NORTH DAKOTA ADMINISTRATIVE CODE

Supplement 332

April 2009

Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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TITLE 4.5

BOARD OF ADDICTION COUNSELING EXAMINERS

APRIL 2009

CHAPTER 4.5-02.1-01

4.5-02.1-01-04. Clinical training requirements. The completion of one thousand four hundred hours in a clinical training program approved by the board is required for licensure. The trainee's registration and successful completion of the clinical training program must be verified in writing with the board by the clinical supervisor or clinical training program director.

1. Qualifications. To be eligible for registration as a clinical trainee, the following must be met:

   a. All core academic coursework must be completed, with the exception that two courses may be completed while registered as a clinical trainee.

   b. Acceptance in a board-approved addiction counseling clinical training program or a board-approved individualized clinical training plan supervised by a board-approved clinical training program.

2. Registration. Clinical training program operators requesting to register their clinical trainees shall make formal application to the board documenting their clinical trainees above qualifications.

3. Expiration. An individual's clinical trainee registration expires after two years. The clinical training period may be extended due to clinical supervisors' recommendations, individual circumstance, health circumstances, or other personal matters. Extension of the clinical portion of training is the responsibility of the clinical supervisor or clinical training program director.

4. Applicants who complete clinical training not approved by the board must demonstrate that the clinical training completed was substantially equivalent to that required by North Dakota Century Code chapter 43-45 and article 4.5-02.1.

5. One year of direct counseling experience as a licensed mental health professional or addiction counselor is equivalent to one hundred fifty hours of clinical training. If the applicant is a licensed mental health professional other than an addiction counselor, a maximum of nine hundred hours of clinical training can be accepted for applicants with direct counseling experience. The remaining five hundred hours of clinical training must include training in American society of addiction medicine, patient placement criteria, current diagnostic and statistical manual, and the counselor skill groups. For the purposes of this subsection, mental health professional is defined as in North Dakota Century Code section 25-03.1-02.

History: Effective January 1, 2002; amended effective April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-05.1

4.5-02.1-01-05. ~~Examinations~~ Examination. ~~Two levels of examination may occur in the licensing process:~~

~~1. A written examination consisting of a knowledge-based objective test. The written examination may be taken when offered anytime after the completion of the required academic coursework.~~

~~2.~~ ~~An oral examination using a performance-based case history and interview. Only individuals who have completed their clinical training will be considered eligible for the oral examination.~~ The applicant must pass the written examination offered as of June 2008, or as later revised by the international certification and reciprocity consortium. The written examination may be taken when offered anytime after the completion of the required academic coursework.

History: Effective January 1, 2002; amended effective April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-06.1. Reciprocity. For the purposes of reciprocity as set forth in subsection 2 of North Dakota Century Code section 43-45-05.1, a requirement of at least one thousand four hundred hours of supervised experience as an addiction counselor is at least substantially the same as the clinical training requirements in section 4.5-02.1-01-04.

History: Effective April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-07. Fees. The board has adopted the following fee payment schedule:

1. Initial license fee:
   a. Application for license received on or after January first of the even-numbered year and before July first of the even-numbered year — $250.00
   b. Application for license received on or after July first of the even-numbered year and before January first of the odd-numbered year — $200.00
   c. Application for license received on or after January first of the odd-numbered year and before July first of the odd-numbered year — $150.00
   d. Application for license received on or after July first of the odd-numbered year and before January first of the even-numbered year — $100.00
2. Biennial renewal of license fee — $200.00
3. Private practice initial fee — $100.00
4. Late fee — $100.00
5. Annual continuing education provider approval fee — $100.00
6. Provider continuing education program approval fee — $35.00
7. Fee for mailing list — $20.00
8. Written examination fee is the national testing agency fee plus an additional board administrative fee of ~~twenty~~ forty dollars.

History: Effective January 1, 2002; amended effective January 1, 2008; April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02.1-03

4.5-02.1-03-01. Clinical training program. Each clinical training program for addiction counseling must be approved biennially by the board of addiction counseling examiners. An approved clinical training program must file a designated application form by October first of even-numbered years with the board and must meet the following conditions:

1. Facility requirements:

   a. Training experiences must occur in at least two separate licensed treatment facilities with a minimum of three months in each facility, unless specifically approved by the board.

   b. ~~Licensed facilities must consist of at least one public provider of addiction treatment and may be at either an inpatient or outpatient treatment setting.~~

   ~~c.~~ Each program may establish the length of its clinical training program, with a one thousand four hundred-hour minimum requirement.

   ~~d.~~ c. Documentation must include:

      (1) Evidence of licensure of each addiction treatment facility.

      (2) ~~Evidence of accreditation of each academic facility.~~

      ~~(3)~~ ~~Institutional training~~ Training program policies and procedures, including an organizational chart and admission policies.

      ~~(4)~~ (3) ~~Goals~~ Training program goals and objectives for each clinical component of the training site.

      ~~(5)~~ (4) Trainee handbook and guidelines, including trainee grievance procedure.

2. ~~Curriculum~~ Training requirements:

   a. ~~Documentation must be provided of syllabi of academic courses or other evidence of coursework quality.~~ Each clinical training program shall conduct an oral examination using a performance-based case history and interview.

   ~~b. Documentation must be provided of provision of thirty hours of direct supervision and twenty hours of indirect supervision in each of the following clinical areas:~~

~~(1) Individual therapy.~~

~~(2) Intake and assessment.~~

~~(3) Group therapy.~~

~~(4) Family counseling.~~

b. At the conclusion of a completed training program experience for a trainee, the training program must provide documentation of the provision of fifty hours of supervision with a minimum of thirty hours of direct supervision in each of the required clinical areas. This will occur by each training program forwarding the trainee completion form, a copy of the trainee's final monthly performance review, and verification of completion of an oral examination. The required clinical areas are:

(1) Screening, assessment, and treatment planning.

(2) Counseling services.

(3) Service coordination, case management, and referral services.

(4) Documentation.

(5) Multicultural counseling, education, and professional ethics.

c. Direct supervision occurs in session with clients, viewing or listening to videotape or audiotape, or verbatim report of a session.

d. Indirect supervision occurs when discussing process and ~~in educational, ongoing meetings with a supervisor~~ procedure as it relates to the five required clinical areas. This may occur in education and ongoing supervision meetings.

3. ~~Academic and clinical staff requirements:~~

~~a. Academic instruction requirements:~~

~~(1) Instruction must be provided by an instructor with an appropriate academic degree, qualified in the specific field of instruction.~~

~~(2) Instructors must be academic staff members of a college or university.~~

~~(3) Instructors must be board-approved, so must submit:~~

~~(a) A letter of introduction to the board.~~

~~(b) A resume, with education and experience in the field of addiction preferred.~~

~~(c) A syllabus for each core academic course taught.~~

~~b.~~ Clinical training supervision requirements:

~~(1)~~ a. Clinical supervision must be provided by a board-registered clinical supervisor.

~~(2)~~ b. Clinical training programs must have one clinical supervisor for each individual clinical trainee.

4. ~~A training program may submit an application without a specific academic site designated, but trainees accepted into the training program must meet board-approved academic coursework.~~

~~5.~~ Individual clinical training programs may be board-approved when they are submitted by and under the auspices of an approved clinical training program. Each plan must:

a. Designate the board-registered clinical supervisor responsible for clinical training.

b. Provide additional information as requested by the board.

~~6.~~ 5. Should a clinical training program at any time not meet board standards or not be in compliance with ethical expectations, it may result in board revocation of clinical training program approval.

History: Effective January 1, 2002; amended effective April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-03-02. Internship registration. The internship is the practice of addiction counseling, under the supervision of a board-registered clinical supervisor, after the academic and clinical training program requirements are met. An intern will become licensed when application criteria are met and examinations are passed. The intern's supervision must be verified in writing to the board by signature of the onsite clinical supervisor.

1. **Qualifications.** To be eligible for registration as an intern, the following must be met:

a. All core academic coursework has been completed.

b. All clinical training program requirements have been board-approved.

2. **Registration.** An individual requesting to be registered as an intern shall make formal application to the board documenting the applicant's qualifications as required by this section.

3. **Expiration.** An individual may remain an intern for a maximum of ~~one year~~ two thousand hours. Upon showing of good cause the board, by special provision, may extend internship status for longer than one year. Request for extension of the internship registration period with documentation of need by clinical supervisor is the responsibility of the intern.

History: Effective January 1, 2002; amended effective January 1, 2008; April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-05.1

CHAPTER 4.5-02.1-04

4.5-02.1-04-02. Application for private practice registration.

1. **Qualifications.** ~~To be eligible for registration to provide private practice, the following must be met:~~

   ~~a. Licensure as a licensed addiction counselor.~~

   ~~b. An applicant must have a master's degree in one of the social or behavioral sciences.~~ To be eligible for registration to provide private practice, a licensed addiction counselor must have five years of full-time clinical experience as a licensed addiction counselor or a master's degree in a closely related social science or health care field with two years of post-master's clinical experience as a licensed addiction counselor.

2. **Registration.** Individuals requesting to be registered for private practice shall make a formal application to the board. This application must include:

   a. ~~A description of the types of services or programs that will be provided in private practice;~~ Documentation of five years of full-time clinical experience as a licensed addiction counselor or a master's degree and two years of post-master's clinical experience as a licensed addiction counselor.

   b. ~~A description of the method established to provide for a system of peer review of cases; and~~ Registration fee.

   ~~c. The registration fee.~~

~~3. **Peer review process.**~~

   ~~a. The peer review process consists of the quarterly presentation and discussion of cases with members of a predetermined peer review committee in order to ensure quality of care, obtain input in reference to problem cases, and assist in case management.~~

   ~~b. The peer review committee must consist of individuals with expertise in the field of addiction counseling. At least one member of the committee in addition to the practitioner must be a licensed addiction counselor.~~

History: Effective January 1, 2002; amended effective April 1, 2009.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-05.3

4.5-02.1-04-03. Application for private practice registration renewal. ~~Registration is renewable annually provided each of the following conditions has been met prior to December first of each year:~~ Repealed effective April 1, 2009.

~~1. A registration renewal application form is completed, submitted, and postmarked prior to December first of each year.~~

~~2. A registration renewal fee is submitted with the registration renewal application.~~

~~3. Documentation is submitted with the registration renewal application that peer review process continues to meet requirements of quarterly presentation and discussion.~~

~~4. Registration is not suspended or revoked.~~

~~A late fee will be assessed if the renewal application, registration renewal fee, and peer review process documentation are submitted and postmarked after the above date and before January first of the new year. If the application for private practice registration renewal does not meet the above conditions by December thirty-first of the new year, the registration will expire.~~

~~The board may extend the registration renewal deadline for any applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.~~

History: ~~Effective January 1, 2002.~~
General Authority: ~~NDCC 43-45-04~~
Law Implemented: ~~NDCC 43-45-04, 43-45-05.3~~

TITLE 10

ATTORNEY GENERAL

APRIL 2009

CHAPTER 10-16-03

10-16-03-08.1. Subscription.

1. A player may procure a subscription application form from a retailer, lottery's office, or lottery's web site.

2. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for thirteen, twenty-six, or fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, at the player's option, the cost of the subscription would be prorated based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased plus the value of an extension.

3. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery. A player may apply for a subscription on the lottery's web site or by mail, by telephone, or in person. A player may use cash, check, automated clearinghouse, debit card, or authorized credit card to pay for a subscription.

4. A person must be at least eighteen years of age.

5. A person must have a mailing address within the state of North Dakota when the original or renewal subscription application form was submitted to the lottery.

6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.

7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may, based on the owner's request, split a prize among two or more persons provided that the share of each person's prize is equal to or more than six hundred dollars.

8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation card to the subscriber. The confirmation card is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation card must include:

   a. Name and address of the subscriber;

   b. Assigned subscriber number;

   c. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;

   d. Number of and starting and ending dates of the draws;

   e. Numbers, letters, or symbols of the play;

   f. Notice that the subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and

   g. Explanation of how a prize will be awarded.

9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified on the confirmation card. The effective date of a new subscription play cannot be sooner than fourteen days from the original date of subscription. The effective date of a renewal subscription play can begin with the next draw following the end of the current subscription.

10. If the value of a prize on a winning subscription play for a draw is:

    a. Five dollars or less, the lottery shall automatically extend the subscription period by the number of draws equal to the value of the winning play;

    b. Equal to or more than six dollars and less than six hundred dollars, the lottery shall send the player a check for the prize; or

    c. Equal to or more than six hundred dollars, the lottery shall contact the player to arrange payment of the prize, less withholding of

income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.

11. If the owner of a subscription changes the owner's name or address, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

CHAPTER 10-16-04

10-16-04-01. Game description. To play POWERBALL®, a player selects five different white numbers, between one and ~~fifty-five~~ fifty-nine, and one additional red number (powerball) between one and ~~forty-two~~ thirty-nine. The additional number may be the same as one of the first five numbers selected. The price of a play is one dollar. A grand prize is paid, at the election of a winning player or by a default election made according to these rules, either on an annuitized pari-mutuel basis or as a cash lump sum payment of the total cash held for the prize pool on a pari-mutuel basis. A set prize (cash prize of two hundred thousand dollars or less) is paid on a single-payment cash basis. Draws are held every Wednesday and Saturday.

History: Effective February 1, 2004; amended effective November 8, 2005; January 4, 2009.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-04-02. Expected prize pool percentages and odds. The minimum grand prize is ~~fifteen~~ twenty million dollars and is paid on a pari-mutuel basis. Except as provided by rule, a set prize must be paid according to these matches per play and prize amounts with these expected prize payout percentages:

Matches Per Play	Prize	Prize Pool Percentage Allocated to Prize	Odds**
5 white + 1 red	Grand prize	~~60.58%*~~ 65.06%*	~~1:146,107,962~~ 1:195,249,054
5 white + 0 red	$200,000	~~11.22%~~ 7.78%	~~1:3,563,609~~ 1:5,138,133
4 white + 1 red	$10,000	~~3.42%~~ 2.77%	~~1:584,432~~ 1:723,145
4 white + 0 red	$100	~~1.40%~~ 1.05%	~~1:14,254~~ 1:19,030
3 white + 1 red	$100	~~1.68%~~ 1.46%	~~1:11,927~~ 1:13,644
3 white + 0 red	$7	~~4.81%~~ 3.90%	~~1:291~~ 1:359
2 white + 1 red	$7	~~1.88%~~ 1.78%	~~1:745~~ 1:787
1 white + 1 red	$4	~~6.31%~~ 6.48%	~~1:127~~ 1:123
0 white + 1 red	$3	~~8.70%~~ 9.72%	~~1:69~~ 1:62

Overall odds of winning a prize on a one dollar play are ~~1:36.6~~ 1:35.11.

*When the grand prize reaches a new high level, the prize pool percentage allocated to the grand prize must be reduced to the percentage needed to fund the maximum grand prize increase as determined by the game group, with the remainder funding the match 5 bonus prize category.

**Reflects the odds of winning and probable distribution of winning tickets in and among each prize tier, based on the total number of possible combinations.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008; January 4, 2009.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-04-06. Power play option.

1. The power play option is a limited extension of the POWERBALL® game and is conducted according to the game group's game rules. The option offers the owner of a qualifying play a chance to multiply the amount of a set prize. A match 5 bonus prize is awarded independent of the power play option and is not multiplied by the power play multiplier.

2. A qualifying play is a single POWERBALL® play for which the player pays an extra one dollar for the power play option. Power play does not apply to the grand prize or a match 5 bonus prize.

3. A qualifying play which wins one of the ~~eight~~ seven lowest set prizes (excluding the match 5+0 prize) will be multiplied by ~~the number selected, two through five,~~ a single number (2, 3, 4, or 5) drawn in a separate random power play drawing. The announced match 5+0 prize shall be multiplied by five regardless of the number two through five drawn as the multiplier for the seven lowest set prizes. The game group may change one or more of the multiplier numbers for a special promotion.

4. ~~A single number from a series of sixteen numbers is selected. The numbers are "2", "2", "2", "2", "3", "3", "3", "3", "4", "4", "4", "4", "5", "5", "5", and "5". The game group may change one or more of the multiplier numbers for a special promotion.~~

5. A prize awarded must be paid as a lump sum set prize. Instead of the normal set prize amount, a qualifying power play will pay the amounts shown below when matched with the power play number drawn:

		POWERBALL® Pays Instead			
Matches per Play	Prize Amount	5X	4X	3X	2X
5 white + 0 red	$200,000	$1,000,000	~~$800,000~~ $1,000,000	~~$600,000~~ $1,000,000	~~$400,000~~ $1,000,000

4 white + 1 red	$10,000	$50,000	$40,000	$30,000	$20,000
4 white + 0 red	$100	$500	$400	$300	$200
3 white + 1 red	$100	$500	$400	$300	$200
3 white + 0 red	$7	$35	$28	$21	$14
2 white + 1 red	$7	$35	$28	$21	$14
1 white + 1 red	$4	$20	$16	$12	$8
0 white + 1 red	$3	$15	$12	$9	$6

Rarely, a set prize amount may be less than the amount shown. In that case, a power play prize will be a multiple of two through five for the new set prize amount for the seven lowest set prizes. The power play prize for a match 5 prize will be a multiple of five. For example, if the match ~~5~~ 4+1 set prize amount of ~~two hundred~~ ten thousand dollars becomes ~~twenty-five~~ five thousand fifty dollars under the game group's rules, a power play player winning that prize amount when a "~~5~~ 4" has been drawn would win ~~one hundred twenty-five thousand two hundred fifty dollars ($25,050 x 5)~~ twenty thousand two hundred dollars ($5,050 x 4). If the match 5 set prize amount of two hundred thousand dollars becomes twenty-five thousand fifty dollars under the game group's rules, a power play player winning that prize amount would win one hundred twenty-five thousand two hundred fifty dollars ($25,050 x 5).

~~6.~~ 5. The following table reflects the probability of the power play numbers being drawn:

Power Play	Probability of Prize Increase
5X - Prize won times 5	1 in 4
4X - Prize won times 4	1 in 4
3X - Prize won times 3	1 in 4
2X - Prize won times 2	1 in 4

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008; January 4, 2009.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

TITLE 30

GAME AND FISH DEPARTMENT

APRIL 2009

CHAPTER 30-02-03

30-02-03-04.1. Maximum area of shooting preserve. Except for permitted shooting preserves operating prior to January 1, 2009, no individual, corporation, or business association may operate or own any interest in one or more shooting preserves with a comprised total of more than six hundred forty acres.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-08

30-02-03-05. Number of game birds released. A minimum of one hundred birds of each species permitted to be hunted on the shooting preserve shall be released during the shooting preserve season. Fewer birds may be released upon written permission of the director.

History: Amended effective December 1, 1982; April 1, 2006; April 1, 2009.
General Authority: NDCC 20.1-12-08
Law Implemented: NDCC 20.1-12-04

CHAPTER 30-03-01.1

30-03-01.1-01. License required to be displayed. All licenses must be publicly displayed on the business premises. Business names must be displayed on any vehicle used to transport live bait. ~~Licenses will be issued on a calendar year basis.~~

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-04. License limitations. Retail or wholesale bait vendor licenses are issued for a calendar year to one person only. An individual may be issued only one wholesale license per calendar year. The holder of a retail bait vendor license may sell live bait at retail only, at one specified selling location per license. A wholesale bait vendor may only sell live bait to licensed bait vendors. Both a retail license and a wholesale license are necessary to sell live bait at both retail and wholesale. A wholesale licensee may not act as an agent or assistant under the license of another wholesaler.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

30-03-01.1-14. Wholesale bait pond. The term "wholesale bait pond" means any pond used to take live bait for wholesale. A legal description, to the quarter section, of each wholesale bait pond must be listed on the wholesaler's application and all ~~locations~~ ponds must be approved by the director before a license is issued. The maximum number of ponds from which a wholesale bait vendor may trap annually is fifty ponds.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 20.1-06-14
Law Implemented: NDCC 20.1-06-14

CHAPTER 30-03-02

30-03-02-03.1. License required. Only one private fish hatchery license may be issued per individual each calendar year.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-06-12
Law Implemented: NDCC 20.1-06-12

30-03-02-14. Violations and penalties. Any private fish hatchery that violates any section of this chapter is guilty of a noncriminal offense and shall pay a one hundred dollar fee. The violation may result in license revocation. Violations may be the basis of administrative action up to and including license revocation or suspension.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-06-12
Law Implemented: NDCC 20.1-06-12

CHAPTER 30-03-03

30-03-03-03. ~~Dimensions~~ Construction. Any structure used as a fishhouse shall be constructed of material that will allow it to float and to be readily removable from the ice at any time. ~~Campers may not be used as fishhouses. Holes not to exceed twelve inches [30.5 centimeters] in diameter or square may be made in the ice for hook and line angling.~~

History: Amended effective September 1, 1993; April 1, 2006; April 1, 2009.
General Authority: NDCC 20.1-06-07
Law Implemented: NDCC 20.1-06-07

CHAPTER 30-03-05

30-03-05-01. Fishing contest defined. A fishing contest is any event where prizes or cash are given for catching fish from waters open to public use. These events include high value tag contests, fishing tournaments, fishing leagues, biggest fish contests, and contests giving prizes for the largest number or weight of fish. Also included are fishing leagues and tournaments that involve multiple fishing events and have a cumulative fee equal to or exceeding five dollars. Entry fees must be collected and listed separately from other activities. Fishing contests do not include the following:

1. Individual big fish promotions sponsored by resident, local businesses not charging any entry or participation fee. If any local, resident business desires to sponsor a high value (prizes exceeding one thousand dollars cash or merchandise) individual fishing contest, the game and fish director shall designate the species of game fish to be included and the contest may be limited to only those species in select waters.

2. Any local fishing tournament charging an entry or participation fee of less than five dollars per angler, unless there are more than forty-nine participating individuals or ~~twenty-four~~ fourteen participating boats.

3. ~~Local tournaments where fishing is through the ice where the activity is beneficial to the fishery resource as determined by the game and fish director.~~

History: Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009.
General Authority: NDCC 20.1-02-05(22)
Law Implemented: NDCC 20.1-02-05(22)

30-03-05-04. Application. ~~Anyone~~ Any organization desiring to hold a fishing contest must submit an application for a permit to the game and fish director at least thirty days prior to the start of the contest. Information on the application must include the name of the ~~applicant~~ sponsor, location of the waters where the contest is to be held, the dates of the contest, the number of participants expected for the contest, the amount of the entry fee, identification of the intended fishery conservation or public access project, a copy of the tournament regulations, and the name of a person ~~to be contacted for additional information about the~~ or persons responsible for organizing and conducting the fishing contest.

History: Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009.
General Authority: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)
Law Implemented: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)

30-03-05-05. Fishing contest rules and regulations.

1. In a boat tournament, ~~committee/sponsors~~ the committee or sponsors shall provide boat launching and loading assistance to tournament participants.

2. The ratio of tournament patrol boats to participant boats shall at no time be less than one to ~~twenty~~ twenty-five in fishing contests involving one hundred or fewer boats and one to ~~twenty-five~~ thirty for contests involving more than one hundred boats.

3. The North Dakota game and fish department may add further tournament regulation restrictions if deemed necessary.

4. Fishing contests for all game and nongame fish, with the exception of paddlefish, pallid and shovelnose sturgeon, zander, and grass carp (white amur) are allowable.

History: Effective March 1, 1984; amended effective May 1, 1994; January 1, 2000; April 1, 2009.
General Authority: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)
Law Implemented: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)

30-03-05-06. Reasons for denying permits. Permits may not be issued or may be revoked if the game and fish director believes the fishing contest does not or will not comply with game and fish rules or regulations, or could be harmful to the fishing resource, or that public use facilities such as boat ramps, parking areas, campgrounds, and related facilities are inadequate to support the contest, or ~~committee/sponsors~~ the committee or sponsors have failed to submit timely reports ~~in a previous year~~.

History: Effective March 1, 1984; amended effective May 1, 1994; April 1, 2009.
General Authority: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)
Law Implemented: NDCC ~~20.1-02-05(22)~~ 20.1-02-05(20)

30-04-02-14.1. Tree stands. No person may construct or use a permanent tree stand or permanent steps to a tree stand on any wildlife management area. Portable tree stands and portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of any tools. Ladder-type stands that lean against the tree are portable stands. A notched board placed in a tree crotch is a portable stand. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. A metal or plastic tag must be attached to each unattended tree stand. This tag must display the owner's name, address, and telephone number. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth of the year, and they shall be taken down by January ~~tenth~~ thirty-first of the following year. Stands and steps not removed by the ~~tenth~~ thirty-first of January are considered abandoned property and are subject to removal and confiscation by the director or the director's designee. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 1986; amended effective April 1, 2006; April 1, 2009.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

30-04-02-20. Paintballing prohibited.

1. No person shall engage in any form of paintballing on any state wildlife management area unless authorized by the director or the director's designee.

2. The term "paintballing" refers to any sport in which participants eliminate opponents from play by hitting them with paintballs (spherical gelatin capsules containing primarily polyethylene glycol, other nontoxic and water-soluble substances, and dye) shot from a compressed gas-powered gun, commonly called a marker.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

30-04-02-21. Geocaching prohibited.

1. No person shall engage in any form of geocaching on any state wildlife management area unless authorized by the director or the director's designee.

2. The term "geocaching" refers to an outdoor treasure-hunting game in which the participants use a global positioning system receiver or other navigational techniques to hide and seek containers, called geocaches

or caches. A typical cache is a small waterproof container containing a logbook and treasure.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-11-05
Law Implemented: NDCC 20.1-11-05

30-04-03-22. Bona fide pursuit of agricultural interests. To be exempt from regulation as an outfitter under North Dakota Century Code section 20.1-03-36.1, the person must provide services on real property that person owns or leases for the "primary pursuit of bona fide agricultural interests". The following definitions apply:

1. "Agriculture" means the production of food, feed, and fiber and other goods by the systematic growing or harvesting of plants, animals, and other life forms and includes aquaculture, cultivation, animal husbandry, and horticulture.

2. "Bona fide" means that the person earnestly intends to devote the land primarily to an agricultural pursuit. In determining a person's intent, a person's use of buildings associated with hunting, such as a hunting facility or accommodation, is generally incompatible with a primary pursuit of agricultural interest, but rather shows that the person's intent is to primarily use the land for hunting.

3. "Primary pursuit" means that the person is:

   a. Actively engaged in the agricultural interest, which does not include the passive ownership of land. Receiving payment on account of agricultural land enrolled in the federal conservation reserve program does not constitute the active pursuit of agriculture by itself, rather, the individual must also be actively engaged in farming or ranching; and

   b. Primarily engaged in the agricultural interest, which means the individual's farming or ranching activities must be of the first rank, importance, or value.

History: Effective April 1, 2009.
General Authority: NDCC 20.1-02-04
Law Implemented: NDCC 20.1-01-02, 20.1-02-15, 20.1-03-36.2, 20.1-03-37, 20.1-03-38

TITLE 33

STATE DEPARTMENT OF HEALTH

APRIL 2009

CHAPTER 33-15-01

33-15-01-04. Definitions. As used in this article, except as otherwise specifically provided or when 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 emitted to the ambient air.

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 or 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. "Coal conversion facility" means any of the following:

   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.

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

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

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

10. "Excess emissions" means the release of an air contaminant into the ambient air in excess of an applicable emission limit or emission standard specified in this article or a permit issued pursuant to this article.

11. "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.

~~11.~~ 12. "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.

~~12.~~ 13. "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.

~~13.~~ 14. "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.

~~14.~~ 15. "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.

~~15.~~ 16. "Hazardous waste" has the same meaning as given by chapter 33-24-02.

~~16.~~ 17. "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.

~~17.~~ 18. "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.

~~18.~~ 19. "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.

~~19.~~ 20. "Inhalable particulate matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

~~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 agent, substance, or mixture of substances intended to prevent, destroy, control, or mitigate any insect, rodent, nematode, predatory animal, snail, slug, bacterium, weed, and any other form of plant or animal life, fungus, or virus, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department may declare to be a pest, except those bacteria, fungi, protozoa, or viruses on or in living man or other animals;

b. Any agent, substance, or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and

c. Any other similar substance so designated by the department, including herbicides, insecticides, fungicides, nematocides, molluscacides, rodenticides, lampreycides, plant regulators, gametocides, post-harvest decay preventatives, and antioxidants.

~~30.~~ 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.

32. "$PM_{2.5}$" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths micrometers.

~~31.~~ 33. "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

~~32.~~ 34. "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.

~~33.~~ 35. "Pipeline quality natural gas" means natural gas that contains two grains, or less, of sulfur per one hundred standard cubic feet [2.83 cubic meters].

~~34.~~ 36. "Premises" means any property, piece of land or real estate, or building.

~~35.~~ 37. "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.

~~36.~~ 38. "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. If 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.

~~37.~~ 39. "Radioactive waste" means solid waste containing radioactive material and subject to the requirements of article 33-10.

~~38.~~ 40. "Refuse" means any municipal waste, trade waste, rubbish, or garbage, exclusive of industrial waste, special waste, radioactive waste, hazardous waste, and infectious waste.

~~39.~~ 41. "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]).

~~40.~~ 42. "Salvage operation" means any operation conducted in whole or in part for the salvaging or reclaiming of any product or material.

~~41.~~ 43. "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.

~~42.~~ 44. "Source" means any property, real or personal, or person contributing to air pollution.

~~43.~~ 45. "Source operation" means the last operation preceding emission which operation:

a. Results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion fuel; and

b. Is not an air pollution abatement operation.

~~44.~~ 46. "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.

~~45.~~ 47. "Stack or chimney" means any flue, conduit, or duct arranged to conduct emissions.

~~46.~~ 48. "Standard conditions" means a dry gas temperature of sixty-eight degrees Fahrenheit [293 degrees Kelvin] and a gas pressure of fourteen and seven-tenths pounds per square inch absolute [101.3 kilopascals].

~~47.~~ 49. "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.

~~48.~~ 50. "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.

~~49.~~ 51. "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.

~~50.~~ 52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~January 1, 2006~~ March 1, 2008, which is incorporated by reference.

~~51.~~ 53. "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; June 1, 2001; March 1, 2003; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-01-05. Abbreviations. The abbreviations used in this article have the following meanings:

A	-	ampere
A.S.T.M.	-	American Society for Testing and Materials
Btu	-	British thermal unit
°C	-	degree Celsius (centigrade)
cal	-	calorie
CdS	-	cadmium sulfide
cfm	-	cubic feet per minute
CFR	-	code of federal regulations
cu ft	-	cubic feet
CO	-	carbon monoxide
CO_2	-	carbon dioxide
dcf	-	dry cubic feet
dcm	-	dry cubic meter
dscf	-	dry cubic feet at standard conditions
dscm	-	dry cubic meter at standard conditions
eq	-	equivalents

°F - degree Fahrenheit
ft - feet
g - gram
gal - gallon
g eq - gram equivalents
gr - grain
hr - hour
HCl - hydrochloric acid
Hg - mercury
H_2O - water
H_2S - hydrogen sulfide
H_2SO_4 - sulfuric acid
Hz - hertz
in. - inch
j - joule
°K - degree Kelvin
k - 1,000
kg - kilogram
l - liter
lpm - liter per minute
lb - pound
m - meter
m^3 - cubic meter
meq - milliequivalent
min - minute
mg - milligram - 10^{-3} gram
Mg - megagram - 10^6 gram
ml - milliliter - 10^{-3} liter
mm - millimeter - 10^{-3} meter
mol - mole
mol.wt. - molecular weight
mV - millivolt
N_2 - nitrogen
N - newton
ng - nanogram - 10^{-9} gram
nm - nanometer - 10^{-9} meter

NO	-	nitric oxide
NO_2	-	nitrogen dioxide
NO_x	-	nitrogen oxides
O_2	-	oxygen
Pa	-	pascal
PM	-	particulate matter
$PM_{2.5}$	-	particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers
PM_{10}	-	particulate matter with an aerodynamic diameter $\leq$ 10 micrometers
ppb	-	parts per billion
ppm	-	parts per million
psia	-	pounds per square inch absolute
psig	-	pounds per square inch gauge
°R	-	degree Rankine
s-sec	-	second
scf	-	cubic feet at standard conditions
scfh	-	cubic feet per hour at standard conditions
scm	-	cubic meters at standard conditions
scmh	-	cubic meters per hour at standard conditions
SO_2	-	sulfur dioxide
SO_3	-	sulfur trioxide
SO_x	-	sulfur oxides
sq ft	-	square feet
std	-	at standard conditions
TSP	-	total suspended particulate
µg	-	microgram - 10^{-6} gram
V	-	volt
W	-	watt
Ω	-	ohm

History: Amended effective January 1, 1989; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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

1. **Maintenance shutdowns.** In the case of shutdown of air pollution control equipment for necessary scheduled maintenance, the intent to

shut down such equipment shall be reported to the department at least twenty-four hours prior to the planned shutdown provided that the air contaminating source will be operated while the control equipment is not in service. Such prior notice shall include the following:

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

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

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

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

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

f. Nothing in this subsection shall in any manner be construed as authorizing or legalizing the emission of air contaminants in excess of the rate allowed by this article or a permit issued pursuant to this article.

2. **Malfunctions.**

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

b. Immediate notification to the department is required for any malfunction that would threaten health or welfare, or pose an imminent danger. During normal working hours the department can be contacted at 701-328-5188. After hours the department

can be contacted through the twenty-four-hour state radio emergency number 1-800-472-2121. If calling from out of state, the twenty-four-hour number is 701-328-9921.

c. Unavoidable malfunction. The owner or operator of a source who believes any excess emissions resulted from an unavoidable malfunction shall submit a written report to the department which includes evidence that:

(1) The excess emissions were caused by a sudden, unavoidable breakdown of technology that was beyond the reasonable control of the owner or operator.

(2) The excess emissions could not have been avoided by better operation and maintenance, did not stem from an activity or event that could have been foreseen and avoided or planned for.

(3) To the extent practicable, the source maintained and operated the air pollution control equipment and process equipment in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions.

(4) Any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible.

(5) All practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality.

(6) The excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance or inadequate design of the malfunctioning equipment.

The report shall be submitted within thirty days of the end of the calendar quarter in which the malfunction occurred or within thirty days of a written request by the department, whichever is sooner.

The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred. The department may elect not to pursue enforcement action after considering whether excess emissions resulted from an unavoidable equipment malfunction. The department will evaluate, on a case-by-case basis, the information submitted by the owner or operator to determine whether to pursue enforcement action.

3. **Continuous emission monitoring system failures.** When a failure of a continuous emission monitoring system occurs, an alternative method~~, acceptable to the department,~~ for measuring or estimating emissions must be undertaken as soon as possible. The owner or operator of a source that uses an alternative method shall have the burden of demonstrating that the method is accurate. Timely repair of the emission monitoring system must be made.

History: Amended effective October 1, 1987; January 1, 1989; June 1, 1992; September 1, 1997; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

CHAPTER 33-15-02

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Particulates Inhalable Particulate PM_{10}	~~50~~ 150	~~micrograms per cubic meter of air, expected annual arithmetic mean micrograms per cubic meter of air, maximum 24-hour average concentration with no more than one expected exceedance per year~~ micrograms per cubic meter, 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
$PM_{2.5}$	15.0	micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 15.0 micrograms per cubic meter.
	35	micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.
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~~
	0.075	parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR 50, Appendix I.
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; April 1, 2009.

33-15-05-03.2. Refuse incinerators.

1. **Applicability.**

   a. The owner or operator of an incinerator of any design capacity for refuse, except trash and refuse derived fuel, must comply with 40 CFR part 60, subpart Ea, which is incorporated by reference in chapter 33-15-12.

   b. Beginning August 1, 1996, no owner or operator of an incinerator for refuse may incinerate materials of any type or form which are recyclable, unless the owner demonstrates to the department that recycling for a waste material is not reasonably available. Documents subject to state or federal privacy regulations may be incinerated when no other acceptable method of disposal is reasonably available.

   c. Beginning August 1, 1997, each existing incinerator for trash must meet the same standards as a new incinerator for trash.

   d. 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.

2. **Existing trash incinerators.** This subsection applies to any owner or operator of an incinerator for trash of any design capacity existing on August 1, 1995.

   a. Prohibited waste. No infectious waste, radioactive waste, hazardous waste, special waste, industrial waste, or any other solid waste may be burned in an incinerator designed for trash unless the incinerator's performance, design, and operating standards for those solid wastes are also met.

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

   c. Recordkeeping and reporting.

      (1) The owner or operator of an incinerator for trash shall keep a log indicating the dates and approximate quantities of waste received from an onsite source, and from each offsite source, including the transporter. The log shall 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 trash shall record in the log any operational error or failure of one-hour or more duration of combustion equipment, emission control equipment, waste charging equipment, or monitoring equipment.

(3) When requested by the department, the owner or operator of an incinerator for trash shall provide a summary of the daily burning and hours of operation.

~~d. Malfunctions. An owner or operator of an incinerator for trash shall immediately halt all waste charging of an 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 trash incinerators.** In addition to subsection 2, this subsection applies to an owner or operator of a new incinerator for trash.

a. Design. Each new incinerator for trash 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. Opacity. No owner or operator of a new incinerator for trash 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.

c. Operating temperature. Each new incinerator for trash shall maintain the flue gas temperature in the secondary combustion chamber or zone at one thousand five hundred degrees Fahrenheit [815 degrees Celsius] or greater for a minimum of one-half-second retention time.

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

e. Stack height. Each new incinerator for trash shall 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. Waste charging.

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

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

History: Effective August 1, 1995; amended effective April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-04, 23-25-04.1

CHAPTER 33-15-12

33-15-12-01.1. Scope. 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 ~~January 31, 2006~~ March 1, 2008, 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; June 1, 2001; March 1, 2003; February 1, 2005; April 1, 2009.
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 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 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, 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 the United States 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 United States 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 United States 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 United States 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.

*The limits and other requirements for mercury are deleted.

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 for which construction is commenced after December 20, 1989, and on or before September 20, 1994.

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

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 hot mix asphalt facilities.

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 O - Standards of performance for sewage treatment 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 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 volatile organic compound (VOC) emissions 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 volatile organic compound (VOC) emissions 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 volatile organic compound (VOC) emissions 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 volatile organic compound (VOC) emissions from petroleum refinery wastewater systems.

Subpart RRR - Standards of performance for volatile organic compound (VOC) 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.

Subpart AAAA - Standards of performance for small municipal waste combustion units for which construction is commenced after August 30, 1999, or for which modification or reconstruction is commenced after June 6, 2001.

Subpart CCCC - Standards of performance for commercial and industrial solid waste incineration units for which construction is commenced after November 30, 1999, or for which modification or reconstruction is commenced on or after June 1, 2001.

Subpart DDDD - Emission guidelines and compliance times for commercial and industrial solid waste incinerator units that commenced construction on or before November 30, 1999.

Except as provided below, designated facilities to which this rule applies shall comply with 40 CFR 60.2575 through 60.2875, including tables 1 through 5.

In the rule, you means the owner or operator of a commercial or industrial solid waste incineration unit.

Table 1 of the rule is deleted and replaced with the following:

Table 1 to Subpart DDDD - Model Rule Increments of Progress and Compliance Schedules	
Comply with these increments of progress	By these dates
Increment 1 - Submit final control plan	One year after EPA approval of the state plan or December 1, 2004, whichever comes first.
Increment 2 - Final compliance	Three years after EPA approval of the state plan or December 1, 2005, whichever comes first.

~~Subpart HHHH - Emission guidelines and compliance times for coal-fired electric steam generating units.~~

~~Designated facilities to which the rule applies shall comply with the applicable requirements of 40 CFR 60.4101 through 60.4124 and 60.4140 through 60.4176.~~

~~Allocation of the mercury allowances shall be in accordance with 40 CFR 60.4142, except that in 2008 and annually thereafter the adjusted control period heat input for units commencing operations before January 1, 2001, must be recalculated annually and the allowance allocation for all units adjusted accordingly. In the recalculation of the adjusted control period heat input, the control period heat input for 2000 through 2004 must be used; however, the adjusted control period heat input must be recalculated using the average heat input for the different types of fuels combusted during the three-year period just prior to the year in which the allocations are made, using the factors provided in 40 CFR 60.4142(a).~~

~~Alternatively, a contract to provide fuel for heat input to a unit during the year to which the allowance allocation will apply may be used to establish the adjusted control period heat input for that year if the contract is in effect and enforceable at the time the allowance allocation is made. If the budget unit does not combust the types of fuels provided for in the contract in the applicable year, the next allowance allocation for such unit shall be reduced by the amount of any excess allowances allocated. Any allowances due to~~

~~this reduction shall be reallocated to the remaining budget units in proportion to their allowance allocation in the year in which the contract was not fulfilled.~~

~~The allowance allocations will be reported to the environmental protection agency administrator by October 31 of each year beginning in 2008 as provided in 40 CFR 60.4141.~~

Subpart KKKK - Standards of performance for stationary combustion turbines.

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; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-13

33-15-13-01.1. Scope. The subparts and appendices of title 40, Code of Federal Regulations, part 61, as they exist on ~~January 31, 2006~~ March 1, 2008, which are listed under section 33-15-13-01.2 are incorporated into this chapter by reference. Any changes to the emission standard are listed below the title of the standard.

History: Effective June 1, 1992; amended effective March 1, 1994; December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; April 1, 1998; September 1, 2002; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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

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

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

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

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

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

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

3. **Alterations to source.**

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

   b. Any physical change in, or change in the method of operation of, a stationary source already existing which increases or may increase the emission rate or increase the ambient concentration by an

amount greater than that specified in subdivision a of subsection 5 of 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~~ air quality). These documents are incorporated by reference.

   b. When 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~~ 27709).

      (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 ninety days of the receipt of the completed application, make the following preliminary determinations:

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

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

   b. Whether the proposed project will provide all necessary 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;

(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~~ 33-15-15-01.2 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 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. (1) 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.

(2) Any single internal combustion engine with a maximum rating of less than one thousand brake horsepower, or multiple engines with a combined brake horsepower rating of less than one thousand brake horsepower, and which operates a total of five hundred hours or less in a rolling twelve-month period.

(3) Any internal combustion engine, or multiple engines at the same facility, with a total combined actual emission rate of five tons [4.54 metric tons] per year or less of any air contaminant for which an ambient air quality standard has been promulgated in section 33-15-02-04.

(4) The exemptions listed in paragraphs 1, 2, and 3 do not apply to engines that are a utility unit as defined in section

33-15-21-08.1 or are subject to a standard under chapter 33-15-22.

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 if 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 if 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, if 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 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 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 be a major modification 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; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
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

CHAPTER 33-15-15

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (~~f~~ e), (h) through (r), ~~and~~ (v) ~~through~~, (w), (aa), and (bb) as they exist on ~~October 1, 2003~~ August 1, 2007, are incorporated by reference into this chapter. This includes revisions to the rules that were effective by this date but had not been published in the Code of Federal Regulations yet. Any changes or additions to the provisions are listed below the affected paragraph.

For purposes of this chapter, administrator means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties listed below, or any others that cannot be delegated, administrator means the administrator of the United States environmental protection agency:

(b)(17) - Definition of federally enforceable.

(b)(37)(i) - Definition of repowering.

(b)(42) - Definition of clean unit.

(b)(43) - Definition of prevention of significant deterioration.

(b)(48)(ii)(c) - Definition of baseline actual emissions.

(b)(50)(i) - Definition of regulated NSR pollutant.

(1)(2) - Air quality models.

(p)(2) - Consultation with the federal land manager.

(y)(4)(i) - First sentence only - Comparison to previous BACT and LAER determinations.

For purposes of this chapter, permit or approval to construct means a permit to construct. The procedures for obtaining a permit to construct are specified in section 33-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33-15-14-02, the requirements of this chapter shall apply.

For purposes of this chapter, the term "40 CFR 52.21" is replaced with "this chapter".

40 CFR 52.21(b)(2)(a)	The following is deleted: Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).
40 CFR 52.21(b)(3)(iii)(a)	The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
40 CFR 52.21(b)(14)	The following is added: (v) The department shall provide a list of baseline dates for each contaminant for each baseline area.
40 CFR 52.21(b)(15)	The following is added: (iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).
40 CFR 52.21(b)(22)	The following is added: Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.
40 CFR 52.21(b)(29)	The following is added: This term does not include effects on integral vistas.
40 CFR 52.21(b)(30)	The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".
40 CFR 52.21(b)(43)	The paragraph is deleted in its entirety and replaced with the following: Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR 52.21(b)(48)(ii)	The following words are deleted: "by the administrator for a permit required under this section or".
40 CFR 52.21(b)(51)	The paragraph is deleted in its entirety and replaced with the following: Reviewing authority means the department.
40 CFR 52.21(b)(53)	This paragraph is deleted in its entirety and replaced with the following: Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.
40 CFR 52.21(b)(54)	This paragraph is deleted in its entirety and replaced with the following: Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.
40 CFR 52.21(b)(58)	This paragraph is deleted in its entirety.
40 CFR 52.21(d)	The paragraph is deleted and replaced with the following: No concentration of a contaminant shall exceed the ambient air quality standards in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States.
40 CFR 52.21(e)	The following is added: (5) The class I areas in North Dakota are the Theodore Roosevelt National Park - north and south units and the Theodore Roosevelt Elkhorn Ranch Site in Billings County - and the Lostwood National Wilderness Area in Burke County.
40 CFR 52.21(h)	The paragraph is deleted and replaced with the following: The stack height of any source subject to this chapter must meet the requirements of chapter 33-15-18.
40 CFR 52.21(i)(5)(ii)	In this paragraph the reference to paragraph (i)(8)(i) is replaced with (i)(5)(i).
40 CFR 52.21(i)	The following subparagraphs are added:

(11) The class I area increment limitations of the Theodore Roosevelt Elkhorn Ranch Site of the Theodore Roosevelt National Park shall apply to sources or modifications for which complete applications were filed after July 1, 1982. The impact of emissions from sources or modifications for which permits under this chapter have been issued or complete applications have already been filed will be counted against the increments after July 1, 1982.

(12) Provided that all necessary requirements of this article have been met, permits will be issued on a first-come, first-served basis as determined by the completion date of the applications.

40 CFR 52.21(k)(1)

This subparagraph is deleted and replaced with the following:

(1) Any ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(l)(1)

This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on ~~January 30, 2004~~ July 1, 2007) as supplemented by the "North Dakota guideline for air quality modeling analyses". These documents are incorporated by reference. Technical inputs for these models shall be based upon credible technical data approved in advance by the department. In making such determinations, the department shall review such technical data to determine whether it is representative of actual source, meteorological, topographical, or local air quality circumstances.

40 CFR 52.21(m)(3)

"Appendix B to part 58 of this chapter" is replaced with 40 CFR 58, appendix B.

40 CFR 52.21(o)(1)

The following is added:

The visibility analysis shall be prepared in accordance with chapter 33-15-19.

40 CFR 52.21(p)(6)

"paragraph (q)(4)" is replaced with "paragraph (p)(4)" and "(q)(7)" is replaced with "(p)(7)".

40 CFR 52.21(p)(7)	"paragraph (q)(7)" is replaced with "paragraph (p)(7)".
40 CFR 52.21(p)(8)	"paragraphs (q)(5) or (6)" is replaced with "paragraphs (p)(5) or (6)".
40 CFR 52.21(p)	The following is added:

(9) Notice to the United States environmental protection agency. The department shall transmit to the administrator of the United States environmental protection agency through the region VIII regional administrator a copy of each permit application relating to a major stationary source or major modification received by the department and provide notice to the administrator of every action related to the consideration of such permit.

40 CFR 52.21(q) This paragraph is deleted and replaced with the following:

~~g.~~ q. Public participation.

(1) Within thirty days after receipt of an application to construct a source or modification subject to this chapter, or any addition to such application, the department shall advise the applicant as to the completeness of the application or of any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application, for the purpose of this chapter, shall be the date on which all required information to form a complete application is received by the department.

(2) ~~Within one year after receipt of~~ With respect to a completed application, the department shall:

(a) ~~Make~~ Within one year after receipt, make a preliminary determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(b) Make available, in at least one location in each region in which the proposed source or modification would be constructed, a copy of all materials submitted by the applicant, a copy of the department's preliminary determination, and a copy or summary of other materials, if any, considered by the department in making a preliminary determination.

(c) Notify the public, by prominent advertisement in newspapers of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment on the information submitted by the owner or operator and the department's preliminary determination on the approvability of the source. The department shall allow at least thirty days for public comment.

(d) Send a copy of the notice required in subparagraph c to the applicant, the United States environmental protection agency administrator, and to officials and agencies having cognizance over the location where the source or modification will be situated as follows: the chief executive of the city and county where the source or modification would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be significantly affected by emissions from the source or modification.

(e) Hold a public hearing whenever, on the basis of written requests, a significant degree of public interest exists or at its discretion when issues involved in the permit decision need to be clarified. A public hearing would be held during the public comment period for interested persons, including representatives of the United States environmental protection agency administrator, to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(f) Consider all public comments submitted in writing within a time specified in the public notice required in subparagraph c and all comments received at any public hearing conducted pursuant to subparagraph e in making its final decision on the approvability of the application. No later than ~~ten~~ thirty days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The department may extend the time to respond to comments based on a written request by the applicant. The department shall consider the applicant's response in making its final decision.

All comments must be made available for public inspection in the same locations where the department made available preconstruction information relating to the source or modification.

(g) Make a final determination whether the source should be approved, approved with conditions, or disapproved pursuant to the requirements of this chapter.

(h) Notify the applicant in writing of the department's final determination. The notification must be made available for public inspection in the same locations where the department made available preconstruction information and public comments relating to the source or modification.

40 CFR 52.21(r)(2) The following is added:

In cases of major construction projects involving long lead times and substantial financial commitments, the department may provide by a condition to the permit to construct a time period greater than eighteen months when such time extension is supported by sufficient documentation by the applicant.

40 CFR 52.21(r)(6) The word "reasonable" is deleted.

40 CFR 52.21(v)(1) This subparagraph is deleted and replaced with the following:

(1) An owner or operator of any proposed major stationary source or major modification may request the department to approve a system of innovative control technology.

40 CFR 52.21(v)(2)(iv)(a) This subitem is deleted and replaced with the following:

(a) Cause or contribute to a violation of an applicable ambient air quality standard in chapter 33-15-02 for those areas subject to regulation under this article and the national ambient air quality standards in all other areas of the United States; or

40 CFR 52.21(w)(1) This subparagraph is deleted and replaced with the following:

(1) Any permit issued under this chapter or a prior version of this chapter shall remain in effect, unless and until it expires under 40 CFR 52.21(r) or is rescinded.

~~40 CFR 52.21(y)(3)(ii)~~ ~~The item is deleted in its entirety and replaced with the following:~~

	~~Impact of emissions from the unit. The department must determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard in chapter 33-15-02 in areas subject to regulation under this article or the national ambient air quality standards in all other areas of the United States, will not cause or contribute to any violation of a PSD increment, or adversely impact an air quality related value (such as visibility) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~
~~40 CFR 52.21(y)(7)~~	~~This paragraph is deleted in its entirety and replaced with the following:~~ ~~Procedures for designating emission units as clean units. The department shall designate an emissions unit a clean unit only by issuing a permit under section 33-15-14-02. The public shall be provided notice of the permit and provided the opportunity for comment. The procedures for public notice and public comment shall be those in paragraph (g)(2) of this section.~~
~~40 CFR 52.21(z)(5)~~	~~This paragraph is deleted in its entirety and replaced with the following:~~ ~~Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs (b)(32)(i) through (vi) of this section, the project must be approved by the department and recorded in a permit to construct under section 33-15-14-02. The department shall provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality effects analysis. The department shall provide at least a thirty-day period for the public and the administrator of the environmental protection agency to submit comments. Public comment procedures must comply with the requirements of paragraph (g)(2) of this section. The department shall address all comments received by the end of the comment period before issuing the permit to construct.~~
40 CFR 52.21(aa)(15)	This paragraph is deleted in its entirety and replaced with the following:

(i) The department shall not issue a PAL that does not comply with the requirements in paragraphs (aa)(1) through (15) of this section after the administrator of the environmental protection agency has approved regulations incorporating these requirements into the state implementation plan.

(ii) The department may supersede any PAL which was established prior to the date of approval of the state implementation plan by the administrator of the United States environmental protection agency with a PAL that complies with the requirements of paragraphs (aa)(1) through (15) of this section.

History: Effective February 1, 2005; amended effective April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

33-15-21-08.1. Permits. The provisions of title 40, Code of Federal Regulations, part 72 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, for purposes of implementing an acid rain program that meets the requirements of title IV of the federal Clean Air Act, are incorporated into this chapter by reference. The term "administrator" means the department except for those duties that cannot be delegated to the department. For those duties that cannot be delegated, "administrator" means the administrator of the United States environmental protection agency. If the provisions or requirements of title 40, Code of Federal Regulations, part 72, conflict with or are not included in section 33-15-14-06, the provisions of part 72 shall apply and take precedence.

History: Effective June 1, 2001; amended effective March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03, 23-01-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-09. Continuous emissions monitoring.

1. **General.** The monitoring, recordkeeping, and reporting of sulfur dioxide, nitrogen oxides, and carbon dioxide emissions, volumetric flow, and opacity data from affected units under the acid rain program shall be conducted in accordance with title 40, Code of Federal Regulations, part 75. Title 40, Code of Federal Regulations, part 75 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, are incorporated by reference.

2. **Exceptions.** Those portions of title 40, Code of Federal Regulations, part 75, that are controlled and administered completely by the United States environmental protection agency will not be enforced by the state. This should not be construed as precluding the United States environmental protection agency from exercising its statutory authority under the Clean Air Act, as amended, or an affected source from complying with the authority or the requirements of the federal acid rain program.

History: Effective December 1, 1994; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1

33-15-21-10. Acid rain nitrogen oxides emission reduction program. Title 40, Code of Federal Regulations, part 76 and its appendices, as they exist on ~~January 31, 2006~~ March 1, 2008, are incorporated into this chapter by reference.

History: Effective April 1, 1998; amended effective June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-01-04.1, 23-25-03

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 ~~January 31, 2006~~ March 1, 2008, which are listed in section 33-15-22-03 are incorporated into this chapter by reference. Any changes to 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; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-22-03. 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, and source category list.

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

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

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

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

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

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

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

Subpart T - National emissions standards for halogenated solvent cleaning.

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

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

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

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

Subpart HH - National emissions standards for hazardous air pollutants from oil and natural gas production facilities.

* Only the requirements that are applicable to major sources of hazardous air pollutants are adopted.

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

Subpart KK - National 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 SS - National emissions standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process.

Subpart TT - National emissions standards for equipment leaks - Control level 1.

Subpart UU - National emissions standards for equipment leaks - Control level 2 standards.

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

Subpart WW - National emissions standards for storage vessels (tanks) - Control level 2.

Subpart YY - National emissions standards for hazardous air pollutants for source categories: generic maximum achievable control technology standards.

Subpart HHH - National emissions standards for hazardous air pollutants from natural gas transmission and storage facilities.

Subpart RRR - National emission standards for hazardous air pollutants for secondary aluminum production.

Table 1 to Subpart RRR - Emission standards for new and existing affected sources.

Table 2 to Subpart RRR - Summary of operating requirements for new and existing affected sources and emission units.

Table 3 to Subpart RRR - Summary of monitoring requirements for new and existing affected sources and emission units.

Appendix A to Subpart RRR - General provisions applicability to subpart RRR.

Subpart UUU - National emission standards for hazardous air pollutants for petroleum refineries: catalytic cracking units, catalytic reforming units, and sulfur recovery units.

Subpart AAAA - National emission standards for hazardous air pollutants: municipal solid waste landfills.

Subpart CCCC - National emission standards for hazardous air pollutants: manufacturing of nutritional yeast.

Subpart FFFF - National emission standards for hazardous air pollutants: miscellaneous organic chemical manufacturing.

Subpart GGGG - National emission standards for hazardous air pollutants: solvent extraction for vegetable oil production.

Subpart MMMM - National emission standards for hazardous air pollutants for surface coating of miscellaneous metal parts and products.

Subpart VVVV - National emission standards for hazardous air pollutants for boat manufacturing.

Subpart WWWW - National emissions standards for hazardous air pollutants: reinforced plastics composites production.

~~Subpart DDDDD - National emission standards for hazardous air pollutants for industrial, commercial, and institutional boilers and process heaters.~~

Subpart GGGGG - National emission standards for hazardous air pollutants: site remediation.

~~Subpart JJJJJ - National emission standards for hazardous air pollutants for brick and structural clay products manufacturing.~~

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; June 1, 2001; March 1, 2003; February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23

33-15-23-03. Minor source permit to operate fees.

1. The owner or operator of each installation subject to a permit issued under section 33-15-14-03 shall pay an annual permit fee based on the following table:

Classification	Annual Fee ($)
Designated	300
Monitor (CEMS or Ambient Site)	600/CEMS or Site
Other	100
State and local government	0
Exempt	0

The following criteria are used to classify sources for determining minor source annual fees:

Designated:	A source that is designated for scheduled inspections ~~and whose actual emissions of any air contaminant are less than one hundred tons per year and whose total annual emissions of all air contaminants would exceed one hundred tons [90.68 metric tons] per year if control equipment was not operated~~.
Monitor:	A charge in addition to the annual fee for any source operating a continuous emission monitor system (CEMS) or an ambient monitoring site.
Other:	As designated by the department.
State and local government:	Any ~~state-owned~~ installation owned by the state of North Dakota or a local government.
Exempt:	As designated by the department.

2. The following activities conducted by the department are not included in the annual costs and will be charged to affected sources based on the actual costs incurred by the department:

   a. Observation of source or performance specification testing, or both.

   b. Audits of source operated ambient air monitoring networks.

   An accounting of the actual costs incurred under this subsection must accompany the notice of the annual permit fee.

3. Annual emissions are derived using representative source test data, "compilation of air pollution emission factors (AP-42)" or other reliable data.

4. The classification of "other" and "exempt" shall be designated by the department on a case-by-case basis.

5. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following ~~receipt~~ the date of such notice.

History: Effective August 1, 1995; amended effective April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

33-15-23-04. Major source permit to operate fees.

1. The owner or operator of each installation that meets the applicability requirements of subsection 2 of section 33-15-14-06 shall pay an annual fee. The fee is determined by the actual annual emissions of regulated contaminants. Fugitive emissions will be included in the fee calculation for sources that are required to count them when determining applicability under section 33-15-14-06.

2. Effective January 1, 2005, the annual fee shall be assessed at a rate of twenty-five dollars per ton of emissions of each regulated contaminant identified in section 112(b) of the Federal Clean Air Act. All other regulated contaminants will be assessed a fee at a rate of twelve dollars per ton. The minimum fee will be five hundred dollars per source.

3. In determining the amount due, that portion of any regulated contaminant which is emitted in excess of four thousand tons [3628.74 metric tons] per year will be exempt from the fee calculation.

4. Each boiler with a heat input greater than two hundred fifty million British thermal units per hour will be assessed fees on an individual basis and independent of the fees associated with the rest of the installation. The four thousand ton [3628.74 metric ton] per year cap referenced in subsection 3 is applied to each boiler.

5. Any state-owned or local government-owned facility is exempt from the fee.

6. The fee calculation must be based upon actual annual emissions from the previous calendar year.

7. The fee must be calculated independently for each installation, facility, source, or unit which has been issued a separate permit to operate.

8. The fee rates and the limits established under subsection 2 may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year.

9. Any source issued a general permit under section 33-15-14-06 is subject to the minor source permit to operate fees under section 33-15-23-03.

10. Any source that qualifies as a "small business" under section 507 of the Federal Clean Air Act may petition the department to reduce or exempt any fee required under this section. Sufficient documentation of the petitioner's financial status must be submitted with the request to allow the department to evaluate the request.

11. The department shall send a notice, identifying the amount of the annual permit fee, to the owner or operator of each affected source. The fee is due within sixty days following ~~receipt~~ the date of such notice.

History: Effective August 1, 1995; amended effective February 1, 2005; January 1, 2007; April 1, 2009.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-04.2

TITLE 87

BOARD OF VETERINARY MEDICAL EXAMINERS

APRIL 2009

CHAPTER 87-01.1-01

87-01.1-01-01. Examination - Waiver.

1. To qualify for a North Dakota license, each applicant must take and pass a North Dakota examination, the national board examination, and the clinical competency test or the North American veterinary licensing examination. The North Dakota examination is a combination written jurisprudence examination and oral interview.

2. The board adopts the passing score on the examination recommended by the national board of veterinary medical examiners. Applicants must request that their examination scores be sent to the board.

3. The national board examination and clinical competency test or the North American veterinary licensing examination is required of all applicants for licensure in North Dakota who have been in practice less than five years. For an applicant who has been in practice more than five years, the applicant may petition the board to waive this requirement if the applicant meets the requirements of North Dakota Century Code section 43-29-07.2.

4. The North Dakota examination may not be waived.

5. A senior veterinary student may take the North Dakota test if the student has taken and passed the national board examination and the clinical competency test or the North American veterinary licensing examination and submits a letter from the dean of a veterinary college indicating the student's anticipated graduation date.

6. Candidates may take the North American veterinary licensing examination for the first time during the testing window eight months prior to their expected graduation.

7. Beginning with the fall 2007 administration of the North American veterinary licensing examination, a candidate may not take the

examination more than five times, and may not take the examination at a date that is later than five years after a candidate's initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

History: Effective January 1, 1999; amended effective November 1, 2000; June 1, 2002; August 1, 2004; April 1, 2009.
General Authority: NDCC 43-29-03, 43-29-07.2
Law Implemented: NDCC 43-29-07.2

CHAPTER 87-02-01

87-02-01-01. License renewal ~~notice~~. ~~Prior to June first of each year, the executive secretary shall mail to each registered veterinarian the following notice:~~

~~Annual renewal of your license to practice veterinary medicine in North Dakota becomes due July 1, ____. The fee is forty-five dollars. You are reminded that if you do not renew your license and practice veterinary medicine after the expiration of your license, you are in violation of North Dakota Century Code chapter 43-29. If your license lapses for two years, it may not be renewed but you may make application for a new license.~~

1. Annual license renewal forms will be mailed to all licensed veterinarians on or before June first and completed license renewal forms must be received by June thirtieth.

2. The annual license renewal fee for veterinarians is sixty dollars.

3. Renewals not received by the due date will be assessed a late fee of fifty percent of the license fee.

History: Amended effective January 1, 1999; December 1, 2004; April 1, 2009.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-07.3

87-02-01-03. Educational program requirement waiver. The board shall have the authority to waive the continuing education requirement for an individual, for any of the following reasons:

1. Impaired health.

2. For persons who have reached the age of sixty-five and are no longer actively engaged in practice and have so indicated on their license renewal form. The license of such a person will be placed on inactive status and the veterinarian may not practice veterinary medicine in North Dakota until all required continuing education is obtained.

3. For other good and sufficient reasons as presented and verified to the board at one of its regular meetings.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

87-02-01-04. Educational program requirements. Veterinary continuing education may consist of the following:

1. Eight hours of in-house training including veterinary medical tapes, films, computer-based programs, and self-assessment tests relevant to the practice of veterinary medicine.

2. Programs sponsored by local, state, regional, or national veterinary associations and other continuing educational programs or training approved by the North Dakota veterinary medical examining board. The board accepts programs approved by the registry of approved continuing education of the American association of veterinary state boards.

3. Wet labs or instructions, or both, taken at a college or university, the subject material of which must pertain to veterinary medicine.

4. Up to eight hours of veterinary continuing education may relate to practice management. Programs designed to enhance the veterinarian's ability to earn money, invest money, or relating to personal financial planning are not acceptable for meeting the continuing education requirement.

5. Programs presented by pharmaceutical companies and other commercial groups may be approved, as long as they consist of objective presentations of scientific information and are not designed principally to sell products to the veterinarian or the animal owner.

6. Eight hours of participation in a clinical setting at another veterinary practice and completion of the written report required by the board's veterinary exchange program.

Proof of attendance and verification will be necessary on request. Verification may include a printed program, certificate, brochure, handout, or syllabus that lists the topics presented, the persons doing the instruction and their qualifications, and the time for each presentation.

History: Amended effective November 1, 1991; January 1, 1999; April 1, 2009.
General Authority: NDCC 43-29-03, 43-29-07.3
Law Implemented: NDCC 43-29-07.3

CHAPTER 87-03-01

87-03-01-02. Requirements for ~~certification~~ licensure as a veterinary technician. ~~Certification~~ Licensure as a veterinary technician requires a recommendation from a licensed veterinarian and a passing score on the veterinary technician national examination.

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; April 1, 2009.
General Authority: NDCC 43-29-09
Law Implemented: NDCC 43-29-07.1

87-03-01-03. Prerequisites for taking the ~~certification~~ national examination. The minimum prerequisite for taking the veterinary technician national examination ~~for certification as a veterinary technician~~ is graduation from ~~a two-year veterinary technician training~~ an accredited program in veterinary technology. Candidates who are students in good standing at an accredited program in veterinary technology may be approved by the board to take the national examination for the first time no earlier than six months prior to their expected graduation date.

History: Effective October 1, 1981; amended effective April 1, 1986; November 1, 1991; April 1, 2009.
General Authority: NDCC 43-29-09
Law Implemented: NDCC 43-29-07.1

87-03-01-04. Application for ~~certification~~ licensure - Fees - ~~Certificate~~ License renewal. Any person desiring ~~certification~~ licensure as a veterinary technician shall make written application for ~~certification~~ licensure to the executive secretary on forms provided for that purpose and shall pay in advance to the North Dakota board of veterinary medical examiners a fee of twenty-five dollars plus, if applicable, the cost of the veterinary technician national examination. Fees are not returned, except by action of the board. If the ~~certificate~~ license is granted, the technician shall pay a ~~ten~~ fifteen dollar annual renewal registration fee ~~before~~ by December thirty-first. The renewal registration fee shall be paid by all ~~certified~~ licensed technicians. The ~~certificate~~ license will expire if the renewal registration fee is not paid ~~before~~ by December thirty-first. Renewals not received by the due date will be assessed a late fee of fifty percent of the registration fee. A ~~certificate~~ license may be renewed for two years after it expires by payment of ~~the~~ all past-due renewal registration ~~fee and a delinquency fee~~ fees and late fees. After two years after expiration, a new application for ~~certification~~ licensure must be made.

History: Effective October 1, 1981; amended effective November 1, 1991; January 1, 1999; August 1, 2004; April 1, 2009.
General Authority: NDCC 43-29-03, 43-29-09
Law Implemented: NDCC 43-29-07.1, 43-29-08.1

CHAPTER 87-04-01

87-04-01-02. Prescription drugs - Records - Labeling - Dispensing.

1. Adequate treatment records must be maintained by the veterinarian for at least ~~two~~ three years, for all animals treated, to show that the drugs were supplied to clients with whom a valid veterinarian-client-patient relationship has existed. Such records must include the information set forth in section 87-04-01-03.

2. All veterinary prescription drugs must be properly labeled when dispensed. A complete label must include the information set forth in section 87-04-01-03. If that information is included in a manufacturer's drug label, it is unnecessary to repeat it in the veterinarian's label. If there is inadequate space on the label for complete instructions, the veterinarian must provide additional information to accompany the drug dispensed or prescribed. The veterinarian's additional instructions must be kept in the owner's drug storage area.

3. When veterinary prescription drugs are dispensed to companion animal owners, such drugs must be placed in child-resistant containers.

History: Effective January 1, 1999; amended effective April 1, 2009.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03

TITLE 89

STATE WATER COMMISSION

APRIL 2009

CHAPTER 89-10-01

89-10-01-01. Authority. These rules are adopted and promulgated by the state engineer pursuant to North Dakota Century Code chapter 61-33 to provide consistency in the administration and management of ~~the islands and beds of navigable waters~~ sovereign lands. These rules do not apply to the interests of the state of North Dakota in oil, gas, and related hydrocarbons.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-02. Prohibition on permanent relinquishment. Sovereign lands may not be permanently relinquished but must be held in perpetual trust for the benefit of the citizens of the state of North Dakota. All structures permitted or otherwise allowed for private use on sovereign lands are subordinate to public use and values.

History: Effective November 1, 1989; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-03. Definitions. The following definitions apply to this article:

1. "Authorization" means a permit, easement, lease, or management agreement approved and granted by the state engineer after application; and the authority granted in sections 89-10-01-10 and 89-10-01-19.

2. "Boardwalk" means a walk constructed of planking.

3. "Grantee" means the person, including that person's assigns, successors, and agents who are authorized pursuant to an authorization.

~~3.~~ 4. "Navigable waters" means any waters which were in fact navigable at time of statehood, that is, were used or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water, including the Missouri River, the Yellowstone River, the Red River of the North from Wahpeton to the Canadian border, the Bois De Sioux River from Wahpeton to the South Dakota border, the James River, the Upper Des Lacs Lake, Devils Lake, Painted Woods Lake, and Sweetwater Lake.

~~4.~~ 5. "Ordinary high watermark" means that line below which the action of the water is frequent enough either to prevent the growth of vegetation or to restrict its growth to predominantly wetland species. Islands in navigable waters are considered to be below the ordinary high watermark in their entirety.

~~5.~~ 6. "Project" means any activity which occurs either partially or wholly ~~below the ordinary high watermark of navigable waters~~ on sovereign lands.

~~6.~~ 7. "Riparian owner" means a person who owns land adjacent to navigable waters or the person's authorized agent.

~~7.~~ 8. "State engineer" means the state officer provided for in North Dakota Century Code section 61-03-01 or any of the state engineer's employees or authorized agents.

9. "Structure" means something that is formed from parts, and includes boat docks, boat ramps, and water intakes.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-04. Authorization. Each project requires an authorization from the state engineer prior to construction or operation, except as ~~specified in sections 89-10-01-10 and 89-10-01-19~~ otherwise provided by these rules.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10. Projects not requiring a permit. The following projects do not require a permit:

1. Boat docks if all of the following conditions are satisfied:

a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;

b. The dock is used only for embarkation, debarkation, moorage of boats, or recreation;

c. Only clean, nonpolluting materials are used;

d. The dock does not extend more than twenty-five feet [7.6 meters] in length ~~within the ordinary high watermarks~~ from the edge of the water on a river and fifty feet [15.24 meters] in length ~~within the ordinary high watermarks~~ from the edge of the water on a lake, and there is no unreasonable interference with navigation or access to adjacent riparian owner's property;

e. The dock is connected to ~~shore~~ a point above the ordinary high watermark by a ~~walkway~~ boardwalk that does not exceed twenty-five feet [7.6 meters] in length, and is removed from below the ordinary high watermark each fall;

f. There is no excavation or filling below the ordinary high watermark in excess of that authorized in subsection 4; and

g. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

2. Boat ramps if all of the following conditions are satisfied:

a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for the riparian owner's or lessee's personal use;

b. Excavation of the bank is limited to the minimum width necessary for the placement of a single lane boat ramp adjacent to privately owned property or a double lane boat ramp adjacent to publicly owned property;

c. Material excavated from the bank is removed to a location above the ordinary high watermark;

d. Only such clean, nonpolluting fill and riprap material free of waste metal, organic materials, and unsightly debris are placed below the ordinary high watermark as necessary to construct and stabilize the boat ramp; and

e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

3. Water intakes if all of the following conditions are satisfied:

   a. They are constructed, operated, and maintained by the riparian owner or the riparian owner's lessee for riparian owner's or lessee's personal use;

   b. Excavation of the bank is limited to the minimum width necessary to install and maintain the water intake;

   c. Materials excavated from the bank are removed to a location above the ordinary high watermark;

   d. The intake is entirely removed each fall; and

   e. Upon abandonment, the grantee restores the bank as closely as practicable to its original condition.

4. Dredging or filling if all of the following conditions are satisfied:

   a. The work is completed and maintained by the riparian owner or the riparian owner's lessee;

   b. The amount of dredge or fill material does not exceed ten cubic yards as part of a single and complete project;

   c. No stream diversion results;

   d. No extension of a claim of ownership to ~~an island or any portion of the bed of a navigable stream or water~~ sovereign lands results; and

   e. Only clean, nonpolluting material free of waste metal, organic materials, and unsightly debris is used.

5. Boats that are temporarily moored.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-10.1. Boat docks, boat ramps, and water intakes. Boat docks, boat ramps, and water intakes not meeting the criteria in section 89-10-01-10 require a permit from the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-11. Structures ~~below ordinary high watermark.~~ Except as otherwise provided in this chapter, the construction or moorage of ~~any residential~~ a structure ~~or structure designed for human occupancy will not be permitted below the ordinary high watermark.~~ is prohibited on sovereign lands. If a structure is constructed on or moored to sovereign lands, the state engineer shall:

1. Issue an order identifying the action required to modify, remove, or otherwise eliminate the structure and a date by which the ordered action must be taken. Unless an emergency exists, the date by which the ordered action must be taken shall be at least twenty days after the order is issued.

2. If the ordered action is not taken by the date specified in the order, the state engineer may modify, remove, or otherwise eliminate the structure.

3. The state engineer may commence a civil proceeding to enforce an order of the state engineer, or, if the state engineer modifies, removes, or eliminates the structure, the state engineer may assess the fees and costs of such action against any property of the person responsible for the structure; or may commence a civil proceeding to recover the costs incurred in such action. If the state engineer chooses to recover costs by assessing the cost against property of the person responsible for the structure and the property is insufficient to pay for the costs incurred, the state engineer may commence a civil proceeding to recover any costs not recovered through the assessment process. Any assessment levied under this section must be collected in the same manner as other real estate taxes are collected and paid.

4. Within ten days of the date the order is issued, a person who receives an order from the state engineer under this section may send a written request to the state engineer for a hearing. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and points of law to be presented are well-founded and not frivolous and the request for a hearing was not made merely to interpose delay, the state engineer shall set a hearing date without undue delay.

5. Any person aggrieved by the action of the state engineer may appeal the decision to the district court of the county in which the sovereign lands at issue are located in accordance with North Dakota Century Code chapter 28-32. A request for a hearing as provided in subsection 4 is a prerequisite to any appeal to the district court.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33, 61-03-21.3, 61-03-22

89-10-01-12. Public recreational use. The ~~public's right to~~ public may use ~~the islands and all land and water below the ordinary high watermark of navigable waters~~ sovereign lands for ~~nondestructive,~~ recreational purposes ~~is allowed~~ except as otherwise provided by these rules or by signage posted by the state engineer.

History: Effective November 1, 1989; amended effective April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-13. Vehicular access. The use of motorized vehicles on ~~land below the ordinary high watermark of navigable water bodies~~ sovereign lands is prohibited, except:

1. When on government-established trails that have been permitted by the state engineer;

2. When on sovereign ~~land areas~~ lands immediately adjacent to the Kimball Bottoms off-road riding area located in the south half of sections 23 and 24 and the north half of sections 25 and 26, all in township 137 north, range 80 west, Burleigh County;

3. When on state-designated off-road use areas, provided the area is managed and supervised by a government entity, the government entity has developed a management plan for the off-road area that must be submitted to the state engineer, and the managing government entity has obtained a sovereign ~~land~~ lands permit for off-road use in the designated area;

4. To cross a stream by use of a ford, bridge, culvert, or similar structure provided the crossing is in the most direct manner possible;

5. To launch or load a boat, canoe, or other watercraft in the most direct manner possible;

6. To access and operate on the frozen surfaces of any navigable water, provided the crossing of sovereign ~~land~~ lands is in the most direct manner possible;

7. To access private land that has no other reasonable access point, provided that access across sovereign ~~land~~ lands is in the most direct manner possible;

8. By disabled persons who possess a totally or permanently disabled person's fishing license or shoot from vehicle permit;

9. When operation is necessary as part of a permitted activity or project;

10. By the riparian owner or the riparian owner's lessee on ~~land below the ordinary high watermark~~ sovereign lands that ~~is~~ are adjacent to the riparian owner's property, provided it does not negatively affect public use or ~~value~~ values; and

11. When being used by government personnel in the performance of their duties.

This section does not authorize use of property above the ordinary high watermark. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-14. Cancellation by the state engineer. The state engineer may cancel any authorization granted pursuant to these rules~~, including projects authorized by sections 89-10-01-10 and 89-10-01-19~~. Cancellation does not release the grantee from any liability.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2008; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-17. Inspections. The state engineer may inspect all projects ~~which lie below the ordinary high watermark~~ on sovereign lands and enter upon a grantee's land during normal working hours to carry out the inspection.

History: Effective November 1, 1989; amended effective August 1, 1994; April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-21. Organized group activities. Organized group activities that are publicly advertised or are attended by more than twenty-five persons are prohibited on sovereign lands without a permit issued by the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-22. Pets. Pets ~~may~~ are not ~~be permitted~~ allowed to run unattended on sovereign ~~land in and around the Missouri River between the railroad bridge near the south border of Fort Lincoln state park (approximately river~~

~~mile marker 1,310) and the interstate 94 bridge (approximately river mile marker 1,315.4). Pets in this corridor of the Missouri River must be in the immediate control of their owner. A pet's solid waste must be disposed of properly~~ lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-23. Camping. Camping for longer than ten consecutive days within a thirty-day period in the same vicinity or leaving a campsite unattended for more than twenty-four hours is prohibited on ~~any state~~ sovereign ~~land area~~ lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-24. Hunting, fishing, and trapping. All sovereign ~~land areas~~ lands are open for public hunting, fishing, and trapping, except as provided in other rules and regulations or laws, or as posted at public entry points. Posting sovereign ~~land~~ lands with signage by anyone other than the state engineer is prohibited without a sovereign ~~land~~ lands permit. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-25. Unattended watercraft. Watercraft may not be left unattended on or moored to sovereign ~~land~~ lands for more than twenty-four hours except:

1. When moored to privately owned docks;

2. When moored to private property above the ordinary high watermark with a rope, chain, or other type of restraint that does not cause unreasonable interference with navigation or the public's use of land below the ordinary high watermark; or

3. By riparian owners on land below the ordinary high watermark.

Any person who violates this section is guilty of a noncriminal offense and shall pay a fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-26. Removal of public property. Trees, shrubs, vines, plants, soil, gravel, fill, rocks, fossils, sod, water, firewood, posts, poles, or other public property may not be removed from sovereign ~~land~~ lands without a permit issued by the state engineer, except that firewood may be removed under certain stated conditions from designated firewood cutting plots, and the riparian owner or the riparian owner's lessee may hay or graze ~~land below the ordinary high watermark~~ sovereign lands adjacent to the riparian owner's property, unless prohibited in writing by the state engineer. Commercial cutting of firewood is prohibited on ~~all~~ sovereign ~~land~~ lands. Gathering of downed wood for campfires is ~~permitted~~ allowed. Removal of property from sovereign ~~land~~ lands by permit shall only be in a manner, limit, and condition specified by the permit. Berries and fruit may be picked for noncommercial use, unless prohibited by posted notice. Property may not be destroyed or defaced. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-27. Cultural or historical resources. Artifacts, or any other cultural or historical resources, occurring on sovereign ~~land~~ lands may not be disturbed or destroyed without formal written approval from the state historical society and a permit from the state engineer.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-28. Disposal of waste. The disposal of refuse, rubbish, bottles, cans, or other waste materials is prohibited on sovereign lands except in garbage containers where provided. ~~Abandonment of vehicles or other personal property is prohibited.~~ Holding tanks of campers or boats may not be dumped on sovereign ~~land. Glass containers are prohibited on sovereign land.~~ lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a two hundred fifty dollar fee.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-29. Glass containers. Glass containers are prohibited on sovereign lands. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-30. Abandoned property. Abandonment of vehicles or other personal property is prohibited on sovereign lands.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-31. Firearms. Use of firearms on sovereign lands is allowed except in a reckless and indiscriminate manner and as otherwise posted at public entry points. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-32. Tree stands. Construction of a permanent tree stand or permanent steps to a tree stand is prohibited on sovereign lands. Portable tree stands and portable steps, screw-in steps, and natural tree stands may be used. Portable tree stands and portable steps are defined as those that are held to the tree with ropes, straps, cables, chains, or bars. Screw-in steps are those that are screwed into the tree by hand without the aid of tools. Ladder-type stands that lean against the tree are portable stands. Natural stands are those crotches, trunks, down trees, etc., where no platform is used. Tree stands do not preempt hunting rights of others in the vicinity of the tree stand. Tree stands and steps may not be put up before August twentieth of the year and shall be removed within three days of the close of the archery deer season. Stands and steps not removed within three days of the close of the archery deer season are considered abandoned property and are subject to removal and confiscation by the state engineer. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective April 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

89-10-01-33. Baiting. Except as otherwise provided in this chapter, placing or using bait to attract, lure, feed, or habituate wildlife to a bait location for any purpose is prohibited on sovereign lands. Bait includes grains, minerals, salt, fruits, vegetables, hay, or any other natural or manufactured feeds. Bait does not include the use of lures, scents, or liquid attractants for hunting or management activities

conducted by the state engineer. Bait may be used to lure and take furbearers when engaged in trapping in lawful trapping activities. Any person who violates this section is guilty of a noncriminal offense and shall pay a one hundred dollar fee.

History: Effective Apirl 1, 2009.
General Authority: NDCC 28-32-02, 61-03-13
Law Implemented: NDCC 61-33

TITLE 92

WORKFORCE SAFETY AND INSURANCE

APRIL 2009

CHAPTER 92-01-02

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

1. The organization shall pay attorneys at one hundred ~~twenty-five~~ thirty dollars per hour for all actual and reasonable time other than travel time. The organization shall pay attorney travel time at ~~sixty~~ sixty-five dollars per hour.

2. The organization may pay legal assistants and third-year law students or law school graduates who are not licensed attorneys who are practicing under the North Dakota senior practice rule acting under the supervision of employees' attorneys up to seventy dollars per hour for all actual and reasonable time other than travel time. The organization shall pay travel time at thirty-five dollars per hour. A "legal assistant" means any person with a bachelor's degree, associate's degree, or correspondence degree in a legal assistant or paralegal program from an accredited college or university or other accredited agency, or a legal assistant certified by the national association of legal assistants or the national federation of paralegal associations. The term may also include a person employed as a paralegal or legal assistant who has a bachelor's degree in any field and experience working as a paralegal or legal assistant.

3. Total fees paid by the organization for all legal services in connection with a dispute regarding an administrative order may not exceed the following:

   a. Except for an initial determination of compensability, twenty percent of the additional amount awarded.

b. Two thousand five hundred dollars, plus reasonable costs incurred, following issuance of an administrative order under North Dakota Century Code chapter 28-32 reducing or denying benefits, for services provided if a hearing request is resolved by settlement or amendment of the administrative order before the administrative hearing is held.

c. Five thousand one hundred dollars, plus reasonable costs incurred, if the employee prevails after an evidentiary hearing is held. If the employee prevails after an evidentiary hearing and the organization wholly rejects the recommended decision, and the employee appeals from the organization's final order, the organization shall pay attorney's fees at a rate of one hundred twenty-five percent of the maximum fees specified in subdivisions d and e when the employee prevails on appeal, as defined by North Dakota Century Code section 65-02-08, to the district court or to the supreme court. However, the organization may not pay attorney's fees if the employee prevails at the district court but the organization prevails at the supreme court in the same appeal.

d. Five thousand seven hundred dollars, plus reasonable costs incurred, if the employee's district court appeal is settled prior to submission of briefs. Seven thousand six hundred dollars, plus reasonable costs incurred, if the employee prevails after hearing by the district court.

e. Nine thousand three hundred dollars, plus reasonable costs incurred, if the employee's North Dakota supreme court appeal is settled prior to hearing. Ten thousand dollars, plus reasonable costs incurred, if the employee prevails after hearing by the supreme court.

f. One thousand four hundred dollars, plus reasonable costs incurred, if the employee requests binding dispute resolution and prevails.

g. Five hundred dollars for review of a proposed settlement, if the employee to whom the settlement is offered was not represented by counsel at the time of the offer of settlement.

h. Should a settlement or order amendment offered during the OIR process be accepted after the OIR certificate of completion has been issued, no attorney's fees are payable. This contemplates not only identical offers and order amendments but those which are substantially similar.

4. The maximum fees specified in subdivisions b, c, d, and e of subsection 3 include all fees paid by the organization to one or more attorneys, legal assistants, law students, and law graduates representing the employee in connection with the same dispute

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

5. All time must be recorded in increments of no more than six minutes (one-tenth of an hour).

6. If the organization is obligated to pay the employee's attorney's fees, the attorney shall submit to the organization a final statement upon resolution of the matter. All statements must show the name of the employee, claim number, date of the statement, the issue, date of each service or charge, itemization and a reasonable description of the legal work performed for each service or charge, time and amount billed for each item, and total time and amounts billed. The employee's attorney must sign the fee statement. The organization may deny fees and costs that are determined to be excessive or frivolous.

7. The following costs will be reimbursed:

   a. Actual postage, if postage exceeds three dollars per parcel.

   b. Actual toll charges for long-distance telephone calls.

   c. Copying charges, at eight cents per page.

   d. Mileage and other expenses for reasonable and necessary travel. Mileage and other travel expenses, including per diem, must be paid in the amounts that are paid state officials as provided by North Dakota Century Code sections 44-08-04 and 54-06-09. Out-of-state travel expenses may be reimbursed only if approval for such travel is given, in advance, by the organization.

   e. Other reasonable and necessary costs, not to exceed one hundred fifty dollars. Other costs in excess of one hundred fifty dollars may be reimbursed only upon agreement, in advance, by the organization. Costs for typing and clerical or office services will not be reimbursed.

8. The following costs will not be reimbursed:

   a. Facsimile charges.

   b. Express mail.

   c. Additional copies of transcripts.

d. Costs incurred to obtain medical records.

e. On-line computer-assisted legal research.

f. Copy charges for documents provided by the organization.

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

History: Effective June 1, 1990; amended effective November 1, 1991; January 1, 1994; January 1, 1996; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-15
Law Implemented: NDCC 65-02-08, 65-02-15, 65-10-03

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

1. The organization shall bill each employer annually for premiums as provided by North Dakota Century Code chapter 65-04. If an employer has an open account with the organization, the organization may send to the employer annually a form on which the employer shall report payroll expenditures from the preceding payroll year. An electronic report of payroll information in a format approved by the organization is acceptable. The employer shall complete the report and send it to the organization either by regular mail or electronic transmission. The report must be received by the organization by the last day of the month following the expiration date of the employer's payroll period. The organization shall consider an unsigned or incomplete submission to be a failure or refusal to furnish the report.

2. The organization shall send the first billing statement ~~approximately fifteen days after the report is received by the organization,~~ to the employer by regular mail to the employer's last-known address or by electronic transmission. The first billing statement must identify the amount due from the employer and the payment due date. The statement must explain the installment payment option.

~~2.~~ The payment due date for an employer's account is thirty days from the date of billing indicated on the premium billing statement.

3. If the organization does not receive full payment or the minimum installment payment indicated on the premium billing statement, on or before the payment due date, the organization shall send a second billing statement.

4. If the minimum installment payment remains unpaid thirty days after the organization sends the second billing statement to the employer, the

organization shall notify the employer by regular mail to the employer's last-known address or by electronic transmission that:

a. The employer is in default and may be assessed a penalty of two hundred fifty dollars plus two percent of the amount of premium, penalties, and interest in default;

b. The employer's account has been referred to the collections unit of the policyholder services department; and

c. Workforce safety and insurance may cancel the employer's account.

5. The organization may extend coverage by written binder if the organization and the employer have agreed in writing to a payment schedule on a delinquent account. If the employer is in default of the agreed payment schedule, however, that employer is not insured.

6. If the employer's payroll report is not timely received by the organization, the organization shall notify the employer, by electronic transmission or regular mail addressed to the last-known address of the employer of the delinquency. The notification must indicate that the organization may assess a penalty of up to two thousand dollars against the employer's account.

7. If the payroll report is not received within forty-five days following the expiration of the employer's payroll year, the organization shall assess a penalty of fifty dollars. The organization shall notify the employer by electronic transmission or regular mail addressed to the employer's last-known address that the employer is uninsured.

8. At any time after sixty days following the expiration of the employer's payroll year, when the employer has failed to submit a payroll report, the organization may bill the employer at the wage cap per employee using the number of employees reported per rate classification from a previous year of actual or estimated payroll reported to the organization. The organization may also bill an employer account using data obtained from job service North Dakota to bill an employer who has failed to submit a payroll report. An employer whose premium has been calculated under this subsection may submit actual wages on an employer payroll report for the period billed and the organization shall adjust the employer's account. The organization may also cancel the employer's account.

9. If the organization receives an employer payroll report more than sixty days after the expiration of the employer's payroll period, the employer's premium billing due date is fifteen days following the expiration of the employer's payroll period. Any employer account billed without benefit

of the employer payroll report has a premium billing due date which is fifteen days following the expiration of the employer's payroll year.

10. If the employer does not have an open account with the organization, the organization shall send the employer an application for coverage by regular mail or by electronic transmission. The organization shall notify the employer of the penalties provided by North Dakota Century Code chapter 65-04 and this section.

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

History: Effective June 1, 1990; amended effective January 1, 1994; January 1, 1996; May 1, 2002; March 1, 2003; July 1, 2006; April 1, 2009.
General Authority: NDCC 65-02-08, 65-04-33
Law Implemented: NDCC 65-04-33

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

1. Definitions. In this section, unless the context otherwise requires:

   a. "Five-year losses" means the total sum of ratable losses accrued on claims occurring during the first five of the six years immediately preceding the premium year being rated.

   b. "Five-year payroll" means the total sum of limited payroll reported for the first five of the six years immediately preceding the premium year being rated.

   c. "Five-year premium" means the total sum of earned premium for the first five of the six years immediately preceding the premium year being rated.

   d. "Manual premium" means the actual premium, prior to any experience rating, for the premium year immediately preceding the premium year being rated for claims experience.

2. An employer's account is not eligible for an experience rating until the account has completed three consecutive ~~twelve-month~~ payroll periods and has developed aggregate manual premiums of at least twenty-five thousand dollars for the rating period used in developing the experience modification factor.

3. For accounts with ratable manual premium of twenty-five thousand dollars or more:

   a. The experience rating must be applied prior to the inception of each premium year for all eligible accounts. A claim is deemed to occur in the premium year in which the injury date occurs.

   b. The experience modification factor (EMF) to be applied to the current estimated portion of an employer's payroll report is computed as follows:

      (1) Calculate the actual primary losses (A_p), which consist of the sum of those five-year losses, comprising the first ten thousand dollars of each individual claim.

      (2) Calculate the actual excess losses (A_e), which consist of the sum of those five-year losses in excess of the first ten thousand dollars of losses of each individual claim, limited to the maximum loss amount contained in the most recent edition of North Dakota workforce safety and insurance rating plan values which is hereby adopted by reference and incorporated within this subsection as though set out in full.

      (3) Calculate the total expected losses (E_t), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected loss rate for each year. The class expected loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance ~~summary of expected loss rates and information~~ rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

      (4) Calculate the expected excess losses (E_e), which are determined by adding the products of the actual payroll for each year of the five-year payroll times the class expected excess loss rates. The class expected excess loss rates, taking into consideration the hazards and risks of various occupations, must be those contained in the most recent edition of North Dakota workforce safety and insurance ~~summary of expected loss rates and information~~ rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

      (5) Calculate the "credibility factor" (Z) ~~which is the quotient of the total expected losses divided by the sum of the total expected losses plus one million dollars~~ based on the formula that is contained in the most recent edition of North Dakota

workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(6) The experience modification factor is then calculated as follows:

(a) Calculate the "ballast amount" (B) which is contained in the most recent edition of North Dakota workforce safety and insurance rating plan values, which is hereby adopted by reference and incorporated within this subsection as though set out in full.

(b) Add the actual primary losses to the product of the actual excess losses times the credibility factor.

~~(b)~~ (c) To this sum add the product of the expected excess losses times the difference between one dollar and the credibility factor.

~~(c)~~ (d) To this sum add ~~twenty thousand dollars~~ the ballast amount (B).

~~(d)~~ (e) Divide this total sum by the sum of the total expected losses plus ~~twenty thousand dollars~~ the ballast amount (B).

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

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

~~$$EMF = \frac{A_p + (Z \times A_e) + [(1.00 - Z) \times E_e] + \$20,000.00}{E_t + \$20,000.00}$$~~

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

4. Small account credit or debit program. Accounts that fall below the eligibility standard for experience rating outlined in subsection 2 are subject to the small account credit or debit program. The rating period and ratable losses used to determine eligibility for the small account credit or debit program are the same as those used for the experience rating program outlined above. The amount of the credit or debit will be

determined annually in conjunction with the development of rating plan values for the prospective coverage period.

5. The organization shall include any modification to the North Dakota workforce safety and insurance rating plan values in its ratemaking process pursuant to North Dakota Century Code section 65-04-01.

History: Effective June 1, 1990; amended effective July 1, 1993; July 1, 1994; April 1, 1997; July 1, 2001; July 1, 2006; July 1, 2009.
General Authority: NDCC 65-02-08, 65-04-17
Law Implemented: NDCC 65-04-01

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

1. Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. "Maximum medical improvement" means the injured employee's recovery has progressed to the point where substantial further improvement is unlikely, based on reasonable medical probability and clinical findings indicate the medical condition is stable.

c. "Medical dispute" means an employee has reached maximum medical improvement in connection with a work injury and has been evaluated for permanent impairment, and there is a disagreement between doctors arising from the evaluation that affects the amount of the award. It does not include disputes regarding proper interpretation or application of the American medical association guides to the evaluation of permanent impairment, fifth edition.

d. "Potentially eligible for an impairment award" means the medical evidence in the claim file indicates an injured employee has

reached maximum medical improvement and has a permanent impairment caused by the work injury that will likely ~~be in excess of fifteen percent whole body~~ result in a monetary impairment award.

e. "Treating doctor" means a doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license who has physically examined or provided direct care or treatment to the injured employee.

2. Permanent impairment evaluations must be performed in accordance with the American medical association guides to the evaluation of permanent impairment, fifth edition, and modified by this section. All permanent impairment reports must include the opinion of the doctor on the cause of the impairment and must contain an apportionment if the impairment is caused by both work-related and non-work-related injuries or conditions.

3. The organization shall establish a list of medical specialists ~~within the state~~ who have the training and experience necessary to conduct an evaluation of permanent impairment. ~~The organization may include in the list medical specialists from other states if there is an insufficient number of specialists in a particular specialty within the state who agree to be listed.~~ When an employee requests an evaluation of impairment, the organization shall schedule an evaluation with a physician from the list. The organization may not schedule a permanent impairment evaluation with the employee's treating doctor. The organization and employee may agree to an evaluation by a physician not on the current list. In the event of a medical dispute, the organization shall furnish the list of appropriate specialists to the employee. The organization and the employee, if they cannot agree on an independent medical specialist, shall choose a specialist by striking names of medical specialists from the ~~appropriate specialty~~ list until a name is chosen.

4. Upon receiving a permanent impairment rating report from the doctor, the organization shall audit the report and shall issue a decision awarding or denying permanent impairment benefits.

~~5.~~ a. Pain impairment ratings. A permanent impairment award may not ~~include a rating due solely to pain, including chronic pain; chronic pain syndrome; pain that is rated under section 13.8, table 13-22, or chapter 18 of the American medical association guides to the evaluation of permanent impairment, fifth edition; or pain beyond the pain associated with injuries and illnesses of specific organ systems rated under other chapters of the fifth edition~~ be made upon a rating solely under chapter 18 of the guides when there is no accompanying rating under the conventional organ and body system ratings of impairment. In addition, no rating for pain may be awarded when the evaluating physician

determines the individual being rated has low credibility, when the individual's pain is ambiguous or the diagnosis is a controversial pain syndrome. A controversial pain syndrome is a syndrome that is not widely accepted by physicians and does not have a well-defined pathophysiologic basis.

b. An evaluating physician qualified in application of the guides to determine permanent impairment shall conduct an informal pain assessment and evaluate the individual under the guide's conventional rating system according to the body part or organ system specific to that person's impairment. If the body system impairment rating adequately encompasses the pain, no further assessment may be done.

c. If the pain-related impairment increases the burden of the individual's condition slightly, the evaluating physician may increase the percentage attributable to pain by up to three percent and, using the combined values chart of the fifth edition, calculate a combined overall impairment rating.

d. If the pain-related impairment increases the burden of the individual's condition substantially, the evaluating physician shall conduct a formal pain assessment using tables 18-4, 18-5, and 18-6 of the guides and calculate a score using table 18-7.

e. The score from table 18-7 correlates to an impairment classification found in table 18-3.

f. If the score falls within classifications two, three, or four of table 18-3, the evaluating physician must determine whether the pain is ratable or unratable.

g. To determine whether the pain is ratable or unratable, the evaluating physician must answer the three questions in this section. If the answer to all three of the following questions is yes, the evaluating physician should consider the pain ratable. If any question is answered no, the pain is unratable.

(1) Do the individual's symptoms or physical findings, or both, match any known medical condition?

(2) Is the individual's presentation typical of the diagnosed condition?

(3) Is the diagnosed condition one that is widely accepted by physicians as having a well-defined pathophysiologic basis?

h. If the pain is unratable, no percentage may be assigned to the impairment.

i. If the pain is ratable, the evaluating physician shall classify the individual into one of the categories in table 18-3 and, using the combined values chart of the fifth edition, calculate a combined overall impairment rating.

j. The impairment percentages assigned to table 18-3 are:

(1) Class 1, mild: one to three percent.

(2) Class 2, moderate: four to five percent.

(3) Class 3, moderately severe: six to seven percent.

(4) Class 4, severe: eight to nine percent.

~~6.~~ 5. Permanent mental and behavioral disorder impairment ratings.

a. Any evaluating physician determining permanent mental or behavioral disorder impairment shall:

(1) Include in the rating only those mental or behavioral disorder impairments not likely to improve despite medical treatment;

(2) Use the instructions contained in the American medical association guides to the evaluation of permanent impairment, fifth edition, giving specific attention to:

(a) Chapter 13, "central and peripheral nervous system"; and

(b) Chapter 14, "mental and behavioral disorders"; and

(3) Complete a full psychiatric assessment following the principles of the American medical association guides to the evaluation of permanent impairment, fifth edition, including:

(a) A nationally accepted and validated psychiatric diagnosis made according to established standards of the American psychiatric association as contemplated by the American medical association guides to the evaluation of permanent impairment, fifth edition; and

(b) A complete history of the impairment, associated stressors, treatment, attempts at rehabilitation, and premorbid history and a determination of causality and apportionment.

b. If the permanent impairment is due to organic deficits of the brain and results in disturbances of complex integrated cerebral function, emotional disturbance, or consciousness disturbance, then chapter 13, "central and peripheral nervous system", must be consulted and may be used, when appropriate, with chapter 14, "mental and behavioral disorders". The same permanent impairment may not be rated in both sections. The purpose is to rate the overall functioning, not each specific diagnosis. The impairment must be rated in accordance with the "permanent mental impairment rating work sheet" incorporated as appendix A to this chapter.

c. The permanent impairment report must include a written summary of the mental evaluation and the "report work sheet" incorporated as appendix A to this chapter.

d. If other work-related permanent impairment exists, a combined whole-body permanent impairment rating may be determined.

6. Errata sheets and guides updates. Any updates, additions, or revisions by the editors of the fifth edition of the guides to the evaluation of permanent impairment as of April 1, 2009, are adopted as an update, addition, or revision by the organization.

History: Effective November 1, 1991; amended effective January 1, 1996; April 1, 1997; May 1, 1998; May 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-05-12.2

92-01-02-29.1. Medical necessity.

1. A medical service or supply necessary to diagnose or treat a compensable injury, which is appropriate to the location of service, is medically necessary if it is widely accepted by the practicing peer group and has been determined to be safe and effective based on published, peer-reviewed, scientific studies.

2. Services that present a hazard in excess of the expected medical benefits are not medically necessary. Services that are controversial, obsolete, experimental, or investigative are not reimbursable unless specifically preapproved or authorized by the organization. Requests for authorization must contain a description of the treatment and the expected benefits and results of the treatment.

3. The organization will not authorize or pay for the following treatment:

   a. Massage therapy or acupuncture unless specifically preapproved or otherwise authorized by the organization. Massage therapy

must be provided by a licensed physical therapist, licensed occupational therapist, licensed chiropractor, or licensed massage therapist.

b. Chemonucleolysis; acupressure; reflexology; rolfing; injections of colchicine except to treat an attack of gout precipitated by a compensable injury; injections of chymopapain; injections of fibrosing or sclerosing agents except where varicose veins are secondary to a compensable injury; ~~viscosupplementation injections;~~ and injections of substances other than cortisone, anesthetic, or contrast into the subarachnoid space (intrathecal injections).

c. Treatment to improve or maintain general health (i.e., prescriptions or injections of vitamins, nutritional supplements, diet and weight loss programs, programs to quit smoking) unless specifically preapproved or otherwise authorized by the organization. Over-the-counter medications may be allowed in lieu of prescription medications when approved by the organization and prescribed by the attending doctor. Dietary supplements, including minerals, vitamins, and amino acids are reimbursable if a specific compensable dietary deficiency has been clinically established in the claimant. Vitamin B-12 injections are reimbursable if necessary because of a malabsorption resulting from a compensable gastrointestinal disorder.

d. Articles such as beds, hot tubs, chairs, Jacuzzis, vibrators, heating pads, home furnishings, waterbeds, exercise equipment, cold packs, and gravity traction devices are not compensable except at the discretion of the organization under exceptional circumstances.

e. Vertebral axial decompression therapy (Vax-D treatment).

f. Intradiscal electrothermal annuloplasty (IDET).

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

92-01-02-29.3. Motor vehicle purchase or modification.

1. An injured worker must obtain a doctor's order of medical necessity before the purchase of a specially equipped motor vehicle or modification of a vehicle may be approved.

2. The organization may require assessments to determine the functional levels of an injured worker who is being considered for a specially equipped motor vehicle or vehicle modification.

3. If an existing vehicle cannot be repaired or modified, the organization, in its sole discretion, may approve the purchase of a specially equipped motor vehicle.

4. Any available vehicle rebates or tax exemptions shall be applied back to the lifetime benefit of one hundred thousand dollars.

5. Any appeal of a decision under this section shall be adjudicated pursuant to North Dakota Century Code section 65-02-20.

History: Effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-05-07(5)(b)

92-01-02-32. Physician assistant and nurse practitioner rules.

~~1.~~ Physician assistants and nurse practitioners may be reimbursed within the scope of their licenses for services performed under the supervision of a licensed physician that are required by their licensure.

~~2. 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 modifier NP. Services provided by a physician assistant or nurse practitioner which meet the following criteria will be reimbursed at one hundred percent of the fee allowed a physician for those services:~~

~~a. The services are rendered under the direct supervision of a physician;~~

~~b. The services are rendered in a clinical setting as an integral, although incidental, part of the physician's professional services in the course of diagnosis or treatment of an injury or illness; and~~

~~c. The physician must be physically onsite when and where service is provided.~~

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

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

1. Certain treatment procedures require prior authorization or preservice review by the organization or its managed care vendor. Requests for authorization or preservice review must include a statement of the condition diagnosed; their relationship to the compensable injury; the medical documentation supporting medical necessity, an outline of the proposed treatment program, its length and components, and expected prognosis.

2. Requesting prior authorization or preservice review is the responsibility of the medical service provider who provides or prescribes a service for which prior authorization or preservice review is required.

3. Medical service providers shall request prior authorization directly from the claims analyst for the items listed in this subsection. The claims analyst shall respond to requests within fourteen days.

   a. Durable medical equipment.

      (1) The organization will pay rental fees for equipment if the need for the equipment is for a short period of treatment during the acute phase of a compensable work injury. The claims analyst shall grant or deny authorization for reimbursement of equipment based on whether the claimant is eligible for coverage and whether the equipment prescribed is appropriate and medically necessary for treatment of the compensable injury. Rental extending beyond thirty days requires prior authorization from the claims analyst. If the equipment is needed on a long-term basis, the organization may purchase the equipment. The claims analyst shall base its decision to purchase the equipment on a comparison of the projected rental costs of the equipment to its purchase price. The organization shall purchase the equipment from the most cost-efficient source.

      (2) The claims analyst will authorize and pay for prosthetics and orthotics as needed by the claimant because of a compensable work injury when substantiated by the attending doctor. If those items are furnished by the attending doctor or another provider, the organization will reimburse the doctor or the provider pursuant to its fee schedule. Providers and doctors shall supply the organization with a copy of their original invoice showing actual cost of the item upon request of the organization. The organization will repair or replace originally provided damaged, broken, or worn-out prosthetics, orthotics, or special equipment devices upon documentation from the attending doctor that replacement

or repair is needed. Prior authorization for replacements is required.

(3) If submitted charges for supplies and implants exceed the usual and customary rates, charges will be reimbursed at the provider's purchase invoice plus twenty percent.

(4) Equipment costing less than five hundred dollars does not require prior authorization. This includes crutches, cervical collars, lumbar and rib belts, and other commonly used orthotics, but specifically excludes ten units.

b. Biofeedback programs; pain clinics; psychotherapy; physical rehabilitation programs, including health club memberships and work hardening programs; chronic pain management programs; and other programs designed to treat special problems.

c. Concurrent care. In some cases, treatment by more than one medical service provider may be allowed. The claims analyst will consider concurrent treatment when the accepted conditions resulting from the injury involve more than one system or require specialty or multidisciplinary care. When requesting consideration for concurrent treatment, the attending doctor must provide the claims analyst with the name, address, discipline, and specialty of all other medical service providers assisting in the treatment of the claimant and with an outline of their responsibility in the case and an estimate of how long concurrent care is needed. When concurrent treatment is allowed, the organization will recognize one primary attending doctor, who is responsible for prescribing all medications if the primary attending doctor is a physician authorized to prescribe medications; directing the overall treatment program; providing copies of all reports and other data received from the involved medical service providers; and, in time loss cases, providing adequate certification evidence of the claimant's ability to perform work. The claims analyst will approve concurrent care on a case-by-case basis. Except for emergency services, all treatments must be authorized by the claimant's attending doctor to be reimbursable.

d. Telemedicine. The organization may pay for audio and video telecommunications instead of a face-to-face "hands on" appointment for the following appointments: office or other outpatient visits that fall within CPT codes 99241 through 99275, inclusive; new and established evaluation and management visits that fall within CPT codes 99201 through 99215, inclusive; individual psychotherapy visits that fall within CPT codes 90804 through 90809, inclusive; and pharmacologic management visits that fall within CPT code 90862. As a condition of payment, the patient must be present and participating in the telemedicine

appointment. The professional fee payable is equal to the fee schedule amount for the service provided. The organization may pay the originating site a facility fee, not to exceed twenty dollars.

4. Notwithstanding the requirements of subsection 5, the organization may designate certain exemptions from preservice review requirements in conjunction with programs designed to ensure the ongoing evolution of managed care to meet the needs of injured workers and providers.

5. Medical service providers shall request preservice review from the utilization review department for:

   a. All nonemergent inpatient hospital admissions or nonemergent inpatient surgery and outpatient surgical procedures. For an inpatient stay that exceeds fourteen days, the provider shall request, on or before the fifteenth day, additional review of medical necessity for a continued stay.

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

   c. Magnetic resonance imaging, a myelogram, discogram, bonescan, arthrogram, or computed axial tomography. Tomograms are subject to preservice review if requested in conjunction with a myelogram, discogram, bonescan, arthrogram, computed axial tomography scan, or magnetic resonance imaging. The

second opinion, or request an examination by the claimant's doctor. A recommendation to deny medical services must specify the reason for the denial.

10. The organization may conduct retrospective reviews of medical services and subsequently reimburse medical providers only:

    a. If preservice review or prior authorization of a medical service is requested by a provider and a claimant's claim status in the adjudication process is pending or closed; or

    b. If preservice review or prior authorization of a medical service is not requested by a provider and the provider can prove, by a preponderance of the evidence, that the injured employee did not inform the provider, and the provider did not know, that the condition was, or likely would be, covered under workers' compensation.

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

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

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

History: Effective January 1, 1994; amended effective October 1, 1998; January 1, 2000; May 1, 2002; March 1, 2003; July 1, 2004; July 1, 2006; April 1, 2008; April 1, 2009.
General Authority: NDCC 65-02-08, 65-02-20, 65-05-07
Law Implemented: NDCC 65-02-20, 65-05-07

92-05-02-06. Safety outreach program. North Dakota employers with the highest frequency and greatest severity rates and those employers in rate classification industries with historically high frequency and severity rates may be selected by the organization to participate in this three-year program.

1. **Calculation of discount.** The safety outreach program provides a ten percent annual premium discount for the creation and implementation of a written action plan approved by the organization. The safety outreach program provides a ten percent premium discount for a reduction of at least ten percent in frequency rate and a ten percent premium discount for a reduction of at least ten percent in severity rate. If an employer reduces both frequency and severity rates by at least ten percent each in a premium year, that employer is entitled to an additional five percent premium discount. An employer's annual discount under this program may not exceed thirty-five percent.

2. **Ongoing eligibility.** Participation beyond the inception year is subject to the sole discretion of the organization. In no event shall an employer's participation extend beyond three consecutive years ~~in total and in consecutive order~~.

History: Effective July 1, 2006; amended effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04, 65-04-19.1, 65-04-19.3

CHAPTER 92-05-03

92-05-03-01. Grant programs - Purpose. The organization may create grant programs ~~for North Dakota employers~~ to fund safety interventions or develop other programs to reduce workplace injury and illness. A grant award under this section is within the discretion of the organization.

History: Effective July 1, 2006; amended effective April 1, 2008; April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

92-05-03-02. Eligibility. A North Dakota-based ~~employers~~ employer who ~~have~~ has an active employer account, a volunteer organization that has elected volunteer coverage with the organization, or an association or group comprised of North Dakota employers or employees active and in good standing with the North Dakota secretary of state for at least one year are eligible to apply for an organization grant. An applicant must submit a completed application. An applicant must demonstrate a need for grant moneys pursuant to the terms of the grant application. The organization may require the applicant to submit proof of its financial ability to support a matching grant program. A grant award under this chapter rests solely within the discretion of the organization. The organization may consider all aspects of an employer's history, including whether the employer account is in good standing, in determining eligibility for a grant award under this chapter.

History: Effective July 1, 2006; amended effective July 1, 2007; April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

92-05-03-03. Administration. Grant awards must be determined by a grant review board established by the organization. Grants awarded by the organization are subject to the terms of a signed agreement executed by the organization and the recipient of the grant moneys. No grant money may be distributed until a signed agreement is fully executed.

If the review board determines that a grant application contains erroneous or misrepresented facts, and a grant award was made based on those facts, the organization may decline to process a grant application or revoke a grant award. The applicant shall refund all grant dollars to the organization.

History: Effective July 1, 2006; amended effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

92-05-03-06. Hazard elimination learning program. The organization may create grant programs to defray the costs ~~incurred by a North Dakota employer who elects to participate~~ of participation in the organization's hazard elimination

learning program. A grant award under this section is within the discretion of the organization.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04

92-05-03-07. Safety training and education program. The organization may create grant programs to defray the costs incurred by a North Dakota association or formally organized pursuant to section 92-05-03-02 employee or employer group that elects to participate in the organization's safety training and education program. A grant award under this section is within the discretion of the organization.

History: Effective April 1, 2008; amended effective April 1, 2009.
General Authority: NDCC 65-02-08
Law Implemented: NDCC 65-03-04