North Dakota state license or certification number; physical therapist's North Dakota state license number; advanced practice registered nurse's UPIN or North Dakota state license number;

i. Referring or ordering physician's UPIN;

j. Type of service;

~~h.~~ k. Appropriate procedure code or hospital revenue code;

~~i.~~ l. Description of service;

~~j.~~ m. Charge for each service;

~~k.~~ n. Units of service;

~~l.~~ o. If dental, tooth numbers;

~~m.~~ p. Total bill charge;

~~n.~~ q. Name of practitioner providing service along with the provider's tax identification number; and

~~o.~~ r. Date of bills; ~~and~~

~~p. Submission of supporting documentation or chart notes documenting services that have been billed.~~

4. ~~Any correspondence received~~ All records submitted by providers, including notes, except those provided by an emergency room physician, must be typed to ensure that they are legible and reproducible. ~~Legible copies~~ Copies of office

or progress notes are required for all followup visits. Office notes are not acceptable in lieu of requested narrative reports. Communications ~~should~~ may not refer to more than one claim ~~only~~.

5. Providers ~~must-supply~~ shall submit with each bill a copy of an appropriate ~~record-that-adequately-documents-the--service--and substantiates~~ records to document the nature and necessity of the service or charge. ~~The-following-supporting-documentation is~~ Documentation required ~~when-billing-for-services~~ includes:

   a. Laboratory and pathology reports;

   b. X-ray findings;

   c. Operative reports;

   d. Office notes, physical therapy, and occupational therapy progress notes;

   e. Consultation reports;

   f. History, physical examination, and discharge summaries;

   g. Special diagnostic study reports; and

   h. Special or other requested narrative reports.

6. When a provider ~~of--medical-services,-including-a-hospital,~~ submits a bill to the bureau for medical services, the ~~medical~~ provider shall submit a copy of ~~such~~--a the bill to the ~~employee~~ claimant to whom the services were provided. The copy ~~to-the-employee~~ must be stamped or printed with a legend that clearly indicates that it is a copy and is not to be paid by the ~~employee~~ claimant.

7. If the provider does not submit records with a bill, and still does not provide those records upon request of the bureau, the charges for which records were not supplied may not be paid by the bureau, unless the provider submits the records before the decision denying payment of those charges becomes final. The provider may also be liable for the penalty provided in subsection 6 of North Dakota Century Code section 65-05-07.

8. ~~Pursuant--to-subsection-4-of-North-Dakota-Century-Code-section 65-05-07,-a-provider-may-not-collect--or--attempt--to--collect payment--from--an-injured-employee,-the-employer,-or-any-other insurer-or-government-for-an--excessive--charge--or--a--charge determined--to--be-not-medically-necessary.--The-provider-must remove-the-charge--from--subsequent--bill--statements--if--the bureau-has-determined-the-charge-is-excessive-or-not-medically necessary.~~ Disputes arising out of reduced or denied reimbursement are handled in accordance with section

92-01-02-46. In all cases of accepted compensable injury or illness under the jurisdiction of the workers' compensation law, a provider may not pursue payment from a claimant for treatment rendered to ~~the--injured--employee~~ that claimant unless the payment for the treatment was ~~provided--under--the following-conditions~~ denied because:

a. The ~~injured--employee~~ claimant sought treatment from that provider for conditions not related to the compensable injury or illness.

b. The ~~injured--employee~~ claimant sought treatment from that provider which ~~has~~ was not ~~been~~ prescribed by the ~~employee's~~ claimant's attending doctor. This ~~would include~~ includes ongoing treatment by the provider who is a nonattending doctor.

c. The ~~injured-employee~~ claimant sought palliative care from that provider~~;-except-as-provided-in~~ not compensable under section 92-01-02-40, after the ~~employee~~ claimant was provided notice that the ~~employee-was-medically-stationary and~~ palliative care ~~is-the~~ service ~~for-which-payment~~ is ~~requested~~ not compensable.

d. The ~~injured--employee~~ claimant sought treatment from that provider after being notified that the treatment sought from that provider has been determined to be unscientific, unproven, outmoded, investigative, or experimental.

e. The ~~injured---employee~~ claimant did not follow the requirements of subsection 1 of North Dakota Century Code section 65-05-28 regarding change of doctors before seeking treatment of the work injury from the provider requesting payment for that treatment.

f. The ~~injured--employee~~ claimant is subject to North Dakota Century Code section 65-05-28.2, and the provider requesting payment is not a preferred provider and has not been approved as an alternative provider under subsection 2, 3, or 4 of North Dakota Century Code section 65-05-28.2.

~~8.~~ 9. A health care provider may not bill for services not provided to ~~the-worker.--A-health-care-provider~~ a claimant and may not bill multiple charges for the same service. Rebilling must indicate that the charges have been previously billed.

~~9.~~ 10. Pursuant to North Dakota Century Code section 65-05-33, a health care provider may not submit false or fraudulent billings. ~~As--used--in--this--section,-"false-or-fraudulent" means-an-intentional--deception--or--misrepresentation--issued with---the--knowledge--that--the--deception--could--result--in unauthorized-benefit-to-the-provider-or-some-other-person.~~

~~10.~~ 11. Only one office visit designation may be used at a time except for those code numbers relating specifically to additional time.

~~11.~~ 12. When ~~an employee~~ a claimant is seen initially in an emergency department and is ~~then~~ admitted subsequently to the hospital for inpatient treatment, the services provided immediately prior to the admission ~~must be considered~~ are part of the inpatient treatment.

~~12.~~ 13. Physician assistant or nurse practitioner fees will be paid at the rate of eighty percent of a doctor's fee for a comparable service. The bills for these services must be marked with the modifier NP.

~~13.~~ 14. A physical medicine modality or manipulation, when applied to two or more areas at one visit, ~~must be~~ is reimbursed at one hundred percent of the maximum allowable fee for the first area treated, fifty percent for the second area treated, and twenty-five percent for all subsequent areas treated.

~~14.~~ 15. When ultrasound, diathermy, microwave, infrared, and hot packs are used in combinations of two or more during one treatment session, only one may be reimbursed, unless two separate effects are demonstrated.

~~15.~~ 16. When multiple areas are examined using CAT scan or magnetic resonance imaging, the first area examined must be reimbursed at one hundred percent, the second area at fifty percent, and ~~the third and~~ all subsequent areas at twenty-five percent of the allowable fee schedule amount.

~~16.~~ 17. When a health care provider is asked to review records or reports prepared by another health care provider, the provider ~~should~~ shall bill ~~for its~~ review of the records ~~utilizing current procedural terminology~~ using CPT code 99080 with a descriptor of "record review". The billing ~~should~~ must include the actual time spent reviewing the records or reports and ~~should~~ must list the health care provider's normal hourly rate for ~~such~~ the review. ~~This would include records reviewed for independent medical examination reports.~~

~~17.~~ 18. When there is a dispute over the amount of a bill or the necessity of services rendered, the bureau shall pay the undisputed portion of the bill and provide specific reasons for nonpayment or reduction of each medical service code. ~~Resolution of treatment disputes and fee disputes must be made in accordance with section 92-01-02-46.~~

~~18.~~ 19. ~~Conditions preexisting or unrelated to the compensable injury are not the responsibility of the bureau.~~ If medical documentation outlines that ~~another~~ a non-work-related condition is being treated concurrently with the compensable

injury and ~~the unrelated~~ that condition has no effect on the compensable injury, the bureau may reduce the charges submitted for treatment. ~~When an unrelated condition is being treated concurrently with the occupational condition,~~ In addition, the attending doctor must notify the bureau immediately and submit ~~the following~~:

a. ~~Diagnosis or nature~~ A description or diagnosis of ~~unrelated~~ the non-work-related condition.

b. ~~Treatment~~ A description of the treatment being rendered.

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

A The attending doctor shall include a thorough explanation of how the ~~unrelated~~ non-work-related condition ~~is affecting~~ affects the compensable injury ~~must be included with any request for~~ when the doctor requests authorization to treat the ~~unrelated~~ non-work-related condition. Temporary treatment of ~~an unrelated~~ a non-work-related condition may be allowed, upon prior approval by the bureau, provided ~~these conditions~~ the condition directly ~~retard~~ delays recovery of the compensable ~~condition~~ injury. The bureau ~~will~~ may not approve or pay for treatment for a known preexisting ~~unrelated~~ non-work-related condition for which the ~~employee~~ claimant was receiving treatment prior to the ~~occupational~~ occurrence of the compensable injury ~~or disease~~, which is not ~~retarding~~ delaying recovery of the ~~occupational condition~~ compensable injury. The bureau may not pay for treatment of ~~an unrelated~~ a non-work-related condition when it no longer exerts any influence upon the compensable injury. When treatment of ~~an unrelated~~ a non-work-related condition is being rendered, the attending doctor shall submit reports ~~must be submitted~~ monthly outlining the effect of treatment on both the ~~unrelated~~ non-work-related condition and the compensable injury ~~conditions~~.

~~19.~~ 20. In cases of questionable liability where the bureau has not rendered a decision on compensability ~~and where~~, the provider has billed the ~~injured employee~~ claimant or other insurance, and the claim is subsequently allowed, the provider shall refund the ~~injured employee~~ claimant or other insurer in full and bill the bureau for services rendered.

~~20.~~ 21. The bureau ~~does~~ may not pay for the cost of duplicating records when covering the treatment received by the ~~injured employee~~ claimant. ~~In cases where~~ If the bureau requests ~~additional~~ records in addition to those listed in subsection 5 or records prior to the date of injury, the bureau ~~will~~ shall pay a minimum charge of five dollars for five or ~~less~~ fewer pages and the minimum charge of five dollars for the first

five pages plus thirty-five cents per page for every page after the first five pages.

~~21.~~ 22. The provider shall ~~undertake professional judgment to~~ assign the correct approved billing code for the service rendered using the appropriate provider group designation. Bills received without codes ~~must~~ will be returned to the provider.

~~22.~~ 23. Billing codes must be found in the most recent edition of the ~~following:~~ physician's current procedural terminology; HCFA (health care financing administration) common procedure coding system (HCPCS); code on dental procedures and nomenclature maintained by the American dental association; or any other code listed in the fee schedules.

~~23.~~ 24. ~~Pursuant to subsection 6 of North Dakota Century Code section 65-05-07, providers~~ A provider shall comply within thirty calendar days with the bureau's request for copies of existing medical data concerning the services provided, the patient's condition, the plan of treatment, and other issues pertaining to the bureau's determination of compensability, medical necessity, or excessiveness or the bureau may ~~assess a one hundred dollar penalty for failure to comply~~ refuse payment for services provided by that provider.

**History:** Effective January 1, 1994; amended effective April 1, 1996; October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20, 65-05-07
**Law Implemented:** NDCC 65-02-20, 65-05-07, 65-05-28.2

**92-01-02-46. Medical services disputes.**

1. ~~Dispute resolution is mandated by these rules under North Dakota Century Code section 65-02-20 when an aggrieved party raises a bona fide dispute concerning the~~ This rule provides the procedures followed for managed care ~~vendor's recommendation - that medical treatment for a compensable condition is excessive, inappropriate, ineffectual, or in violation of the medical rules regarding the performance of medical services. Dispute resolution is mandated under these rules where the aggrieved party is an employer who disputes an award of~~ disputes. Restrospective review is the procedure provided for disputing the denial of payment for a medical ~~services~~ service charge based on failure to request prior authorization or preservice review. Binding dispute resolution is the procedure provided for disputing managed care recommendations, including palliative care recommendations and bill audit and review. Disputes not arising from managed care follow the reconsideration and hearing procedures provided by North Dakota Century Code sections 65-01-16 and 65-02-15.

2. ~~The bona fide dispute must involve:~~

~~a. Medical services performed by doctors.~~

~~b. Ancillary services prescribed by an attending doctor.~~

~~c. Services that cannot be obtained without a doctor's prescription.~~

~~d. Services that qualify for review under this rule pursuant to section 92-01-02-30.~~

~~e. Braces, splints, and physical restorative devices determined to be excessive, inappropriate, ineffectual, or in violation of the rules regarding the performance of medical services.~~

~~f. Denials or reductions in payment to a provider arising out of medical bill review or application of the bureau's fee schedules or medical service rules.~~ When the bureau denies payment for a medical service charge because the provider did not properly request prior authorization or preservice review for that service, the provider may request a retrospective review of that service. Requests for retrospective review must be made in writing, within thirty days after the notice that payment for the service is denied, addressed to the bureau claims analyst assigned to handle the claimant's claim. Requests for retrospective review should not be sent to the managed care vendor. The request must contain:

a. The claimant's name.

b. The claim number.

c. The date of service.

d. A statement of why the provider did not know and should not have known that the injury or condition may be a compensable injury.

e. The information required to perform a preservice review or prior aughorization of the service.

If the provider knew or should have known that the patient may have a compensable work injury when the medical services for that injury were provided, the request for retrospective review must be denied. If the provider did not know and should not have known that the patient may have a compensable work injury when the medical services for that injury were provided, a retrospective preservice review or preauthorization must be done in accordance with this chapter. If the bureau continues to deny payment for the service, the

provider may request binding dispute resolution under this rule.

3. An--aggrieved--party-is-a-claimant,-an-employer,-or-a-provider who-raises-a-bona-fide-dispute.

4.---A-bona-fide-dispute-does-not-include:

a.--A-dispute-that-is-solely-a-question-of-law.

b.--A-dispute-about-the-compensability-of-an-entire-condition.

c.--A-dispute-about-the-compensability-of-a-claim.

5.--An---aggrieved A party must who wishes to dispute a recommendation of a utilization review managed care vendor first shall exhaust the any internal dispute resolution procedures of provided by the managed care vendor before filing--a--request--with--the-bureau-for-binding. A party who wishes to dispute resolution-on-any-issue-related-to a final recommendation of a managed care services.--The-managed-care vendor's-dispute-resolution-process-must-be--completed vendor shall file a written request for binding dispute resolution with the bureau within thirty days of-receipt-of-the-necessary information--to--process-the-request.--The-managed-care-vendor shall-notify-the-aggrieved-party-and-the-bureau-orally-of--the results--of--the-additional-review-and-shall-notify-the-bureau in-writing-within-seven-days-of-completion-of--the--additional review.

6.--If--the-aggrieved after the final recommendation. The request must contain:

a. The claimant's name.

b. The claim number.

c. All relevant medical information and documentation.

d. A statement of any actual or potential harm to the claimant from the recommendation.

e. The specific relief sought.

4. A party files-a-petition-for-binding who wishes to dispute a denial or reduction of a service charge arising from bill audit and review must file a written request for binding dispute resolution with the bureau within thirty days after the date of issuance--of the managed-care-vendor's-dispute resolution-recommendation,-the-petition--must--be--in--a--form prescribed--by--the--bureau--and bureau's remittance advice reducing or denying the charge. The request must contain:

a. ~~Identify the~~ The claimant's ~~name, date of injury, and~~.

b. The claim number.

~~b. Provide all relevant medical information along with medical documentation which indicates that the treatment in question conforms to accepted medical standards of care.~~

c. ~~Identify any actual or potential harm to the claimant.~~ The specific code and the date of the service in dispute.

d. ~~Identify the~~ A statement of the reasons the reduction or denial was incorrect, with any supporting documentation.

e. The specific relief sought.

~~7. A petition for binding dispute resolution regarding denial or reductions of fees must be filed within thirty days of the issuance of managed care vendor's dispute resolution recommendation, in a form prescribed by the bureau and must:~~

~~a. State specific code and date of service in dispute.~~

~~b. State the grounds for questioning the disputed amount.~~

~~c. State the requested relief.~~

~~d. Include specific documentation to support the review request, including copies of original health care financing administration bills, chart notes, remittance advice, correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute.~~

~~8.~~ 5. The bureau shall review the ~~formal petition~~ request for binding dispute resolution. ~~An informal investigation of the petition and evidence will be conducted~~ and the relevant information in the record.

~~9.~~ The bureau ~~shall advise the parties if~~ may request additional information ~~is needed to make a decision~~ or documentation. If a party does not provide the requested information requested within fourteen days, the bureau may ~~issue an order resolving or dismissing~~ decide the dispute based on available the information in the record.

~~10.~~ 6. The bureau ~~shall determine whether it is necessary to appoint health care providers to examine the records or the claimant. If the bureau determines that peer~~ may request review ~~is not required, the bureau shall enter a final administrative order based upon the investigation.~~

~~11.--If--the-bureau-determines-it-is-necessary-to-appoint~~ by health care providers ~~to-review-the-case,-the-providers-may:~~

~~a.--Examine-the-medical-records.~~

~~b.--Perform-reasonable-and-necessary-medical-tests,-other-than invasive-tests,-pursuant--to--North--Dakota--Century--Code section-65-05-28.~~

~~12.--The--bureau--may--select--a--health-care-provider-or-convene-a panel-of-health-care--providers--to--conduct--a--review--under subsection-3--of--North--Dakota-Century-Code-section-65-05-07. When-a-doctor-is-selected-to-conduct-a-review,-the-doctor,~~ at least one of whom must be ~~a-practitioner-of-the-healing-art-of~~ licensed or certified in the same profession as the health care provider whose treatment is being reviewed, to assist with its review of the request.

~~When--a--panel--of-doctors-is-selected,-at-least-one-member-of the-panel-must-be-a-practitioner-of-the--healing--art--of--the health-care-provider-whose-treatment-is-being-reviewed.~~

~~13.--When--an--examination--of--a-claimant-is-necessary,-the-bureau shall-inform-the-claimant-of-the-date,-time,-and--location--of the-examination-and-also-shall-inform-the-attending-doctor-and the-selected-providers,-doctor,-or-panel-members.~~ The bureau may request an independent medical examination ~~may-include-a~~ to assist with its review of ~~all-medical--records--and--x-rays submitted;-an-interview-and-examination-with-the-claimant;-and performance-of-any-necessary--tests,--except--invasive--tests, laboratory-studies,-or-x-rays~~ a request.

~~14.--If,--without--good--cause,--the--claimant--does-not-attend-the examination,-the--bureau--may--issue--an--order--resolving--or dismissing-the-dispute-based-on-available-information.~~

7. At the conclusion of its review, the bureau shall issue its binding decision. The bureau shall issue its decision by letter or notice, or for a decision that is reviewable by law, the bureau may issue its decision in an administrative order instead of a letter or notice.

**History:** Effective January 1, 1994; amended effective April 1, 1997; October 1, 1998.
**General Authority:** NDCC 65-02-08, 65-02-20
**Law Implemented:** NDCC 65-02-20

# TITLE 101

# Real Estate Appraiser Qualifications and Ethics Board

**OCTOBER 1998**

**CHAPTER 101-02-01**

**101-02-01-02. Application for licensure or certification.** A person who wishes to file an application for a permit to be an apprentice real property appraiser, ~~a--transitionally--licensed-real property-appraiser;~~ a licensed real property appraiser, or a certified general real property appraiser may obtain the required form from the appraisal board.

**History:** Effective October 1, 1992; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-03
**Law Implemented:** NDCC 43-23.3-05

**101-02-01-03. Filing fees.**

1. The following annual fees must be charged:

| | | | |
|---|---|---|---|
| ~~1.~~ | a. | Apprentice real property appraiser permit | $200 225 |
| ~~2.~~ | b. | Licensed real property appraiser permit ~~(including the transitionally licensed real property appraiser permit)~~ | 200 $225 |
| ~~3.~~ | c. | Certified general real property appraiser permit | 200 $225 |
| ~~4.~~ | d. | Inactive status | $ 50 |
| | e. | Late filing fee (per month) | $ 25 |

2. The following fees will be charged:

| | |
|---|---|
| a. Initial real property appraiser licensure or certification permit | $275 |
| b. Real property appraiser permit status change | $150 |
| c. Temporary practice permit-per contract | $150 |
| d. Approval of prelicensing or precertification educational courses | $100 |
| e. Approval of continuing educational courses: | |
| (1) Courses two to eight hours in length | $ 25 |
| (2) Courses over eight hours in length | $ 50 |

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998.
**General Authority:** NDCC 43-23.3-20
**Law Implemented:** NDCC 43-23.3-05

## CHAPTER 101-02-02

**101-02-02-02. Appraiser permit definitions, criteria, and qualifications.** To apply for and maintain any appraiser permit an individual must:

1. Be at least eighteen years of age;

2. Have a high school education or its equivalent;

3. Possess good character; and

4. Pass the appropriate examinations. All applicants for permits of apprentice real property appraiser, ~~transitionally licensed real property appraiser~~, licensed real property appraiser, and certified general real property appraiser agree to follow the uniform standards of professional appraisal practice (USPAP) and must satisfy the qualification requirements listed in chapter 101-02-02.

**History:** Effective October 1, 1992; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-03
**Law Implemented:** NDCC 43-23.3-08, 43-23.3-18

**101-02-02-03. Apprentice real property appraiser.**

1. **Definition.** An apprentice real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.

2. **Property appraisal limitations.** An apprentice real property appraiser permit is considered the entry level (training ground level) for a North Dakota real property appraiser. The apprentice real property appraiser permittee ~~may~~ shall assist either a licensed or a certified general real property appraiser in appraisal work, provided the licensed or certified general real property appraiser accepts full responsibility for the appraisal performed.

3. **Prerequisite requirements - Education~~,--examination~~, and experience.** The apprentice real property appraiser must have successfully completed at least a fifteen-hour class covering all the provisions of the uniform standards of professional appraisal practice. No other appraisal or appraisal-related education prerequisite is required for the apprentice real property appraiser. No past appraisal experience is required.

**History:** Effective October 1, 1992; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-03
**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-08, 43-23.3-09

**101-02-02-04. Transitionally licensed real property appraiser.**

~~1.--Definition.--A-transitionally-licensed-real-property-appraiser permit-must-be-issued-to-an-individual-who-successfully--meets all--of--the--North--Dakota--appraisal-requirements-for-such-a permit.~~

~~2.--Property--appraisal--limitations.---A--transitionally-licensed real-property-appraiser-may-appraise-the-same--property--types and--is--subject--to-the-same-limitations-as-the-licensed-real property-appraiser.~~

~~3.--Prerequisite---requirements------Education,--examination,--and experience.---The--transitionally---licensed---real---property appraiser-must-have-successfully-completed-the-appraisal-board endorsed-uniform-licensing-examination-or-its-equivalent,-must have--successfully--completed--at--least--a-fifteen-hour-class covering--the--uniform--standards--of--professional--appraisal practice,--and--meet--one--of--the--two-remaining-requirements (either-the-education-or-the-experience-requirement)-needed-by a---licensed--real--property--appraiser.---The--education--and experience-requirements-are:~~

~~a.--Seventy-five--hours--of--credible--education,--which--must include-coverage--of--uniform--standards--of--professional appraisal-practice;-or~~

~~b.--Two--thousand-hours-(two-hundred-forty-points)-of-credible real-estate-appraisal-experience.--The-point-system-awards points--based-on-the-number-of-appraisals-performed-by-the individual,-the-types-of--appraisals--performed,--and--the types-of-properties-appraised.~~

~~The--transitionally--licensed--real--property--appraiser--must successfully-complete-the--remaining--criteria--on--or--before January-1,--1994,--or--the--applicant--will--be--automatically reclassified-as-an-apprentice-real-property-appraiser.~~

~~4.--Sunset--clause--provision.---The--North-Dakota-appraisal-board will-issue-a-permit-for-a-transitional--license.---The--permit will--have-a-definite-sunset-clause-whereby-this-level-will-be abolished--after--the--first---two---years,---following---full implementation--of--the--state--law.--The-transitional-license level--will--be--abolished--on--January-1,---1994.~~ Repealed effective October 1, 1998.

~~History: Effective-October-1,-1992.~~
**General Authority:** ~~ND66-43-23.3-03,-43-23.3-09~~
**Law Implemented:** ~~ND66--43-23.3-03,--43-23.3-06,-43-23.3-07,-43-23.3-08,~~ ~~43-23.3-18~~

**101-02-02-05. Licensed real property appraiser.**

1. **Definitions.** A licensed real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.

2. **Property appraisal limitations.** All appraisals for transactions not requiring the services of a certified general real property appraiser may be prepared by a licensed real property appraiser.

3. **Prerequisite requirements - Education and examination.** A licensed real property appraiser must have successfully completed the appraisal board endorsed uniform licensing examination or its equivalent. A An applicant for the examination as a licensed real property appraiser must have successfully completed ~~seventy-five~~ ninety classroom hours of real estate appraisal education ~~related--to--real--estate appraisal-which-must.~~ Education shall include ~~coverage~~ sixty hours of appraisal-specific education related to the valuation of real estate, fifteen classroom hours covering all the provisions of the uniform standards of professional appraisal practice, and fifteen hours may be comprised of appraisal-related subject matter, as approved as such, by the board.

   a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.

   b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.

   c. Credit for the classroom requirement may be obtained from the following:

      (1) Colleges or universities;

      (2) Community or junior colleges;

      (3) Real estate appraisal or real estate related organizations;

      (4) State or federal agencies or commissions;

      (5) Proprietary schools; and

      (6) Other providers approved by the board.

   d. Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses. ~~A--teacher requesting--credit--for-the-classroom-hour-requirement-may~~

~~request-credit-for-either-the-classroom-hour-or-experience requirement,-but-not-both.~~

e. There is no time limit regarding when qualifying education credit must have been obtained.

f. Various appraisal courses may be credited toward the ~~seventy-five~~ ninety classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of the topics listed below, with particular emphasis on the appraisal of one to four unit residential properties.

(1) Influences on real estate value;

(2) Legal considerations in appraisal;

(3) Types of value;

(4) Economic principles;

(5) Real estate markets and analysis;

(6) Valuation process;

(7) Property description;

(8) Highest and best use analysis;

(9) Appraisal statistical concepts;

(10) Sales comparison approach;

(11) Site value;

(12) Cost approach;

(13) Income approach:

(a) Gross rent multiplier analysis;

(b) Estimation of income and expenses; and

(c) Operating expense ratios;

(14) Valuation of partial interests; and

(15) Appraisal standards and ethics.

4. **Prerequisite requirement - Experience.** A licensed real property appraiser must have the equivalent of two thousand hours of credible appraisal experience prior to obtaining the licensing permit. ~~If-requested,-documentation-in-the-form--of~~

~~reports--or--file-memoranda-should-be-available-to-support-the experience-claimed~~ The applicant for licensure must submit for review a minimum of three summary or self-contained residential appraisal reports. All three of the reports must be complete appraisals and must meet the current uniform standards of professional appraisal practice (USPAP) as of the time of application.

a. Adequate experience will be determined on a point system.

(1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.

(2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

(a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.

(b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate.

(c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or

file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include~~,-but-are-not limited-to,~~ the following:

(a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition~~,-etc~~.

(b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.

(c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.

(d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center~~,-etc~~.

(e) Commercial multitenant may include office building, shopping center, and hotel~~,-etc~~.

(f) Industrial may include warehouse~~,~~ and manufacturing plant~~,-etc~~.

(g) Institutional may include rest home, nursing~~,~~ home, hospital, school, church, and government building~~,-etc~~.

(4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure and certification. A copy of this form can be obtained by contacting the appraisal board office.

b. A total of two hundred forty points is equivalent to the two thousand-hour requirement. These two hundred forty points (two thousand hours of experience) must be obtained using at least two years of appraisal practice gained over a period of at least twenty-four months.

c. There is no other time limit regarding when qualifying experience may be obtained.

d. Hours may be treated as cumulative in order to achieve the necessary two thousand hours (two hundred forty points) of appraisal experience.

e. Acceptable appraisal experience includes, but is not limited to, the following:

(1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate ~~counseling~~ consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study~~;--and--teaching---of appraisal-courses~~.

(2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes ~~teaching~~, authorship, and ~~counseling~~ consulting.

~~(3)--Teachers--may-request-credit-for-either-the-classroom hour-or-experience-requirement,-but-not-both.~~

f. The verification for the two thousand hours (two hundred forty points) of experience credit claimed by an applicant ~~must--be-via-affidavit~~ shall be on forms prescribed by the state certification or licensing board which shall include:

(1) Type of property;

(2) Date of report;

(3) Address of appraised property;

(4) Description of work performed; and

(5) Number of work hours (points).

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998.
**General Authority:** NDCC 43-23.3-03, 43-23.3-09
**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

**101-02-02-06. Certified general real property appraiser.**

1. **Definitions.** A certified general real property appraiser permit must be issued to an individual who successfully meets all of the North Dakota appraisal requirements for such a permit.

2. **Property appraisal limitations.** All transactions having a transaction value of one million dollars or more requires an appraisal prepared by a certified general real property appraiser; all transactions having a transaction value of two

hundred fifty thousand dollars or more, other than those involving appraisals of one-to-four family residential properties, require an appraisal prepared by a certified general real property appraiser; and all complex one-to-four family residential property appraisals require a certified general real property appraiser if the transaction value is two hundred fifty thousand dollars or more. The term "complex one-to-four family residential property appraisal" means an appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

3. **Prerequisite requirements - Education and examination.** A certified general real property appraiser must have successfully completed the appraisal board endorsed uniform state certification examination or its equivalent. A An applicant for examination as a certified real property appraiser must have successfully completed one hundred ~~sixty-five~~ eighty classroom hours of real estate appraisal education ~~related--to--real--estate--appraisal,--which--must.~~ Education shall include ~~coverage~~ one hundred fifty hours of appraisal-specific education related to the valuation of real estate, fifteen classroom hours covering all the provisions of the uniform standards of professional appraisal practice, and fifteen hours may be comprised of appraisal-related subject matter, as approved as such, by the board.

   a. A classroom hour is defined as fifty minutes out of each sixty-minute segment.

   b. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen hours, and the individual successfully completes an examination pertinent to that educational offering.

   c. Credit for the classroom requirement may be obtained from the following:

      (1) Colleges or universities;

      (2) Community or junior colleges;

      (3) Real estate appraisal or real estate related organizations;

      (4) State or federal agencies or commission;

      (5) Proprietary schools; and

      (6) Other providers approved by the state certification or licensing board.

d. Credit towards the classroom hour requirement may be awarded to teachers of appraisal courses. ~~A teacher requesting credit for the classroom hour requirement may request credit for either the classroom hour or experience requirement, but not both.~~

e. There is no time limit regarding when qualifying education credit must have been obtained.

f. Various appraisal courses may be credited toward the one hundred ~~sixty-five~~ eighty classroom hour education requirement. Applicants must demonstrate that their education involved substantially equivalent coverage of topics listed below with particular emphasis on the appraisal of nonresidential properties. Residential is defined as one-to-four residential units.

(1) Influence on real estate value;

(2) Legal considerations in appraisal;

(3) Types of value;

(4) Economic principles;

(5) Real estate markets and analysis;

(6) Valuation process;

(7) Property description;

(8) Highest and best use analysis;

(9) Appraisal math and statistics;

(10) Sales comparison approach;

(11) Site value;

(12) Cost approach;

(13) Income approach:

(a) Estimation of income and expenses;

(b) Operating statement ratios;

(c) Direct capitalization;

(d) Cash flow estimates;

(e) Measures of cash flow; and

(f) Discounted cash flow analysis;

(14) Valuation of partial interests;

(15) Appraisal standards and ethics; and

(16) Narrative report writing.

4. **Prerequisite requirement - Experience.** A certified general real property appraiser must have the equivalent of ~~two~~ three thousand hours of credible appraisal experience prior to obtaining the certified general real property appraiser certification permit. ~~If requested, experience documentation in the form of reports or file memoranda should be available to support the experience claimed.~~ The applicant for certification must submit for review a minimum of three summary or self-contained nonresidential appraisal reports. All three of the reports must be complete appraisals and one must include all three approaches to value. The reports submitted must meet the current uniform standards of professional appraisal practice (USPAP) as of the time of application.

a. Adequate experience will be determined on a point system.

(1) The point system awards points based on the types of appraisals performed, the types of properties appraised, and the number of appraisals performed by the individual.

(2) Types of appraisals performed include standard appraisal, review appraisal, and condemnation appraisal.

(a) A standard appraisal is the process of developing an appraisal using those methods commonly accepted by real estate appraisers as constituting the appraisal process and preparing a written appraisal report or file memorandum describing the appraisal and reporting the estimate of value.

(b) A review appraisal is the process of critically reviewing an appraisal report prepared by another appraiser and preparing a separate written report or file memorandum setting forth the results of the review process. The review appraiser reviews the report and forms an opinion as to the adequacy of the report, the appropriateness of the methods used by the appraiser, and the reasonableness of the appraiser's conclusions. A review appraiser may or may not perform a field review. A field

review includes inspecting the subject and comparables to verify data, to determine the appropriateness of the comparables selected and adjustments made, and to assist in determining the reasonableness of the value estimate.

(c) A condemnation appraisal is an appraisal of real property for condemnation purposes where a partial taking is involved and the appraiser must develop both a before taking value estimate and an after taking value estimate. The appraiser uses those methods commonly accepted by real estate appraisers as constituting the appraisal process including a field inspection and preparation of a written appraisal report or file memorandum describing the appraisal and reporting the before and after value estimates.

(3) Types of property appraised may include~~,-but-are-not limited-to,~~ the following:

(a) Land may include farms of one hundred acres [40.47 hectares] or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites, and land in transition~~,-etc~~.

(b) Residential multifamily, five-12 units may include apartments, condominiums, townhouses, and mobile home parks.

(c) Residential multifamily, thirteen plus units may include apartments, condominiums, townhouses, and mobile home parks.

(d) Commercial single-tenant may include office building, retail store, restaurant, service station, bank, and day care center~~,-etc~~.

(e) Commercial multitenant may include office building, shopping center, and hotel~~,-etc~~.

(f) Industrial may include warehouse~~,~~ and manufacturing plant~~,-etc~~.

(g) Institutional may include rest home, nursing home, hospital, school, church, and government building~~,-etc~~.

(4) Points assigned for each appraisal type are assigned by the appraisal board and are included on the application for licensure or certification. A copy

of this form can be obtained by contacting the appraisal board office.

b. A total of ~~two~~ three hundred ~~forty~~ sixty points is equivalent to ~~two~~ three thousand-hour requirement. These ~~two~~ three hundred ~~forty~~ sixty points, (~~two~~ three thousand hours of experience) must be obtained using at least two and one-half years of appraisal practice gained over a period of at least ~~twenty-four~~ thirty months.

c. There is no other time limit regarding when qualifying experience may be obtained.

d. Hours may be treated as cumulative in order to achieve the necessary ~~two~~ three thousand hours (~~two~~ three hundred ~~forty~~ sixty points) of appraisal experience.

e. Acceptable appraisal experience includes~~,--but--is--not limited-to,~~ the following:

(1) Fee and staff appraisal, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, real estate ~~counseling~~ consulting (excludes related fields such as real estate lending), highest and best use analysis, and feasibility analysis or study~~,--and--teaching---of appraisal-courses~~.

(2) No more than seventy-five points of the total experience credit may be in related areas. Related experience includes ~~teaching,~~ authorship~~,~~ and ~~counseling~~ consulting.

~~(3)--Teachers--may-request-credit-for-either-the-classroom hour-or-experience-requirement,-but-not-both.~~

f. The verification for the ~~two~~ three thousand hours (~~two~~ three hundred ~~forty~~ sixty points) of experience credit claimed by an applicant ~~must be via affidavit~~ shall be on forms prescribed by the state certification or licensing board which shall include:

(1) Type of property;

(2) Date of report;

(3) Address of appraised property;

(4) Description of work performed; and

(5) Number of work hours (points).

g. The applicant must have at least fifty percent (one thousand five hundred hours) of nonresidential appraisal experience. Residential is defined as one-to-four residential units.

**History:** Effective October 1, 1992; amended effective January 1, 1995; October 1, 1998.
**General Authority:** NDCC 43-23.3-03, 43-23.3-09
**Law Implemented:** NDCC 43-23.3-03, 43-23.3-06, 43-23.3-07, 43-23.3-08, 43-23.3-09, 43-23.3-17, 43-23.3-18

## CHAPTER 101-02-02.1

**101-02-02.1-01. Reciprocity.** If, in the determination of the board, another state, territory, or the District of Columbia has substantially equivalent licensure requirements and enters into a reciprocity agreement with the board, an applicant who is licensed in the other state may be licensed under North Dakota Century Code chapter 43-23.3. To qualify, the applicant must:

1. Submit an application on a form provided by the board;

2. Certify that the applicant is licensed or certified to appraise real estate in the applicant's state of domicile;

3. Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction; ~~and~~

4. Sign an irrevocable consent to service of process form; and

5. Pay the application fee.

**History:** Effective January 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-03, 43-23.3-11
**Law Implemented:** NDCC 43-23.3-11

**101-02-02.1-02. Temporary practice licensure.** A nonresident of this state who has submitted an irrevocable consent to service of process may obtain a temporary license to perform a contract relating to the appraisal of real estate ~~involving a federally related transaction~~ in this state. To qualify, the applicant must:

1. Submit an application on a form provided by the board;

2. Certify that the applicant is licensed or certified to appraise real estate in the applicant's state of domicile;

3. Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or any other jurisdiction; ~~and~~

4. Submit a copy of the contract for appraisal services;

5. Sign an irrevocable consent to service of process form; and

6. Pay the application fee.

A temporary license issued under this section is expressly limited to a the grant of authority to perform the appraisal work required by the contract for appraisal services. Each temporary license expires upon

the completion of the appraisal work required by the contract for appraisal services.

**History:** Effective January 1, 1995; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-03, 43-23.3-11
**Law Implemented:** NDCC 43-23.3-11

## CHAPTER 101-04-01

### 101-04-01-01. Continuing education requirements.

1. ~~The--board--requires--all~~ Purpose. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases that individual's skill, knowledge, and competency in real estate appraising.

2. Requirements. All licensed and certified permittees ~~to~~ must meet a minimum level of continuing education. This minimum level has been set at ~~thirty~~ forty-two hours over a three-year education renewal period. ~~The--permittee--may--obtain--the necessary--thirty--hours--at--any--time--during-the-three-year renewal-period.~~ Of the forty-two hours, twenty-one hours must include appraisal-specific education related to the valuation of real estate, seven hours must include coverage of the uniform standards of professional appraisal practice (USPAP), and fourteen hours may be comprised of appraisal-related subject matter, as approved as such, by the appraisal board.

   a. ~~The--board--requires-that-all-continuing-education-must-be taken-in-blocks-of--at--least--two--hours.~~ The necessary forty-two hours may be obtained at any time during the three-year renewal period.

   b. ~~A--classroom--hour-is-defined-as-fifty-minutes-out-of-each sixty-minute--segment.~~ Verification of the necessary forty-two hours must be submitted by the end of the three-year renewal period.

   c. ~~Credit--for-the-classroom-requirement-may-be-obtained-from the-following:~~

      ~~(1)--Colleges-or-universities;~~

      ~~(2)--Community-or-junior-colleges;~~

      ~~(3)--Real---estate---appraisal---or---real--estate-related organizations;~~

      ~~(4)--State-or-federal-agencies-or-commissions;~~

      ~~(5)--Proprietary-schools;-and~~

      ~~(6)--Other--providers--approved-by-the-state-certification or-licensing-board.~~ All continuing education courses taken in this state must be approved by the board.

   d. ~~Credit--may-be-granted-for-educational-offerings-which-are consistent-with-the-purpose-of-continuing-education-stated~~

~~in--subdivision-f--and-cover-real-estate-related-appraisal topics-such-as-those-listed-below:~~

~~(1)--Ad-valorem-taxation;~~

~~(2)--Arbitration;~~

~~(3)--Business--courses--related-to-practice-of-real-estate appraisal;~~

~~(4)--Construction-estimating;~~

~~(5)--Ethics-and-standards-of-professional-practice;~~

~~(6)--Land-use-planning,-zoning,-and-taxation;~~

~~(7)--Management,-leasing,-brokerage,-timesharing;~~

~~(8)--Property-development;~~

~~(9)--Real-estate-appraisal-(valuations-or-evaluations);~~

~~(10)--Real-estate-law;~~

~~(11)--Real-estate-litigation;~~

~~(12)--Real-estate-financing-and-investment;~~

~~(13)--Real-estate-appraisal-related-computer-applications;~~

~~(14)--Real-estate-securities-and-syndication;-and~~

~~(15)--Real--property--exchange.~~ Courses taken out of this state may be approved for credit, provided the state in which the course was taken has approved the course for appraiser education.

e. ~~Continuing--education--credit--may--also--be--granted--for participation,-other--than--as--a--student,--in--appraisal educational---processes---and---programs.----Examples---of activities-for-which-credit-may-be-granted--are--teaching, program--development,--authorship-of-textbooks,-or-similar activities--which--are--determined--to--be--equivalent--to obtaining--continuing--education.~~ A course which has not had prior approval may be approved on an individual basis.

f. ~~The--purpose-of-continuing-education-is-to-ensure-that-the appraiser-participates-in-a--program--that--maintains--and increases---that---individual's---skill,---knowledge,--and competency-in--real--estate--appraising.~~ All continuing education must be taken in blocks of at least two hours.

g. A classroom hour is defined as fifty minutes out of each sixty-minute segment.

h. With the exception of distance education, no examination is required for continuing education courses.

i. Credit for the classroom requirement may be obtained from the following:

(1) Colleges or universities;

(2) Community or junior colleges;

(3) Real estate appraisal or real estate related organizations;

(4) State or federal agencies or commissions;

(5) Proprietary schools; and

(6) Other providers approved by the state certification or licensing board.

j. Credit may be granted for education offerings which are consistent with the purpose of continuing education stated in subsection 1 and cover real estate related appraisal topics such as:

(1) Ad valorem taxation;

(2) Arbitration;

(3) Business courses related to practice of real estate appraisal;

(4) Construction estimating;

(5) Ethics and standards of professional practice;

(6) Land use planning, zoning, and taxation;

(7) Management, leasing, brokerage, and timesharing;

(8) Property development;

(9) Real estate appraisal (valuations or evaluations);

(10) Real estate law;

(11) Real estate litigation;

(12) Real estate financing and investment;

(13) Real estate appraisal-related computer applications;

(14) Real estate securities and syndications; and

(15) Real property exchange.

k. A professional real estate appraisal organization meeting may be granted credit, provided it is a formal education program of learning which contributes to the real estate appraisal profession.

l. Real estate appraisal-related field trips may be granted credit. However, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

m. Continuing education credit may be granted for participation, other than as a student in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education.

(1) Ten hours may be granted for authorship of textbooks, publications, or similar activities provided the document contributes to the appraisal profession.

(2) One and one-half hours of credit for each one hour of instruction may be granted for teaching appraisal courses;

(3) Teaching of a course with the same, or substantially the same subject content may be claimed only once for credit within a three-year renewal cycle.

n. Ten hours may be granted for distance education. Distance education is defined as any educational process based on the geographical separation of provider and student (e.g., CD-ROM, on-line learning, correspondence courses, video conferencing, or similar activities). Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board and meets one of the following conditions:

(1) The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the appraiser qualifications board; or

(2) The course either has been presented by an accredited (commission on colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines, or has received either the American council on education program on noncollegiate sponsored instruction (ACE/PONSI) approval for college credit or the appraiser qualification board's approval through the appraisal qualifications board course approval program; and the course meets the following requirements:

(a) The course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the appraisal qualifications board; and

(b) The student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation which demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

o. A course with the same or substantially the same subject content may be claimed only once for credit within a three-year renewal cycle.

p. Excess hours of education earned in one renewal period cannot be carried over to the next renewal period.

q. Courses that are taken as a result of a disciplinary action may not be credited toward continuing education.

**History:** Effective October 1, 1992; amended effective October 1, 1998.
**General Authority:** NDCC 43-23.3-12, 43-23.3-19
**Law Implemented:** NDCC 43-23.3