NORTH DAKOTA ADMINISTRATIVE CODE

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APRIL 2011

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2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw. If a new high grand prize is not won in a draw, the prize money allocated for the match 5 bonus prizes must roll over and be added to the match 5 bonus prize pool for the next draw.

3. When the grand prize reaches a new high annuitized amount, the maximum amount to be allocated to the grand prize pool is an additional twenty-five million dollars (annuitized) or an amount set by the game group. Any amount of the grand prize percentage that exceeds the twenty-five million dollar (annuitized) increase must be added to the match 5 bonus prize pool. The match 5 bonus prize pool is created, and must accumulate until the grand prize is won, at which time the match 5 bonus prize pool must be divided equally by the number of plays that win the match 5 prize. If there is no match 5 winning play on the draw when the new high grand prize is won, the match 5 bonus prize pool must be divided equally by the number of plays that win the match 4+1 prize.

4. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the guaranteed annuitized grand prize must be determined by dividing the guaranteed annuitized grand prize by the number of winning plays.

5. The prize money allocated to the match 5 bonus prize must be divided equally by the number of plays that win the match 5 prize when a play wins the new high grand prize amount.

6. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in thirty graduated payments with the initial payment being made in cash, followed by twenty-nine payments (increasing each year) by a rate determined by the game group funded by the annuity. Annual payments after the initial payment must be made by the lottery on the anniversary date or if this date falls on a nonbusiness day, then the first business day following the anniversary date of the draw of the grand prize winning numbers.

7. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

8. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective February 1, 2004; amended effective November 8, 2005; April 1, 2008.
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 or increase 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 seven lowest set prizes (excluding the match 5+0 prize) will be multiplied by a single number (2, 3, 4, or 5) drawn in a separate random power play drawing. The announced match 5+0 prize, for players selecting the power play option, shall be ~~multiplied by five regardless of the number two through five drawn as the multiplier for the seven lowest set prizes~~ paid $1,000,000 unless a higher limited promotional dollar amount is announced by the game group or unless a lower dollar amount is announced by the game group under its limitation of liability rules. The game group may change one or more of the multiplier numbers or the match 5+0 power play prize amount, or both, for a special promotion.

4. 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	Set Prize Amount	Prize Amount With Power Play Purchase			
5 white + 0 red	$200,000	$1,000,000	~~$1,000,000~~	~~$1,000,000~~	~~$1,000,000~~

Prize Amounts With Power Play Purchase and Multiplier

Matches Per Play	Set Prize Amount	5X	4X	3X	2X
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, under the game group's limitation of liability rules, 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 4+1 set prize amount of ten thousand dollars becomes five thousand fifty dollars under the game group's rules, a power play player winning that prize amount when a "4" has been drawn would win 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).~~ The match 5+0 prize may be reduced as announced by the game group.

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; November 1, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-08

10-16-08-02. Expected prize pool percentages and odds. The minimum grand prize is twelve 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 gold	Grand prize*	63.60%	1:175,711,536
5 white + 0 gold	$250,000**	12.80%	1:3,904,701
4 white + 1 gold	$10,000**	2.90%	1:689,065
4 white + 0 gold	$150**	1.96%	1:15,313
3 white + 1 gold	$150**	2.18%	1:13,781
2 white + 1 gold	$10	2.38%	1:844
3 white + 0 gold	$7	4.58%	1:306
1 white + 1 gold	$3	4.26%	1:141
0 white + 1 gold	$2	5.34%	1:75

Overall odds of winning a prize on a one dollar play are 1:39.89.

* The grand prize is pari-mutuel and will be divided equally by the number of jackpot prize winners.

** For any drawing, if prize liability exceeds the lesser of 300% of MEGA MILLIONS® sales or 50% of draw sales plus $50,000,000, then these prizes become pari-mutuel.

*** 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 January 31, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-03. Prize pool and payment.

1. The prize pool for all prize categories must consist of ~~fifty~~ up to fifty-five percent of each draw period's sales after the prize reserve account is funded.

2. The prize money allocated to the grand prize pool must be divided equally by the number of plays that win the grand prize. If the grand prize is not won in a draw, subject to any restrictions by the game group, the prize money allocated for the grand prize must roll over and be added to the grand prize pool for the next draw.

3. If there are multiple grand prize winning plays during a draw, each player selecting the annuitized option prize, then a winning play's share of the annuitized grand prize must be determined by dividing the annuitized grand prize by the number of winning plays.

4. A grand prize must be paid, at the election of the winning player made within sixty days after the player becomes entitled to the prize, with either a per winning player annuity or cash payment. If the payment election is not made by the player within sixty days after the player becomes entitled to the prize, then the prize must be paid as an annuity prize. An election for an annuity payment made by a player may be changed to a cash payment at the election of the player until the expiration of sixty days after the player becomes entitled to the prize. Otherwise, the payment election is final. Shares of the grand prize must be determined by dividing the cash available in the grand prize pool equally among all winning plays of the grand prize. A player who elects a cash payment must be paid the share in a single cash payment. A player who elects an annuitized prize must be paid annually in twenty-six payments with the initial payment being made in cash, followed by twenty-five payments by the best available rate obtained

through a competitive bid of qualified bidders. Annual payments after the initial payment must be made by the lottery within seven days of the anniversary date on which the bonds were purchased to fund the annuity.

5. The lottery may not pay a grand or set cash prize until after it receives authorization from the MUSL. The lottery may pay the prize before it receives the funds from the MUSL.

6. The prize pool percentage allocated to set prizes must be carried forward to a subsequent draw if all or a portion of it is not needed to pay the set prizes awarded in the current draw.

History: Effective January 31, 2010; amended effective December 1, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

10-16-08-04. Megaplier® option.

1. The Megaplier® option is a limited extension of the MEGA MILLIONS® 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 or increase the amount of a set prize.

2. A qualifying play is a single MEGA MILLIONS® play for which the player pays an extra one dollar for the Megaplier® option. Megaplier® does not apply to the grand prize.

3. A qualifying play which wins one of the seven lowest set prizes ~~(excluding the match 5+0 prize)~~ will be multiplied by the number selected, two through four, in a separate random Megaplier® drawing. The match 5+0 prize, for players selecting the Megaplier® option, shall be ~~multiplied by four regardless of the number two through four drawn as the multiplier for the seven lowest set prizes~~ paid one million dollars unless a higher limited promotional dollar amount is announced by the game group or unless a lower dollar amount is announced by the game group under its limitation of liability rules.

4. A single number from a series of twenty-one numbers is selected according to the following frequency: two number 2s, seven number 3s, and twelve number 4s. The game group may change one or more of the multiplier numbers or the match 5+0 Megaplier® prize amount, or both, 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 Megaplier® will pay the amounts shown below when matched with the Megaplier® number drawn:

MEGA MILLIONS® Pays Instead

Matches Per Play	Set Prize Amount	Prize Amount With Megaplier® Purchase		
5 white + 0 gold	$250,000	$1,000,000	~~$1,000,000~~	~~$1,000,000~~

Prize Amounts With Megaplier® Purchase and Multiplier

Matches Per Play	Set Prize Amount	4X	3X	2X
4 white + 1 gold	$10,000	$40,000	$30,000	$20,000
4 white + 0 gold	$150	$600	$450	$300
3 white + 1 gold	$150	$600	$450	$300
2 white + 1 gold	$10	$40	$30	$20
3 white + 0 gold	$7	$28	$21	$14
1 white + 1 gold	$3	$12	$9	$6
0 white + 1 gold	$2	$8	$6	$4

Multiplier numbers do not apply to the grand prize or to the match 5+0 prize.

Rarely, under the game group's limitation of liability rules, a set prize amount may be less than the amount shown. In that case, a Megaplier® prize will be a multiple of two through four for the new set prize amount for the seven lowest set prizes. ~~The Megaplier® prize for a match 5+0 prize will be a multiple of four.~~ For example, if the match 4+1 set prize amount of ten thousand dollars becomes five thousand dollars under the game group's rules, a Megaplier® player winning that prize amount when a "4" has been drawn would win twenty thousand dollars ($5,000 x 4). ~~If the match 5+0 set prize amount of two hundred fifty thousand dollars becomes one hundred fifty thousand dollars under the game group's rules, a Megaplier® player winning that prize amount would win six hundred thousand dollars ($150,000 x 4).~~ The match 5+0 prize may be reduced as announced by the game group.

6. The following table reflects the probability of the Megaplier® numbers being drawn:

Megaplier®	Probability of Prize Increase
4X - Prize won times 4	12 in 21
3X - Prize won times 3	7 in 21
2X - Prize won times 2	2 in 21

History: Effective January 31, 2010; amended effective September 14, 2010; December 1, 2010.
General Authority: NDCC 53-12.1-13
Law Implemented: NDCC 53-12.1-13

TITLE 20

STATE BOARD OF DENTAL EXAMINERS

APRIL 2011

CHAPTER 20-01-01

20-01-01-01. Organization and functions of board of dental examiners.

1. **History and functions.** In 1895 a five-member board of dental examiners was created to examine dentists as to their qualifications and to license and register qualified dentists.

2. **Board membership.** The board consists of seven members appointed by the governor. Five members must be licensed dentists, one member must be a licensed hygienist, and one member must be a consumer. Members of the board serve five-year terms. No member may serve more than ten years or two 5-year terms of office.

3. **Board members.** Members of the board are elected by the board to fill the individual positions of president, president-elect, and secretary-treasurer. The position of executive director has been created to assist the secretary-treasurer.

4. **Per diem.** Each member of the board shall receive as compensation for each day actually engaged in the duties of the office per diem in the amount of two hundred dollars.

5. **Inquiries.** Inquiries regarding the board may be addressed to the executive director of the board:

   Rita M. Sommers, RDH, ~~B.A.~~ MBA
   North Dakota Board of Dental Examiners
   Box 7246
   Bismarck, ND 58507-7246
   www.nddentalboard.org

701-258-8600

History: Amended effective October 1, 1988; November 1, 1988; July 1, 1993; May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011.
General Authority: NDCC ~~28-32-02.1~~ 28-32-02, 43-28-06
Law Implemented: NDCC ~~28-32-02.1~~ 28-32-02, 43-28-05

CHAPTER 20-01-02

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

1. "Advertising" means any public communication, made in any form or manner, about a licensee's professional service or qualifications, for the purpose of soliciting business.

2. "Anxiolysis" means diminution or elimination of anxiety.

~~2.~~ 3. "Basic full upper and lower denture" means replacement of all natural dentition with artificial teeth. This replacement includes satisfactory tissue adaptation, satisfactory function, and satisfactory aesthetics. Materials used in these replacements must be nonirritating in character and meet all the standards set by the national institute of health and the bureau of standards and testing agencies of the American dental association for materials to be used in or in contact with the human body.

~~3.~~ 4. "Board certified" means the dentist has been certified in a specialty area in which there is a certifying body approved by the commission on dental accreditation of the American dental association.

~~4.~~ 5. "Board eligible" means the dentist has successfully completed a duly accredited training program or in the case of a dentist in practice at the time of the adoption of these rules has experience equivalent to such a training program in an area of dental practice in which there is a certifying body approved by the commission on dental accreditation of the American dental association.

6. "Bona fide specialties" means the specialties of dental public health, endodontics, oral and maxillofacial pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, and prosthodontics.

7. "Cardiopulmonary resuscitation course" means the American heart association's health care provider course, the American red cross professional rescuer course, or an equivalent course.

~~5.~~ 8. "Certified dental assistant" means a dental assistant who meets the education or experience prerequisites, or both, established by the dental assisting national board and passes the dental assisting national board's certified dental assistant examination (including radiation health and safety, infection control, and general chairside components), is currently cardiopulmonary resuscitation-certified, and continues to maintain the credential by meeting the dental assisting national board requirements.

9. "Code of ethics" means the January 2009 version of the American dental association's principles of ethics and code of professional conduct.

~~6.~~ 10. "Combination inhalation - enteral conscious sedation" (combined conscious sedation) means conscious sedation using inhalation and enteral agents.

When the intent is anxiolysis only, and the appropriate dosage of agents is administered, then the definition of enteral or combined inhalation-enteral conscious sedation (combined conscious sedation), or both, does not apply.

Nitrous oxide/oxygen when used in combination or with sedative agents may produce anxiolysis, conscious or deep sedation, or general anesthesia.

~~7.~~ 11. "Complete evaluation" means an examination, review of medical and dental history, the formulation of a diagnosis, and the establishment of a written treatment plan, documented in a written record to be maintained in the dentist's office or other treatment facility or institution.

~~8.~~ 12. "Conscious sedation" means depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or a combination thereof. The drugs or technique, or both, should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.

~~9.~~ 13. "Coronal polishing" is the mechanical polishing of clinical crowns using a rubber cup or brush only and not to include any instrumentation. Examination for calculus and instrumentation must be done by the dentist or hygienist.

~~10.~~ 14. "Deep sedation" is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently or to respond purposefully to physical stimulation or verbal command, and is produced by pharmacological or nonpharmacological method, or combination thereof.

~~11. "Dental assistant" means a person who under the direct supervision of a dentist renders assistance to a dentist or dental hygienist as described in article 20-03.~~

~~12. "Dental hygienist" means any person who is a graduate of a school of dental hygiene with a minimum of two academic years of dental hygiene curriculum approved or provisionally approved by the commission on dental accreditation of the American dental association and who is registered and licensed by the North Dakota board of dental examiners.~~

~~13.~~ 15. "Dental technician" means any individual who offers or undertakes to perform the fabrication or repair of corrective or prosthetic dental devices according to the written instructions of a licensed dentist. A certified dental technician is an individual who is specifically qualified through education and experience and who has successfully completed the written and practical certification examinations administered by the national board for certification, and who further maintains certification through compliance with continuing education requirements as stipulated by the national board for certification.

~~14.~~ 16. "Direct supervision" means the dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the procedures and remains in the dental office or treatment facility while the procedures are being performed by the dental hygienist or dental assistant, and before dismissal of the patient, evaluates the performance of the dental hygienist or dental assistant.

~~15.~~ 17. "Evaluation" means the act or process by a dentist of assessing and determining the significance, quality or work of something such as the patient's oral health status, the progress of dental therapy, or the performance of the dental hygienist or dental assistant.

~~16.~~ 18. "General anesthesia" means an induced state of unconciousness accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or nonpharmacological method, or a combination thereof.

~~17.~~ 19. "General supervision" means the dentist has authorized the procedures and they are carried out in accordance with the dentist's diagnosis, if necessary, and treatment plan. The dentist is not required to be in the treatment facility. Limitations are contained in North Dakota Century Code section 43-20-03.

~~18.~~ 20. "Inactive status" means the licensee shall not engage in the practice of dentistry or dental hygiene in the state of North Dakota. The license that is placed on inactive status remains on that status until such time as the license is reinstated.

~~19.~~ 21. "Indirect supervision" means that a dentist is in the dental office or treatment facility, has personally diagnosed the condition to be treated, authorizes the procedures, and remains in the dental office

or treatment facility while the procedures are being performed by the dental hygienist or dental assistant.

~~20.~~ 22. "Local anesthesia" means the elimination of sensations in one part of the body by regional injection of drugs without causing the loss of consciousness.

~~21. "Modified general supervision" means that the dentist must personally evaluate the patient, diagnose the conditions to be treated, and plan and authorize treatment. The dentist must personally evaluate the patient at each visit, but need not be present when treatment is initiated or remain until procedures are completed on a patient of record who has been seen in the office in the previous twelve months.~~

~~22.~~ 23. "Oral hygiene treatment planning" means the process of assessing and determining, by the dentist and the hygienist, the services the dental hygienist will perform, including preventative, educational, and instrumentation. This treatment plan is an organized sequence of events that is a part of the dentist's total treatment plan. The total treatment plan and diagnosis are to be determined by the dentist.

~~23.~~ 24. "Patient of record" means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

~~24. "Personal supervision" means a level of supervision indicating that the dentist or dental hygienist is personally treating a patient and authorizes the dental hygienist or dental assistant to aid the treatment by concurrently performing a supportive procedure.~~

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

26. ~~"Qualified dental assistant" means a dental assistant who has received on-the-job training or instruction totaling at least six hundred fifty hours, has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the dental assisting national board examination, and has applied to the board and paid the certificate fee determined by the board.~~

~~27. "Registered dental assistant" means a dental assistant who is a graduate of a dental assistant program approved or provisionally approved by the commission on dental accreditation of the American dental association, or who has received at least three thousand two hundred hours of dental assisting instruction including on-the-job training as a dental assistant and has completed dental assistant national boards, or who has completed a course in dental assisting which is approved by the North Dakota board of dental examiners, and who is registered by the North Dakota board of dental examiners.~~

~~28.~~ "Satellite office" means an office, building, or location used at any time by a dentist for the practice of dentistry other than the office listed on the dentist's biennial registration certificate.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011.
General Authority: NDCC 43-20-10; 43-28-06
Law Implemented: NDCC ~~43-20-02, 43-20-12, 43-28-06~~ 43-20, 43-28

CHAPTER 20-02-01

20-02-01-01. Advertising.

1. ~~Advertising by dentists is permitted to disseminate information for the purpose of providing the public a sufficient basis upon which to make an informed selection of dentists. In the interest of protecting the public health, safety, and welfare, advertising which~~ In addition to violations of the code of ethics, the following is false, deceptive, or misleading ~~is prohibited.~~ advertising:

   a. Advertising containing a material, objective representation, whether express or implied, that the advertised services are superior in quality to those of other dentists.

   b. Advertising using a name for a practice other than the legal name of the dentist or business entity or the registered trade name.

   c. Advertising describing combination inhalation - enteral conscious sedation, conscious sedation, or local anesthesia by terms such as sleep or snooze dentistry or twilight sleep.

   d. Advertising stating a range of fees for a service if the fee charged is fixed or is usually in the higher half of the range.

2. ~~All advertising must contain the legal name of the dentist, or a reasonable variation thereof. In the case of a partnership or corporation, the name used in the advertisement may be the true name of the partnership or corporation. The advertisement must also contain the location, or locations, of the dentist, partnership, or corporation.~~

~~3. A dentist engaged in general practice who wishes to announce the services available in the dentist's practice is permitted to announce the availability of those services as long as the dentist avoids using language that expresses or implies that the dentist is a specialist. If a dentist, other than a specialist, wishes to advertise a limitation of practice, such advertisement must state that the limited practice is being conducted by a general dentist. A dentist who is a specialist may announce the dentist's specialization provided that the dentist has successfully completed an educational program accredited by the commission on accreditation of dental and dental auxiliary educational programs, two or more years in length, as specified by the commission on dental accreditation of the American dental association or be a diplomate of a nationally recognized certifying board. Such a dentist may announce that the dentist's practice is limited to the special area of dental practice in which the dentist has or wishes to announce.~~

~~4.~~ A dentist who advertises on radio or television must retain a recorded copy of such advertising for a period of one year following the termination of the use of such advertising, and is responsible to make recorded copies of such advertising available to the ~~North Dakota state~~ board ~~of dental examiners within thirty days following a request from the board for such copies~~ upon request.

~~5. No dentist may advertise the dentist, the dentist's staff, the dentist's services, or the dentist's method or methods of delivery of dental services to be superior to those of any other licensed dentist, unless such claim or claims can be substantiated by the advertiser, upon whom rests the burden of proof.~~

~~6. No advertising by a dentist may contain representations or other information contrary to the provisions of North Dakota Century Code section 43-28-18 or North Dakota Administrative Code title 20.~~

3. Each dentist, with an ownership interest in the practice being advertised, is responsible for the advertisement of the practice for the purposes of a disciplinary action or denial of an application.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC ~~43-28-06~~ 43-28-18

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

History: Effective February 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; January 1, 2011.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-10, 43-20-13.2, 43-28-06, 43-28-10.1, 43-28-15

20-02-01-03. Nitrous oxide. A duly licensed dentist may use nitrous oxide for treating patients only when the following conditions are met:

1. Documentation has been provided by the dentist to the board that verifies completion of fourteen hours of instruction or continuing professional education dealing specifically with the use of nitrous oxide. In the absence of documentation of classroom training, the dentist must provide proof acceptable to the board that demonstrates three years of practical experience in the use of nitrous oxide.

2. A dentist who induces a patient into a state of psychosedation or relative analgesia using nitrous oxide shall ensure that the patient

will be continually and personally monitored by a dentist. A dentist may delegate the monitoring tasks to a licensed dental hygienist or a registered dental assistant utilizing direct supervision only after the patient has been stabilized at the desired level of conscious sedation or relative analgesia by the action of the dentist. The licensed dental hygienist or registered dental assistant who is assigned the monitoring task shall remain in the treatment room with the patient at all times. A dental hygienist or a dental assistant may not initiate the administration of nitrous oxide to a patient.

3. The dentist must provide and document training for the dental hygienist or registered dental assistant in the proper and safe operation of the analgesia machine being used~~, including the~~ prior to the registered dental hygienist or registered dental assistant monitoring the patient. Training shall include emergency procedures to be employed if required.

History: Effective February 1, 1992; amended effective May 1, 1996; April 1, 2000; October 1, 2007; January 1, 2011.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-03, 43-20-10, 43-20-12, 43-20-13, 43-28-06

20-02-01-03.1. Additional requirements for licensure by examination. The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-10.1 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examiners or the national dental examining board of Canada within five years of application.

2. The applicant has passed, within five years of application, a clinical competency examination administered by one of the following:

   a. Central regional dental testing service.

   b. Council of interstate testing agencies.

   c. Northeast regional board of dental examiners, except after December 31, 2009, the examination approved by the American board of dental examiners.

   d. Southern regional testing agency, except the applicant must pass the periodontal part of an examination administered by another approved regional dental testing service.

   e. Western regional examining board.

3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-10.1

20-02-01-03.2. Additional requirements for licensure by credential review. The board may grant a license to practice dentistry to an applicant who has met the requirements of North Dakota Century Code section 43-28-15 and all the following requirements:

1. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

2. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

History: Effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-15

20-02-01-03.3. Additional requirements for applications. Applications must be completed within six months of filing. In addition to the application requirements of North Dakota Century Code sections 43-28-11 and 43-28-17, the board may require an application to include:

1. Proof of identity, including any name change.

2. An official transcript sent by an accredited dental school directly to the board.

3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within five years of application.

4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within five years of application.

5. An interview by the board.

6. Anything necessary for a criminal history record check pursuant to North Dakota Century Code section 43-28-11.2.

7. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.

8. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.

9. Verification of physical health and visual acuity.

10. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.

11. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

12. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-10.1, 43-28-11, 43-28-11.2, 43-28-15, 43-28-17

20-02-01-03.4. Clinical competency examination retakes. If an applicant taking the clinical competency examination in the integrated format is unsuccessful after having exhausted all allowable retake opportunities for the failed parts, one failure is recorded. The applicant must then retake all five parts of the examination in the traditional format. If the applicant is unsuccessful in one or more parts, a second failure is recorded. If the failed parts are retaken and failed again, a third failure will be recorded. A dental applicant may take a clinical examination three times before remedial training is required. After failing the examination for a third time, and prior to the fourth attempt of the examination, an applicant shall:

1. Submit to the board a detailed plan for remedial training by an accredited dental school. The board must approve the proposed remedial training.

2. Submit proof to the board of passing the remedial training within twenty-four months of its approval by the board.

The board may grant or deny a fourth attempt of the clinical examination. A fourth attempt must occur within twelve months of the date of the board's decision. If an applicant fails any part of the examination after remedial training, the board must approve additional retakes.

History: Effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06, 43-28-10.1, 43-28-17

20-02-01-04. Temporary license to practice dentistry. The board may grant a nonrenewable temporary license to practice dentistry in the state of North Dakota for a period not to exceed one year. The temporary license will be issued only for special purposes that are unique and cannot be satisfied by the normal means to licensure.

1. A temporary license to practice dentistry in North Dakota may be granted to a dentist when the dentist:

   a. Has applied to the board as prescribed in North Dakota Century Code section ~~43-28-12~~ 43-28-11.

   b. Has paid the nonrefundable application and license fee prescribed by the board.

   c. Holds an active dental license in another ~~state or~~ jurisdiction, has been a full-time student or resident of a dental program accredited by the American dental association's commission on dental accreditation within the last six months, or has held a North Dakota dental license within the previous five years.

   d. Has provided a statement from the licensing authority of all the states in which the dentist is licensed that the dentist's license is unencumbered, unrestricted, and that the dentist's professional record is free of blemish for professional misconduct, substandard care, or violations of the state's practice act.

   e. Has certified that no disciplinary actions are pending in other states or jurisdictions.

   f. Has authorized the board to seek information concerning the dentist's professional and personal background and agrees to hold harmless those individuals who may provide such information to the board.

2. The board may apply such restrictions as it deems appropriate to limit the scope of the practice of dentistry under the authority of the temporary license.

3. The board may restrict the licensee to engage in dental practice, as may be limited above, only at certain and specifically defined practice locations.

History: Effective February 1, 1992; amended effective October 1, 2007; January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-04.2. Volunteer license to practice dentistry. A patient who is seen by a dentist who holds a volunteer license to practice dentistry shall not be considered a patient of record of the volunteer dentist. The dentist is not obligated to treat the patient outside of the volunteer practice setting. The board may grant a volunteer license to practice dentistry in North Dakota, renewable annually by application to the board, when the following conditions are met:

1. The ~~dentist is~~ applicant was formerly licensed in the state of North Dakota and is in good standing with the board.

2. The ~~dentist~~ applicant agrees to provide primary health services without remuneration in a board-approved setting.

3. The ~~dentist~~ applicant holds a current ~~CPR~~ cardiopulmonary resuscitation course certification.

4. The ~~dentist~~ applicant has completed continuing education requirements of the board.

5. The ~~dentist~~ applicant has made application for a volunteer dental license in a manner prescribed by the board.

6. The ~~dentist~~ applicant has paid the nonrefundable application and license fee prescribed by the board.

History: Effective April 1, 2000; amended effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-04.3. Inactive status - License reinstatement. ~~Any person who holds a dental or dental hygiene license~~ A dentist may ~~elect~~, upon payment of the fee determined by the board, ~~to~~ place ~~that person's~~ the dentist's license on ~~an~~ inactive status ~~and shall, subject to the rules of the board,~~. A dentist on inactive status shall be excused from the payment of renewal fees ~~until that person notifies the board in writing of that person's desire to resume active status~~, except inactive status renewal fees, and continuing education. ~~Any licensee whose license is in an~~ A dentist on inactive status shall not practice in ~~the state of~~ North Dakota. To reinstate a license on inactive status, the dentist shall apply on the form a prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-02-01-03.1, within five years application. The board may, within the board's discretion, waive this requirement.

2. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

3. The applicant has completed thirty-two hours of continuing education in accordance with section 20-02-01-06 within two years of application.

4. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-28-18 do not exist.

History: Effective April 1, 2006; amended effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC ~~43-28-06~~ 43-28-17

20-02-01-05. Permit for anesthesia use.

1. The rules in this chapter are adopted for the purpose of defining standards for the administration of anesthesia by dentists. The standards specified in this chapter shall apply equally to general anesthesia, deep sedation, moderate (conscious) sedation, or a combination of any of these with inhalation, but do not apply to sedation administered through inhalation alone. A dentist licensed under North Dakota Century Code chapter 43-28 and practicing in North Dakota may not use any form of sedation if the intent is beyond anxiolysis on any patient unless such dentist has a permit, currently in effect, issued by the board, initially for a period of twelve months and renewable biennially thereafter, authorizing the use of such general anesthesia, deep sedation, moderate (conscious) sedation, or minimal sedation when used in combination with inhalation.

2. An applicant may not be issued a permit initially as required in subsection 1 unless:

   a. The board of dental examiners approves the applicant's facility after an inspection conducted by an individual or individuals designated by the dental examiners;

   b. The board of dental examiners is satisfied that the applicant is in compliance with the American dental association's most recent policy statement: ~~THE USE OF SEDATION AND GENERAL ANESTHESIA BY DENTISTS~~ the use of sedation and general anesthesia by dentists; ~~and~~

   c. The initial application includes payment of a fee in the amount determined by the dental examiners; and

   d. If the application appears to be in order, the board may issue a temporary permit prior to the site evaluation. The temporary permit may be revoked if the applicant fails the site inspection or if the

applicant fails to cooperate with the timely scheduling of the site inspection.

3. The board of dental examiners may renew such permit biennially, provided:

   a. Requirements of the permit application have been met;

   b. Application for renewal and renewal fee is received by the dental examiners before the date of expiration of such permit. If the renewal application and renewal fee have not been received by the expiration of the permit, late fees as determined by the board shall apply; and

   c. ~~Payment of a renewal fee in the amount to be determined by the board of dental examiners is received with such application; and~~

   ~~d.~~ An onsite evaluation of the dentist's facility may be conducted by an individual designated by the board of dental examiners, and the board of dental examiners must approve the results of each such evaluation. Each facility where anesthesia is administered must be evaluated.

4. The board shall reevaluate the credentials, facilities, equipment, personnel, and procedures of a permitholder five years following a successful initial application.

History: Effective October 1, 1993; amended effective May 1, 1996; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007; January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

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

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

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

~~2.~~ 3. The minimum number of hours required within a two-year cycle for dentists is thirty-two. Of these hours, a dentist may earn no more than

~~six~~ sixteen hours ~~in nonclinical subjects relating to the dental profession and no more than ten hours through home study courses.~~

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

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

~~5. Nonclinical subjects relating to the dental profession are those which cover skills relating to dental services in general which are not related to, but are nevertheless supportive of, the provision of clinical dental services. Examples of nonclinical subjects relating to the dental profession are patient management, the legal and ethical responsibilities of the dental profession, and stress management.~~

~~6.~~ ~~Examples of nonclinical subjects that will not be creditable to the continuing education requirement are those that deal with estate planning, financial planning, marketing, investments, and personal health.~~ from publications and online education. The continuing education must include:

a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

b. Two hours of infection control.

c. A cardiopulmonary resuscitation course.

d. For anesthesia permitholders, four hours related to sedation or anesthesia.

~~7.~~ 4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.

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

~~9.~~ 5. All dentists~~, registered dental hygienists, dental assistants, qualified dental assistants, and registered dental assistants~~ must hold a current cardiopulmonary resuscitation certificate ~~of registration or its equivalent, to practice dentistry, dental hygiene, or dental assisting in the state of North Dakota (equivalent means basic life support or advanced care life support)~~. Anesthesia permitholders are required to maintain current advanced cardiac life support certification or pediatric advanced life support as specified by permit.

History: Effective October 1, 1993; amended effective May 1, 1996; August 1, 1998; June 1, 2002; April 1, 2006; October 1, 2007; January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC ~~43-20-12.1,~~ 43-28-06, ~~43-28-12.2~~ 43-28-16.2

20-02-01-09. Retention of records. A dentist shall ~~maintain~~ retain a patient's dental record for a minimum of six years after the ~~date of~~ patient's last examination, prescription, or treatment. Records for minors shall be ~~maintained~~ retained for a minimum of either one year after the patient reaches the age of eighteen or six years after the patient's last examination, prescription, or treatment, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements. The requirements of this rule apply to electronic records as well as to records kept by any other means.

History: Effective April 1, 2006; amended effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-06

20-02-01-10. Authorization of laboratory services. A dentist using the services of any person, not licensed to practice dentistry in this state, to construct, alter, repair, or duplicate any orthodontic or prosthetic device, must furnish the unlicensed person a written prescription which shall include all of the following:

1. The name and address of the unlicensed person.
2. The patient's name or patient number.
3. The date on which the prescription was written.
4. The description of the work to be done, with a diagram, if necessary.
5. A specification of the materials to be used if necessary.
6. The signature of the dentist and the number of the dentist's North Dakota license.

The dentist shall retain a duplicate copy of the prescription for inspection by the board or the board's agent for two years.

History: Effective January 1, 2011.
General Authority: NDCC 43-28-06
Law Implemented: NDCC 43-28-02, 43-28-06, 43-28-18, 43-28-25

CHAPTER 20-03-01

20-03-01-01. Duties. A dental assistant may perform the ~~services~~ duties listed in subsections 1 through 6 under direct supervision of a ~~licensed~~ dentist. A qualified dental assistant may perform duties set forth in subsections 1 through 7 under direct supervision of a dentist. A registered dental assistant may perform the duties set forth in subsections 1 through 24 under ~~direct or~~ indirect supervision of a ~~licensed~~ dentist; ~~a~~. A registered dental assistant may perform duties set forth in subsections 25 through ~~30~~ 31 under ~~the~~ direct supervision of a ~~licensed~~ dentist ~~and~~. A registered dental assistant may perform duties set forth in subsections ~~31~~ 32 and ~~32~~ 33 under ~~the~~ general supervision of a ~~licensed~~ dentist. ~~A qualified dental assistant may perform the duties set out in subsections 1 through 7 under the direct supervision of a licensed dentist.~~

1. Take and record pulse, blood pressure, and temperature.

2. Take and record preliminary dental and medical history for the interpretation by the dentist.

3. Apply topical medications and drugs to oral tissues, including topical anesthetic, but not including desensitizing or caustic agents or anticariogenic agents.

4. Receive removable dental prosthesis for cleaning or repair.

5. Take impressions for study casts.

6. Hold impression trays in the mouth (e.g., reversible hydrocolloids, rubber base).

7. Take dental radiographs.

8. Apply anticariogenic agents topically.

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

10. Dry root canal with paper points.

11. Place and remove rubber dams.

12. Take occlusal bite registration for study casts.

13. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

14. Remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only.

15. Perform nonsurgical clinical and laboratory oral diagnosis tests, including pulp testing, for interpretation by the dentist.

16. Apply pit and fissure sealants if ~~criteria set out in section 20-03-01-04 of these rules are met~~ the registered dental assistant has provided documentation of a board-approved sealant course. Adjust sealants with slow-speed handpiece.

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

18. Polish restorations.

19. Place and remove periodontal dressings, dry socket medications, and packing.

20. Remove sutures.

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

22. Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

23. Preselect and prefit orthodontic bands.

24. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

25. Place and remove arch wires or appliances that have been activated by a dentist.

26. Acid-etch enamel surfaces prior to direct bonding of orthodontic brackets or composite restorations.

27. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a licensed dentist.

28. Take face bow transfers.

29. Place and remove matrix bands and wedges.

30. Adjust permanent crowns outside of the mouth.

31. Orally transmit a prescription that has been authorized by the supervising dentist.

32. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, or onlay or temporary restorative material. This applies only to dentitions actively under treatment for which a permanent restoration is being fabricated.

~~32.~~ 33. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC ~~43-20-12~~ 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-02. Prohibited services. A dental assistant, qualified dental assistant, or registered dental assistant may not perform the following services:

1. Diagnosis and treatment planning.
2. Surgery on hard or soft tissue.
3. ~~Administering of~~ Administer or titrate local ~~or general~~ anesthetics, sedation or general anesthesia drugs.
4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a licensed dentist.
5. Placing a final restoration.
6. Contouring a final restoration, excluding a crown which has not been cemented by a dentist.
7. Activating any type of orthodontic appliance.
8. Cementing or bonding orthodontic bands or brackets that have not been previously placed by a dentist.
9. Placing bases or cavity liners.
10. Scaling, root planing, or gingival curettage.
11. Measuring the gingival sulcus with a periodontal probe.

History: Effective February 1, 1992; amended effective October 1, 1993; April 1, 2000; June 1, 2002; July 1, 2004; January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC ~~43-20-12~~ 43-20-01.1, 43-20-08, 43-20-10, 43-20-13

20-03-01-03. Annual registration of dental assistants performing expanded duties. Repealed effective January 1, 2011.

~~1. Any individual engaged in performing expanded duties in the practice of dental assisting in the state of North Dakota (those duties set out in subsections 7 through 32 of section 20-03-01-01) must register with the board of dental examiners by submitting an application accompanied by a fee determined by the board. Thereafter, on a yearly basis, before expiration, every dental assistant performing expanded duties shall transmit to the board a registration fee determined by the board and evidence of completion of continuing education requirements, together with other pertinent information as required. At least thirty days before the certificate of registration expiration date, the executive director of the board shall send to every dental assistant performing expanded duties a written notice stating the amount and due date of the fee. A late fee determined by the board shall be assessed if the registration renewal application and fee are not received by the board before expiration.~~

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

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

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

~~(1) The dental assistant is currently dental assistant certified by the dental assisting national board and has received at least three thousand two hundred hours of dental assisting instruction, including on-the-job training;~~

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

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

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

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

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

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

~~b. The dental assistant has received six hundred fifty hours of dental assisting instruction, including on-the-job training, and been employed and trained as a dental assistant for at least six months working at least twenty-four hours per week.~~

~~c. The dental assistant has completed a board-approved infection control seminar and passed the x-ray and infection control portions of the dental assisting national board examination.~~

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

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

History: ~~Effective October 1, 1993; amended effective May 1, 1996; July 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; October 1, 2007.~~
General Authority: ~~NDCC 43-28-06~~
Law Implemented: ~~NDCC 43-28-06~~

20-03-01-04. Criteria for dental assistants placing sealants. Repealed effective January 1, 2011. ~~A dental assistant may place sealants, if the dental assistant is currently registered with the North Dakota board of dental examiners and has provided documentation of a board-approved sealant course.~~

History: ~~Effective June 1, 2002; amended effective April 1, 2006; October 1, 2007.~~
General Authority: ~~NDCC 43-28-06~~
Law Implemented: ~~NDCC 43-28-06~~

20-03-01-05. Registration of registered and qualified dental assistants. An individual seeking registration as a registered or qualified dental assistant shall apply on forms prescribed by the board. The application must be notarized and include the application fee.

1. The board may grant registration as a registered dental assistant to an applicant meeting all the following requirements:

   a. The applicant meets any of the following requirements:

      (1) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, within one year of application.

      (2) The applicant was certified by the dental assisting national board within one year of application.

      (3) The applicant successfully completed a dental assisting program, accredited by the commission on dental accreditation of the American dental association or approved by the board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

      (4) The applicant was certified by the dental assisting national board, and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

   b. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

   c. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

   d. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

2. The board may grant registration as a qualified dental assistant to an applicant meeting all the following requirements:

   a. The applicant meets any of the following requirements:

      (1) The applicant passed the infection control and radiation parts of the dental assisting national board examination within one year of application.

      (2) The applicant passed the infection control and radiation parts of the dental assisting national board examination and completed, within two years before application, sixteen hours of continuing education in accordance with section 20-03-01-06.

b. The applicant completed six hundred fifty hours of dental assistance instruction, including on-the-job training.

c. The applicant passed a written examination on the laws and rules governing the practice of dentistry in North Dakota within one year of application.

d. The applicant successfully completed a cardiopulmonary resuscitation course within two years of application.

e. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.2

20-03-01-06. Continuing dental education for qualified and registered dental assistants. Each qualified or registered dental assistant shall provide evidence on forms supplied by the board that the qualified or registered dental assistant has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a qualified or registered dental assistant may earn no more than eight hours from publications and online education. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.

5. All qualified or registered dental assistants must hold a current cardiopulmonary resuscitation certificate.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-13.1

CHAPTER 20-04-01

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

1. Complete prophylaxis to include removal of accumulated matter, deposits, accretions, or stains from the natural and restored surfaces of exposed teeth. The dental hygienist may also do root planing and soft tissue curettage upon direct order of the dentist.

2. Polish and smooth existing restorations.

3. Apply topical applications of drugs to the surface tissues of the mouth and to exposed surfaces of the teeth, including anticariogenic agents and desensitizing solutions.

4. Take impressions for study casts.

5. Take and record preliminary medical and dental histories for the interpretation by the dentist.

6. Take and record pulse, blood pressure, and temperature.

7. Provide oral hygiene treatment planning.

8. Take dental radiographs.

9. Apply therapeutic agents subgingivally for the treatment of periodontal disease.

10. Hold impression trays in the mouth after placement by a dentist (e.g., reversible hydrocolloids, rubber base, etc.).

11. Receive removable dental prosthesis for cleaning and repair.

12. Dry root canal with paper points.

13. Place and remove rubber dams.

14. Place and remove matrix bands or wedges.

15. Take occlusal bite registration for study casts.

16. Place retraction cord in the gingival sulcus of a prepared tooth prior to the dentist taking an impression of the tooth.

17. Fabricate, adjust, place, recement, or remove a temporary crown, bridge, onlay, or temporary restorative material. This applies only to

dentitions actively under treatment for which a permanent restoration is being fabricated.

18. Adjust permanent crowns outside of the mouth.

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

20. Apply pit and fissure sealants. Adjust sealants with slow speed handpiece.

21. Place and remove periodontal dressings, dry socket medications, and packing.

22. Remove sutures.

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

24. ~~Administer local anesthesia under the direct supervision of a dentist if criteria in section 20-04-01-03 are met.~~

~~25.~~ Take impressions for fixed or removable orthodontic appliances, athletic mouth guards, bleaching trays, bite splints, flippers, and removable prosthetic repairs.

~~26.~~ 25. Preselect and prefit orthodontic bands.

~~27.~~ 26. Place, tie, and remove ligature wires and elastic ties, and place orthodontic separators.

~~28.~~ 27. Place and remove arch wires or appliances that have been activated by a dentist.

~~29.~~ 28. Cut and remove arch wires or replace loose bands, loose brackets, or other orthodontic appliances for palliative treatment.

~~30.~~ 29. Acid-etch enamel surfaces prior to pit and fissure sealants, direct bonding of orthodontic brackets, or composite restorations.

~~31.~~ 30. Place orthodontic brackets using an indirect bonding technique by seating the transfer tray loaded with brackets previously positioned in the dental laboratory by a ~~licensed~~ dentist.

~~32.~~ 31. Take face bow transfers.

32. Orally transmit a prescription that has been authorized by the supervising dentist.

History: Effective September 1, 1980; amended effective February 1, 1992; October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; July 1, 2004; April 1, 2006; January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03, 43-20-11, 43-20-12

20-04-01-02. Prohibited services. A dental hygienist may not perform the following services:

1. Diagnosis and treatment planning.

2. Surgery on hard or soft tissue.

3. ~~Administering~~ Administer or titrate anesthetics, except topical and local anesthetic, as permitted under ~~these rules~~ sections 20-04-01-01 and 20-04-01-03.

4. Any irreversible dental procedure or procedures which require the professional judgment and skill of a ~~licensed~~ dentist.

5. Place a final restoration.

6. Contour a final restoration, excluding a crown which has not been cemented by a dentist.

7. Activating any type of orthodontic appliance.

8. Cementing or bonding orthodontic bands or brackets that have not been previously placed by a dentist.

9. Placing bases or cavity liners.

History: Effective February 1, 1992; amended effective October 1, 1993; July 1, 2004; January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-03; 43-20-11, 43-20-12, 43-20-12.3

20-04-01-04. Additional requirements for licensure by examination. The board may grant a license to practice dental hygiene to an applicant who has met the requirements of North Dakota Century Code section 43-20-01.2 and all the following requirements:

1. The applicant has passed the examination administered by the joint commission on national dental examinations or the dental hygiene certification board of Canada within two years of application.

2. The applicant has passed, within two years of application, a clinical competency examination administered by one of the following:

   a. Any regional dental testing service before September 17, 2009.

   b. Central regional dental testing service.

   c. Council of interstate testing agencies.

   d. Western regional examining board.

3. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

4. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2

20-04-01-05. Additional requirements for licensure by credential review. The board may grant a license to practice dental hygiene to an applicant who has met the requirements of North Dakota Century Code section 43-20-01.3 and all the following requirements:

1. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

2. The applicant has the physical health and visual acuity to enable the applicant to meet the minimum standards of professional competence.

3. The applicant has completed sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.3

20-04-01-06. Additional requirements for applications. Applications must be completed within twelve months of filing. In addition to the application requirements of North Dakota Century Code sections 43-20-01.2, 43-20-01.3, and 43-20-06, the board may require an application to include:

1. Proof of identity, including any name change.

2. An official transcript sent by an accredited dental school directly to the board.

3. Evidence demonstrating the applicant passed the examination administered by the joint commission on national dental examinations within two years of application.

4. Evidence demonstrating the applicant passed a clinical competency examination, approved by the board, within two years of application.

5. An interview by the board.

6. A certification, from the licensing board of every jurisdiction in which the applicant is licensed, that the applicant is licensed in good standing.

7. Certification that the applicant has completed a cardiopulmonary resuscitation course within two years of application.

8. Verification of physical health and visual acuity.

9. For applications for licensure by credential review, the law and rules stating the requirements for licensure, when the applicant was licensed, of the jurisdiction in which the applicant is licensed.

10. For applications for licensure by credential review and reinstatement from inactive status, proof of completion of sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.

11. Any information required by the application forms prescribed by the board.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-06

20-04-01-07. Inactive status - License reinstatement. A dental hygienist may, upon payment of the fee determined by the board, place the dental hygientist's license on inactive status. A dental hygienist on inactive status shall be excused from the payment of renewal fees, except inactive status renewal fees, and continuing education. A dental hygienist on inactive status shall not practice in North Dakota. To reinstate a license on inactive status, the dental hygienist shall apply on a form prescribed by the board, pay a reinstatement fee, and meet all of the following requirements:

1. The applicant has passed a clinical competency examination administered by a regional dental testing service, approved by the board in section 20-04-01-04, within two years of application. The board may, within the board's discretion, waive this requirement.

2. The applicant passes a written examination on the laws and rules governing the practice of dentistry in this state administered by the board at a meeting.

3. The applicant has completed sixteen hours of continuing education in accordance with section 20-04-01-08 within two years of application.

4. The applicant has successfully completed a cardiopulmonary resuscitation course within two years of application.

5. Grounds for denial of the application under North Dakota Century Code section 43-20-05 do not exist.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-06

20-04-01-08. Continuing dental education for dental hygienists. Each dental hygienist shall provide evidence on forms supplied by the board that the dental hygienist has attended or participated in continuing dental education in accordance with the following conditions:

1. Continuing education activities include publications, seminars, symposiums, lectures, college courses, and online education.

2. The continuing dental education hours will accumulate on the basis of one hour of credit for each hour spent in education. Subject matter directly related to clinical dentistry will be accepted by the board without limit.

3. The minimum number of hours required within a two-year cycle is sixteen. Of these hours, a dental hygienist may earn no more than eight hours from publications and online education. The continuing education must include:

   a. Two hours of ethics or jurisprudence. Passing the laws and rules examination is the equivalent of two hours of ethics or jurisprudence.

   b. Two hours of infection control.

   c. A cardiopulmonary resuscitation course.

4. Mere registration at a dental convention without specific attendance at continuing education presentations will not be creditable toward the continuing dental education requirement.

5. All dental hygienists must hold a current cardiopulmonary resuscitation certificate.

History: Effective January 1, 2011.
General Authority: NDCC 43-20-10
Law Implemented: NDCC 43-20-01.4

CHAPTER 20-05-01

20-05-01-01. Fees. The board shall charge the following nonrefundable fees ~~apply to the services listed~~:

~~1. The nonrefundable fee to process an initial application for a license to practice for an applicant who has completed a clinical board examination within the time period allowed by the state board of dental examiners is four hundred forty dollars for a dentist and two hundred dollars for a dental hygienist. The nonrefundable initial application for the registration of a registered or qualified dental assistant is sixty-five dollars.~~

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

~~3. The nonrefundable annual fee to process an application for a temporary license to practice dentistry is two hundred fifty dollars.~~

~~4. The fee for annual registration for registered or qualified dental assistants is fifty dollars. The certificate of registration biennial renewal fee is four hundred dollars for a dentist and one hundred fifty dollars for a dental hygienist. The board may charge an administrative fee for hard copy license or registration renewal.~~

~~5. In addition to the fee for renewal, the penalty for late renewal of the biennial certificate of registration is four hundred dollars for dentists, one hundred fifty dollars for dental hygienists, and fifty dollars for late renewal of the annual certificate of registration for dental assistants.~~

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

~~7. The fee to reactivate a retired or inactive dental or dental hygiene license is the sum of each year's annual renewal fee since the license was retired plus one hundred dollars, not to exceed one thousand two hundred dollars for dentists or four hundred fifty dollars for hygienists.~~

~~8. The fee for an onsite facility inspection to obtain a permit for anesthesia use will be the sole responsibility of the anesthesia permit applicant and shall be determined as the cost incurred by the board for the site evaluation process.~~

~~9. The fee for a volunteer dental license is thirty-five dollars annually.~~

~~10. The fee for inactive license status is thirty-five dollars annually.~~

1. For dentists:

a.	License by examination application fee	$440.00
b.	License by credential review application fee	$1,200.00
c.	Renewal fee	$400.00
d.	Late fee	$400.00
e.	Temporary license application and license fee	$250.00
f.	Volunteer license application and license fee	$65.00
g.	Inactive status application fee	$35.00
h.	Inactive status renewal fee	$35.00
i.	Inactive status reinstatement fee	$400.00

2. For dental hygienists:

a.	License by examination application fee	$200.00
b.	License by credential review application fee	$450.00
c.	Renewal fee	$150.00
d.	Late fee	$150.00
e.	Inactive status application fee	$35.00
f.	Inactive status renewal fee	$35.00
g.	Inactive status reinstatement fee	$150.00

3. For registered and qualified dental assistants:

a.	Application fee	$130.00
b.	Renewal fee	$100.00
c.	Late fee	$100.00

4. For anesthesia permits:

a.	Application fee	$200.00
b.	Inspection fee	actual cost
c.	Renewal fee	$200.00

d.	Late fee	$200.00
5.	For a duplicate license, registration, or permit	$45.00

History: Effective May 1, 1992; amended effective October 1, 1993; May 1, 1996; August 1, 1998; April 1, 2000; June 1, 2002; July 1, 2004; April 1, 2006; January 1, 2008; January 1, 2011.
General Authority: NDCC 43-20-10, 43-28-06
Law Implemented: NDCC 43-20-01.2, 43-20-01.3, 43-20-01.4, 43-20-06, 43-20-13.1, 43-20-13.2, 43-28-11, 43-28-16.2, 43-28-17, 43-28-24, 43-28-27

TITLE 33

STATE DEPARTMENT OF HEALTH

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.

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.

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.

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.

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.

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

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.

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.

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.

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

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.

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.

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.

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.

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

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.

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

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

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.

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.

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.

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

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.

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].

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

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.

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.

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

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

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]).

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

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.

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

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.

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.

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

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].

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.

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.

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.

52. "Volatile organic compounds" means the definition of volatile organic compounds in 40 Code of Federal Regulations 51.100(s) as it exists on ~~March 1, 2008~~ July 2, 2010, which is incorporated by reference.

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; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-02

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

1. **Particulates and gases.** ~~Except as provided in section 33-15-02-07, the~~ The standards of ambient air quality listed in table 1 and table 2 define the limits of air contamination by particulates and gases. Any air contaminant which exceeds these limits is hereby declared to be unacceptable and requires air pollution control measures. The stated limits include normal background levels of particulates and gases.

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

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

History: Amended effective October 1, 1987; January 1, 1989; September 1, 1998; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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

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

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

~~3. No person may cause or permit the emission of sulfur oxides (sulfur dioxide) to the ambient air from any coal conversion facility or petroleum refinery in such a manner or amount that causes or contributes to a violation in the ambient air of the national ambient air quality standards for sulfur oxides (sulfur dioxide) in title 40, Code of Federal Regulations, part 50, sections 4 and 5. The national ambient air quality standards for sulfur oxides (sulfur dioxide) are summarized in table 2.~~

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

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

History: Amended effective October 1, 1987; September 1, 1998; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

Table 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Inhalable Particulates PM_{10}	150	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	0.075	parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T.
	0.5	parts per million (1309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
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	0.075	parts per million (147 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the three-year 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 P.
Nitrogen Dioxide	0.053	parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean
	0.100	parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	~~1.5~~ 0.15	micrograms per cubic meter of air, ~~maximum~~ arithmetic mean averaged over a ~~calendar quarter~~ 3-month rolling period. The standard is met when the maximum 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Amended effective December 1, 1994; April 1, 2009; April 1, 2011.

Table 2. NATIONAL AMBIENT AIR QUALITY STANDARDS

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

The standards in Table 2 will remain in effect until one year after the effective date of the designation for the one-hour sulfur dioxide standard pursuant to Section 107 of the Federal Clean Air Act except for areas designated nonattainment with respect to the standards in Table 2 and areas not meeting the requirements of a state implementation call with respect to requirements for the national ambient air quality standards in Table 2. The standards in Table 2 will apply to those areas until that area submits, and the environmental protection agency approves, an implementation plan providing for attainment of the one-hour sulfur dioxide standard.

History: Amended effective September 1, 1998; April 1, 2011.

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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
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, for the emission guidelines promulgated on September 15, 1997, and not later than October 6, 2014, for the emission guidelines promulgated on October 6, 2009, 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~~ written six months after the United States environmental protection agency's approval of the state plan, submit ~~documentation~~:

   i. 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, for the emission guidelines promulgated on September 15, 1997. For the amended emission guidelines published on October 6, 2009, compliance with the applicable requirements shall be attained on or before the date three years after United States environmental protection agency approval of the amended state plan but not later than October 6, 2014.

*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 VVa - Standards of performance for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry for which construction, reconstruction, or modification commenced after November 7, 2006.

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 IIII - Standards of performance for stationary compression ignition internal combustion engines.

Subpart JJJJ - Standards of performance for stationary sparks ignition internal combustion engines.

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; April 1, 2011.
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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-14

33-15-14-01. Designated air contaminant sources. Pursuant to subsection 1 of North Dakota Century Code section 23-25-04, stationary sources within the following source categories are designated as air contaminant sources capable of causing or contributing to air pollution, either directly or indirectly.

1. The following chemical process facilities:

   a. Adipic acid.

   b. Ammonia.

   c. Ammonium nitrate.

   d. Carbon black.

   e. Charcoal.

   f. Chlorine.

   g. Chlor-alkali manufacturing.

   h. Detergent and soap.

   i. Explosives (trinitrotoluene and nitrocellulose).

   j. Hydrochloric acid.

   k. Hydrofluoric acid.

   l. Nitric acid.

   m. Paint and varnish manufacturing.

   n. Phosphoric acid.

   o. Phthalic anhydride.

   p. Plastics manufacturing.

   q. Printing ink manufacturing.

   r. Sodium carbonate.

   s. Sulfur production and recovery.

t. Sulfuric acid.

u. Synthetic fibers.

v. Synthetic rubber.

w. Terephthalic acid.

x. Alcohol.

y. Cresylic acids.

z. Phenol.

aa. Polymer manufacturing and coating operations.

2. The following food and agricultural facilities:

a. Agricultural drying and dehydrating operations.

b. Ammonium nitrate.

c. Cheese whey drying and processing.

d. Coffee roasting.

e. Cotton ginning.

f. Feed, grain, and seed handling and processing.

g. Fermentation processes.

h. Fertilizers.

i. Fishmeal processing.

j. Meat smokehouses.

k. Orchard heaters.

l. Potato processing.

m. Rendering plants.

n. Starch manufacturing.

o. Sugarbeet processing.

3. The following metallurgical facilities:

    a. Primary metals facilities:

        (1) Aluminum ore reduction.

        (2) Copper smelters.

        (3) Ferroalloy production.

        (4) Iron and steel mills.

        (5) Lead smelters.

        (6) Metallurgical coke manufacturing.

        (7) Zinc.

    b. Secondary metals facilities:

        (1) Aluminum operations.

        (2) Brass and bronze smelting.

        (3) Ferroalloys.

        (4) Ferrous foundries.

        (5) Gray iron foundries.

        (6) Lead smelting.

        (7) Magnesium smelting.

        (8) Nonferrous foundries.

        (9) Steel foundries.

        (10) Zinc processes.

    c. Electrolytic plating operations.

4. The following mineral products facilities:

    a. Asphalt roofing.

    b. Asphaltic concrete plants.

c. Bricks and related clay refractories.

d. Calcium carbide.

e. Ceramic and clay processes.

f. Clay and fly ash sintering.

g. Coal cleaning.

h. Coal drying.

i. Coal mining.

j. Coal handling and processing.

k. Concrete batching.

l. Fiberglass manufacturing.

m. Frit manufacturing.

n. Glass manufacturing.

o. Gypsum manufacturing.

p. Leonardite mining, drying, and processing.

q. Lime manufacturing.

r. Mineral wool manufacturing.

s. Paperboard manufacturing.

t. Perlite manufacturing.

u. Phosphate rock preparation.

v. Portland cement manufacturing, bulk handling, and storage.

w. Rock, stone, gravel, and sand quarrying and processing.

x. Uranium mining, milling, and enrichment.

y. Calciners and dryers.

5. The following energy and fuel facilities:

    a. Coal gasification.

    b. Coal liquefaction.

    c. Crude oil and natural gas production.

    d. Fossil fuel steam electric plants.

    e. Fuel conversion plants.

    f. Natural gas processing.

    g. Petroleum refining and petrochemical operations.

    h. Petroleum storage (storage tanks and bulk terminals).

6. The following wood processing facilities:

    a. Plywood veneer and layout operations.

    b. Pulpboard manufacturing.

    c. Wood pulping.

    d. Sawmills.

    e. Wood products manufacturing.

7. The following waste management units or facilities:

    a. Afterburners.

    b. Automobile body incinerators.

    c. Conical burners.

    d. Flares.

    e. Gaseous and liquid organic compounds incinerators.

    f. Industrial waste incinerators.

    g. Open burning.

    h. Open pit incinerators.

i. Infectious waste incinerators.

j. Refuse incinerators.

k. Salvage incinerators.

l. Sewage sludge incinerators.

m. Wood waste incinerators

n. Municipal waste combustors.

8. The following miscellaneous facilities:

a. Drycleaning and laundry operations.

b. Fuel burning equipment.

c. Internal combustion engines.

d. Surface coating operations.

e. Wastewater treatment plants.

f. Water cooling towers and water cooling ponds.

g. Stationary gas turbines.

h. Lead acid battery manufacturing.

i. Hydrocarbon contaminated soil remediation projects.

9. Any ~~category of sources to~~ source for which ~~a~~ an applicable federal standard of performance ~~applies~~ [40 CFR 60] has been adopted in chapter 33-15-12.

10. Any source for which ~~emits a contaminant subject to a~~ an applicable national emission standard for hazardous air pollutants [40 CFR 61] has been adopted in chapter 33-15-13.

11. Any source which is subject to review under federal prevention of significant deterioration of air quality regulations [40 CFR 51.166].

12. Any source which is determined by the department to ~~have an emission which affects~~ cause or contribute to a violation of any state ambient air quality ~~standards~~ standard or violates the other provisions of chapter 33-15-02.

13. Any source subject to title V permitting requirements in section 33-15-14-06.

14. Any major source to which a national emission standard for hazardous air pollutants for source categories [40 CFR 63] would apply.

15. Other stationary sources subject to a standard or requirement under the Federal Clean Air Act as amended.

History: Amended effective October 1, 1987; March 1, 1994; August 1, 1995; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-04, 23-25-04.1

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 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 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 section 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; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-04, 23-25-04.1, 23-25-04.2

33-15-14-03. Minor source permit to operate.

1. **Permit to operate required.**

    a. Except as provided in subdivisions c and d, no person may operate or cause the routine operation of an installation or source designated in section 33-15-14-01 without applying for and

obtaining, in accordance with this section, a permit to operate. Application for a permit to operate a new installation or source must be made at least thirty days prior to startup of routine operation. Those sources that received a permit to construct under section 33-15-14-02, need only submit a thirty-day prior notice of proposed startup to satisfy the requirement to apply for a permit to operate under this subdivision.

b. No person may operate or cause the operation of an installation or source in violation of any permit to operate or any condition imposed upon a permit to operate or in violation of this article.

c. Sources that are subject to the title V permitting requirements of section 33-15-14-06 are exempt from the requirements of this section ~~except during the transitional period from a minor source permit to operate to a title V permit to operate. Existing sources shall comply with all the requirements of this section until a title V permit to operate is issued. Fees for sources that meet the applicability requirements of section 33-15-14-06 shall be assessed based on section 33-15-23-04~~.

d. Sources that are exempt from the requirement to obtain a permit to construct under subsection 13 of section 33-15-14-02 are exempt from this section.

e. Sources which are subject to the title V permitting requirements in section 33-15-14-06 based solely on their potential to emit may apply for a federally enforceable minor source permit to operate which would limit their potential to emit to a level below the title V permit to operate applicability threshold.

f. Permits which are issued under this section which do not conform to the requirements of this section, including public participation under subdivision a of subsection 5 of section 33-15-14-03, and the requirements of any United States environmental protection agency regulations may be deemed not federally enforceable by the United States environmental protection agency.

g. General permits: The department may issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other minor source permits to operate and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the department shall grant the conditions and terms of the general permit. Sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or apply for an individual minor source permit to operate. Without repeating the public participation procedures under subsection 5 of section 33-15-14-03, the department may

grant a source's request for authorization to operate under a general permit.

2. **Application for permit to operate.**

   a. Application for a permit to operate must be made by the owner or operator thereof on forms furnished by the department.

   b. Each application for a permit to operate must be accompanied by such performance tests results, information, and records as may be required by the department to determine whether the requirements of this article will be met. Such information may also be required by the department at any time when the source is being operated to determine compliance with this article.

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

3. **Standards for granting permits to operate.** No permit to operate may be granted unless the applicant shows to the satisfaction of the department that the source is in compliance with this article.

4. **Performance testing.**

   a. Before a permit to operate is granted, the applicant, if required by the department, shall conduct performance tests in accordance with methods and procedures required by this article or methods and procedures approved by the department. Such tests must be made at the expense of the applicant. The department may monitor such tests and may also conduct performance tests.

   b. 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. Issuance of a minor source permit to operate is subject to the faithful completion of the test in accordance with this article.

   c. All dates and periods of trial operation for the purpose of performance or emission testing pursuant to a permit to operate 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.

d. 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.

e. 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.

5. **Action on applications.**

a. Public participation: This subdivision is applicable to only those sources which apply for a federally enforceable minor source permit to operate which limits their potential to emit an air contaminant. The department shall:

(1) Within ninety days of receipt of a complete application:

(a) Make a preliminary determination concerning issuance of the permit to operate.

(b) Make available in at least one location in the county or counties in which the source is located, a copy of the proposed permit and copies of or a summary of the information considered in developing the permit.

(c) Publish notice to the public by prominent advertisement, in the region affected, of the opportunity for written comment on the proposed permit. The public notice must include the proposed location of the source.

(d) Deliver a copy of the proposed permit and public notice to any state or federal land manager, or Indian governing body whose lands will be significantly affected by the source's emissions. For purposes of this subparagraph, lands will be considered to be significantly affected if the source is located within thirty-one and seven hundredths miles [50 kilometers] of such land.

(e) Provide a copy of the proposed permit, all information considered in the development of the permit and the public notice to the regional administrator of the United States environmental protection agency.

(2) Allow thirty days for public comment.

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

(4) 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.

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

(6) 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.

b. For those sources not subject to public participation under subdivision a, the department shall act within thirty days after receipt of an application for a permit to operate a new installation or source, and within thirty days after receipt of an application to operate an existing installation or source, and shall notify the applicant, in writing, of the approval, conditional approval, or denial of the application.

c. The department shall set forth in any notice of denial the reasons for denial. A denial must be without prejudice to the applicant's right to a hearing before the department or for filing a further application after revisions are made to meet objections specified as reasons for the denial.

6. **Permit to operate - Conditions.** The department may impose any reasonable conditions upon a permit to operate. All emission limitations, controls, and other requirements imposed by conditions on the permit to operate must be at least as stringent as any applicable limitation or requirement contained in this article. Permit to operate conditions may include:

a. Sampling, testing, and monitoring of the facilities or 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. Limits on the hours of operation of a source or its processing rate, fuel usage, or production rate when necessary to assure compliance with this article.

7. **Suspension or revocation of permit to operate.**

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

   b. Suspension or revocation of a permit to operate shall become final ten days after serving notice on the holder of the permit.

   c. A permit to operate which has been revoked pursuant to this article must be surrendered forthwith to the department.

   d. No person may operate or cause the operation of an installation or source if the department denies or revokes a permit to operate.

8. **Transfer of permit to operate.** The holder of a permit to operate may not transfer it without the prior approval of the department.

9. **Renewal of permit to operate.**

   a. Every permit to operate issued by the department after February 9, 1976, shall become void upon the fifth anniversary of its issuance. Applications for renewal of such permits must be submitted ninety days prior to such anniversary date. The department shall approve or disapprove such application within ninety days. If a source submits a complete application for a permit renewal at least ninety days prior to the expiration date, the source's failure to have a minor source permit to operate is not a violation of this section until the department takes final action on the renewal application.

   b. The department may amend permits issued prior to February 9, 1976, so as to provide for voidance upon the fifth anniversary of its issuance.

10. **[Reserved]**

11. **[Reserved]**

12. **Responsibility to comply.**

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

b. The exemption of any stationary source from the requirements to obtain a minor source permit to operate does not relieve the owner or operator of such source of the responsibility to comply with any other applicable portions of this article.

13. **Portable sources.** Sources which are designed to be portable and which are operated at temporary jobsites across the state may not be considered a new source by virtue of location changes. One application for a permit to operate any portable source may be filed in accordance with this chapter, and subsequent applications are not required for each temporary jobsite. The permit to operate issued by the department shall be conditioned by such specific requirements as the department deems appropriate to carry out the provisions of sections 33-15-01-07 and 33-15-01-15.

14. **Registration of exempted stationary sources.** The department may require that the owner or operator of any stationary source exempted from the requirement to obtain a minor source permit to operate to register the source with the department within such time limits and on such forms as the department may prescribe.

15. **Extensions of time.** The department may extend any of the time periods specified in this section upon notification of the applicant by the department.

16. **Amendment of permits.** When the public interest requires or when necessary to ensure the accuracy of the permit, the department may modify any condition or information contained in a minor source permit to operate. 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, or modify a condition which limits the potential to emit of a source which possesses a federally enforceable permit, 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.

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 February 1, 1982; October 1, 1987; March 1, 1994; August 1, 1995; June 1, 2001; March 1, 2003; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04.1, 23-25-04.2
Law Implemented: NDCC 23-25-03, 23-25-04.1, 23-25-04.2

33-15-14-04. Permit fees. Repealed effective March 1, 1994.

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

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

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

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

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

   d. "Alternative operating scenario (AOS)" means a scenario authorized in a title V permit that involves a change at the title V source for a particular emissions unit, and that either results in the unit being subject to one or more applicable requirements which differ from those applicable to the emissions unit prior to implementation of the change or renders inapplicable one or more requirements previously applicable to the emissions unit prior to implementation of the change.

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

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

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

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

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

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

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

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

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

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

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

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

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

permitted pursuant to section 504(e) of the Federal Clean Air Act.

f. "Approved replicable methodology (ARM)" means title V permit terms that:

(1) Specify a protocol which is consistent with and implements an applicable requirement, or requirement of this section, such that the protocol is based on sound scientific or mathematical principles, or both, and provides reproducible results using the same inputs; and

(2) Require the results of that protocol to be recorded and used for assuring compliance with such applicable requirement, any other applicable requirement implicated by implementation of the approved replicable methodology, or requirement of this section, including where an approved replicable methodology is used for determining applicability of a specific requirement to a particular change.

~~e.~~ g. "Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this section, or in any other regulations implementing title V of the Federal Clean Air Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

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

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

~~h.~~ j. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally

enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

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

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

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

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

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

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

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

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

(a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of

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

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

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

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

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

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

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

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

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

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

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

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

(aa) Any other stationary source category which as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

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

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

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

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

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

~~u.~~ w. "Regulated air contaminant" means the following:

(1) Nitrogen oxides or any volatile organic compounds.

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

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

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

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

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

applicable date established pursuant to section 112(e) of the Federal Clean Air Act; and

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

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

(1) Carbon monoxide.

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

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

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

~~X.~~ Z. "Responsible official" means one of the following:

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

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

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

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

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

(4) For affected sources:

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

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

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

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

~~aa.~~ cc. "Subject to regulation" means, for any air contaminant, that the air contaminant is subject to either a provision in the Federal Clean Air Act, or a nationally applicable regulation codified by the administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I, subchapter C, that requires actual control of the quantity of emissions of that air contaminant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that air contaminant release from the regulated activity. Except that:

(1) Greenhouse gases, the air contaminant defined in 40 Code of Federal Regulations 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the greenhouse gases emissions are at a stationary source emitting or having the potential to emit one

hundred thousand tons per year carbon dioxide equivalent emissions.

(2) The term tons per year carbon dioxide equivalent emissions shall represent an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the contaminant greenhouse gases, by the gas's associated global warming potential published at 40 Code of Federal Regulations, part 98, subpart A, table A-1 - global warming potentials, and summing the resultant value for each to compute a tons per year carbon dioxide equivalent.

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

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

2. **Applicability.**

a. This section is applicable to the following sources:

(1) Any major source.

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

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

(4) Any affected source.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. **Permit applications.**

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

      (1) Timely application.

         (a) A timely application for a source applying for a title V permit for the first time is one that is submitted within one year of the source becoming subject to this section.

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

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

      (2) Complete application. To be deemed complete, an application must provide all information required pursuant to subdivision c, except that applications for a permit revision need supply such information only if it is related to the proposed change. Information required under subdivision c must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official must certify the submitted information consistent with subdivision d. Unless the department determines that an application is not complete within sixty days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in paragraph 3 of subdivision a of subsection 6. If, while processing an application that has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in

writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in subdivision b of subsection 6, shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

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

b. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

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

Particulate: 2 tons [1.81 metric tons] per year

Inhalable particulate: 2 tons [1.81 metric tons] per year

Sulfur dioxide: 2 tons [1.81 metric tons] per year

Hydrogen sulfide: 2 tons [1.81 metric tons] per year

Carbon monoxide: 2 tons [1.81 metric tons] per year

Nitrogen oxides: 2 tons [1.81 metric tons] per year

Ozone: 2 tons [1.81 metric tons] per year

Reduced sulfur compounds: 2 tons [1.81 metric tons] per year

Volatile organic compounds: 2 tons [1.81 metric tons]

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

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

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

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

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

(3) The following emissions-related information:

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

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

(c) Emissions rates in tons per year~~, in terms of the applicable standard, and terms that are necessary to establish compliance with the applicable compliance method~~ and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tons per year can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed,

including where necessary to determine or assure compliance with, or both, an applicable requirement.

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

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

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

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

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

(4) The following air pollution control requirements:

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

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

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

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

(7) ~~Information that the department determines to be necessary to define alternative operating scenarios identified by the source or to define permit terms and conditions.~~ Additional information as determined to be necessary by the department to define proposed alternative operating scenarios identified by the source pursuant to paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 of section 33-15-14-06 or implementing paragraph 2 of

subdivision b of subsection 6 of section 33-15-14-06, paragraph 3 of subdivision b of subsection 6 of section 33-15-14-06, paragraph 8 of subdivision a of subsection 5 of section 33-15-14-06, or paragraph 10 of subdivision a of subsection 5 of section 33-15-14-06. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed alternative operating scenarios, or a certification that the source has submitted all relevant materials to the department for obtaining such authorizations.

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

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

(b) A description as follows:

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

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

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

[4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(c) A compliance schedule as follows:

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

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

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

[4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such requirements upon implementation of the alternative operating scenario. If a proposed alternative operating scenario would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

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

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

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

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

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

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

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

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

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

5. **Permit content.**

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

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include approved replicable methodologies identified by the source in its title V permit application as approved by the department, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this section or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.

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

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

(c) If the state implementation plan allows a determination of an alternative emissions limit at a title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the department elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

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

(3) Monitoring and related recordkeeping and reporting requirements.

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

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

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

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

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

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

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

[b] The dates analyses were performed;

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

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

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

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

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

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

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

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

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the Federal Clean Air Act, or the regulations promulgated thereunder, provided that such

increases do not require a permit revision under any other applicable requirement.

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

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

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

(6) Provisions stating the following:

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

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

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

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

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

such records directly to the administrator of the United States environmental protection agency along with a claim of confidentiality.

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

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

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

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

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

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this section. The department shall not approve a proposed alternative operating scenario into the title V permit until the source has obtained all authorizations required under any applicable requirement relevant to that alternative operating scenario.

(10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements, including the state implementation plan, provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

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

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

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

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

b. Federally enforceable requirements.

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

(2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the Federal Clean Air Act any terms and conditions included in the permit that are not required under the Federal Clean Air Act or under any of its applicable requirements.

Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

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

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

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

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

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

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

(d) As authorized by the Federal Clean Air Act and this article, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

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

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

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

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

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

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

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

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

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

[2] The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a;

[3] The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in item 2. The certification shall identify each deviation and take it into

account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under subsection 10 occurred; and

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

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

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

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

d. General permits.

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

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

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

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

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

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

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

f. Permit shield.

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

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

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

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

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

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

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

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

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

g. Emergency provision.

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

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

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

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

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

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

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

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

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

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

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

a. Action on application.

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

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

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

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

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

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

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

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

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

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

b. Requirement for a permit.

(1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted

in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Permit renewal and expiration.

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

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with subdivision b of subsection 6 and subparagraph c of paragraph 1 of subdivision a of subsection 4.

d. Administrative permit amendments.

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

(a) Corrects typographical errors;

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

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

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

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

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

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

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

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

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

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

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

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

(1) Minor permit modification procedures.

(a) Criteria.

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

[a] Do not violate any applicable requirement;

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

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

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source

has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the Federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Clean Air Act;

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

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

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

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

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

[2] The source's suggested draft permit;

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

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

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

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

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

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

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

(e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the

department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

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

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

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

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

[2] That collectively are below the threshold level which is ten percent of the emissions allowed by the permit for the emissions unit for which the change is requested, twenty percent of the applicable definition of major source in subsection 1, or five tons [4.54 metric tons] per year, whichever is least.

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

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

[2] The source's suggested draft permit.

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

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

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

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

(c) United States environmental protection agency and affected state notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under item 2 of subparagraph a of paragraph 2 of subdivision e, whichever is earlier, the department shall meet its obligation under paragraph 1 of subdivision a of subsection 7 and paragraph 1 of subdivision b of subsection 7 to notify the administrator of the United States environmental protection agency and affected states of the requested permit modifications. The department shall send any notice required under paragraph 2 of subdivision b of subsection 7 to the administrator of the United States environmental protection agency.

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application

or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

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

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

(3) Significant modification procedures.

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

(b) Significant permit modifications shall meet all requirements of this section, including those for applications, public participation, review by affected states, and review by the United States environmental protection agency, as they apply to permit issuance and permit renewal. The department shall complete review of significant permit modifications within nine months after receipt of a complete application.

f. Reopening for cause.

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

(a) Additional applicable requirements under the Federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the

date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

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

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

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

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

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

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

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

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

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

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

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

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

h. Public participation. Except for modifications qualifying for minor permit modification procedures, all permit proceedings, including initial permit issuance, significant modifications, and renewals, shall be subject to procedures for public notice including offering an opportunity for public comment and a hearing on the draft permit. These procedures shall include the following:

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

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

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

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

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

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

a. Transmission of information to the administrator.

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

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

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

b. Review by affected states.

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

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

c. United States environmental protection agency objection. No permit for which an application must be transmitted to the administrator of the United States environmental protection agency under subdivision a shall be issued if the administrator of the United States environmental protection agency objects to its issuance in writing within forty-five days of receipt of the proposed permit and all necessary supporting information.

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

be in violation of the requirement to have submitted a timely and complete application.

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

8. **Judicial review of title V permit to operate decisions.**

a. The applicant, any person who participated in the department's public participation process, and any other person who could obtain judicial review under North Dakota Century Code section 28-32-42 may obtain judicial review provided such appeal is filed in accordance with North Dakota Century Code section 28-32-42 within thirty days after notice of the final permit action.

b. The department's failure to take final action on an application for a permit, permit renewal, or permit revision within the timeframes referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42 within thirty days after expiration of the applicable timeframes.

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

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

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

9. **Enforcement.** The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

10. **Compliance assurance monitoring.** Except as noted below, title 40, Code of Federal Regulations, part 64 compliance assurance monitoring, as it exists on ~~January 31, 2004~~ July 2, 2010, is incorporated by reference.

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

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

    c. "Permitting authority" means the department.

History: Effective March 1, 1994; amended effective December 1, 1994; August 1, 1995; January 1, 1996; September 1, 1997; September 1, 1998; March 1, 2003; February 1, 2005; April 1, 2011.
General Authority: NDCC 23-25-03, 23-25-04, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04, 23-25-04.1, 23-25-10

33-15-15-01.2. Scope. The provisions of 40 Code of Federal Regulations part 52, section 21, paragraphs (a)(2) through (e), (h) through (r), (v), (w), (aa), and (bb) as they exist on ~~August 1, 2007~~ July 2, 2010, are incorporated by reference into this chapter. This includes revisions to the rules that were ~~effective~~ published as a final rule in the Federal Register 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)~~ 52.21(b)(2)(iii)(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)(49)	The following words are deleted "administrator in subchapter C of this chapter" and replaced with the following: Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.
40 CFR 52.21(b)(49)(i)	"§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(49)(ii)(a)	"Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.
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)(50)(i)(c)	This paragraph is deleted in its entirety and replaced with the following: Nitrogen oxides are a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.
40 CFR 52.21(b)(50)(i)(d)	This paragraph is deleted in its entirety and replaced with the following: Volatile organic compounds are not a precursor to $PM_{2.5}$ in any attainment or unclassifiable areas.
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 ~~July 1, 2007~~ July 2, 2010) 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:

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) With respect to a completed application, the department shall:

(a) 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 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(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; April 1, 2011.
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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
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 ~~March 1, 2008~~ July 2, 2010, 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; April 1, 2011.
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 ZZZZ - National emission standards for hazardous air pollutants for stationary reciprocating internal combustion engines.

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

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

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; April 1, 2011.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-24-08
TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

33-24-08-127 [Reserved]
33-24-08-128 [Reserved]
33-24-08-129 [Reserved]
33-24-08-130 Operating an Underground Storage Tank or Underground Storage Tank System (Lender Liability)

33-24-08-03. Definitions (technical standards, delivery prohibition, and corrective action).

1. "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

2. "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an underground storage tank.

3. "Belowground release" means any release to the subsurface of the land and the ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

4. "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

5. "Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

6. "Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

7. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

8. <u>"Class A operator" means an individual who has primary responsibility to operate and maintain the underground storage tank system.</u>

9. "Class B operator" means an individual who has daily responsibility to operate and maintain the underground storage tank system.

10. "Class C operator" means an individual who has daily onsite presence and responsibility to handle emergencies and alarms pertaining to a spill or release from the underground storage tank system.

11. "Community water system (CWS)" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.

~~9.~~ 12. "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the underground storage tank.

~~10.~~ 13. "Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual underground storage tank system, the piping that joins two underground storage tank systems should be allocated equally between them.

~~11.~~ 14. "Consumptive use" with respect to heating oil means consumed on the premises.

~~12.~~ 15. "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

~~13.~~ 16. "Department" means the North Dakota state department of health charged with the administration and enforcement of this chapter.

~~14.~~ 17. "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (for example, tank from piping).

~~15.~~ 18. "Dispenser" means equipment that is used to transfer a regulated substance from underground piping, through a rigid or flexible hose

or piping located aboveground, to a point of use outside of the underground storage tank system such as a motor vehicle.

~~16.~~ 19. "Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

~~17.~~ 20. "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

~~18.~~ 21. "Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

a. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

b. Either, (1) a continuous onsite physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

~~19.~~ 22. "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland, and nurseries with growing operations.

~~20.~~ 23. "Flowthrough process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flowthrough process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

~~21.~~ 24. "Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (for example, liquid not dissolved in water).

~~22.~~ 25. "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

~~23.~~ 26. "Hazardous substance underground storage tank system" means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum underground storage tank system.

~~24.~~ 27. "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker c); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

~~25.~~ 28. "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

~~26.~~ 29. "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

~~27.~~ 30. "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

~~28.~~ 31. "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

~~29.~~ 32. "New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "existing tank system".)

~~30.~~ 33. "Noncommercial purposes" with respect to motor fuel means not for resale.

~~31.~~ 34. "On the premises where stored" with respect to heating oil means underground storage tank systems located on the same property where the stored heating oil is used.

~~32.~~ 35. "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under sections 33-24-08-60 through 33-24-08-64.

~~33.~~ 36. "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system.

~~34.~~ 37. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

~~35.~~ 38. "Owner" means:

a. In the case of an underground storage tank system in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank system used for storage, use, or dispensing of regulated substances; and

b. In the case of any underground storage tank system in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use.

~~36.~~ 39. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

~~37.~~ 40. "Petroleum underground storage tank system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimus quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

~~38.~~ 41. "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials that routinely contains and conveys regulated substances from the underground tank or tanks to the dispenser or dispensers, or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank or tanks to the dispenser or dispensers. This definition does not include vent, vapor recovery, or fill lines.

~~39.~~ 42. "Pipeline facilities (including gathering lines)" are new and existing pipe rights of way and any associated equipment, facilities, or buildings.

~~40.~~ 43. "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which:

a. Supplies water for a noncommunity public water system, or;

b. Otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses).

Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

~~41.~~ 44. "Product deliverer" means any person who delivers or deposits product into an underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities.

~~42.~~ 45. "Public water system (PWS)" means a system for the provision to the public of water for human consumption through pipes, or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year. Such term includes:

a. Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and

b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Such term does not include any "special irrigation district". A public water system is either a "community water system" or a "noncommunity water system".

~~43.~~ 46. "Red tag" means a tag, device, or mechanism on the tank's fill pipes that clearly identifies an underground storage tank as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible underground storage tank. The tag, device, or mechanism is generally tamper resistant.

~~44.~~ 47. "Regulated substance" means:

a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under North Dakota Century Code chapter 23-20.3; and

b. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (sixty degrees

Fahrenheit [10 degrees Celsius] and fourteen and seven-tenths pounds per square inch [101.3 kilopascals] absolute). The term "regulated substance" includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

~~45.~~ 48. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

~~46.~~ 49. "Release detection" means determining whether a release of a regulated substance has occurred from the underground storage tank system into the environment or into the interstitial space between the underground storage tank system and its secondary barrier or secondary containment around it.

~~47.~~ 50. "Repair" means to restore a tank or underground storage tank system component that has caused a release of product from the underground storage tank system. Piping repair includes installation of a single run of up to ten feet of new piping to replace existing piping. Piping repair involving installation of a single run of more than ten feet of new piping to replace existing piping constitutes replacement as defined in subsection 48. Dispenser repair includes installation of a new dispenser to replace an existing dispenser so long as work is performed entirely on or above any shear valves and check valves. Installation of a new dispenser to replace an existing dispenser constitutes replacement as defined in subsection 48 if the work is performed beneath any shear valves or check valves, or on any flexible connectors, or unburied risers.

~~48.~~ 51. "Replace or replacement" means the installation of a new underground tank system or component in substantially the same location as another tank system or component in lieu of that tank system or component.

~~49.~~ 52. "Residential tank" is a tank located on property used primarily for dwelling purposes.

~~50.~~ 53. "SARA" means the Superfund Amendments and Reauthorization Act of 1986.

~~51.~~ 54. "Secondary containment tank or piping" means a tank or piping which is designed with an inner primary barrier and an outer barrier which extends around the inner barrier, and which is designed to contain any leak through the primary barrier from any part of the tank or piping that routinely contains product, and to allow for monitoring of the interstitial

space between the barriers for the detection of any leak or release of regulated substance from the underground tank or piping.

~~52.~~ 55. "Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

~~53.~~ 56. "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

~~54.~~ 57. "Surface impoundment" is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials) that is not an injection well.

~~55.~~ 58. "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (for example, concrete, steel, plastic) that provide structural support.

~~56.~~ 59. "Under-dispenser containment (UDC)" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must:

a. Be liquid-tight on its sides, bottom, and at any penetrations;

b. Be compatible with the substance conveyed by the piping; and

c. Allow for visual inspection and access to the components in the containment system or be monitored.

~~57.~~ 60. "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

~~58.~~ 61. "Underground release" means any belowground release.

~~59.~~ 62. "Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten

percent or more beneath the surface of the ground. This term does not include any:

a. Farm or residential tank of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes;

b. Tank used for storing heating oil for consumptive use on the premises where stored;

c. Septic tank;

d. Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 [49 U.S.C. App. 1671, et seq.];

(2) The Hazardous Liquid Pipeline Safety Act of 1979 [49 U.S.C. App. 2001, et seq.]; or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph 1 or 2 of this subdivision;

e. Surface impoundment, pit, pond, or lagoon;

f. Storm water or wastewater collection system;

g. Flowthrough process tank;

h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions a through i of this subsection.

63. "Unattended cardtrol facility" means a facility where control of the dispensing of a regulated substance is through a mechanical or electronic method without the constant onsite presence of a class A, class B, or class C operator.

~~60.~~ 64. "Underground storage tank system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

~~61.~~ 65. "Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

~~62.~~ 66. "Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

History: Effective December 1, 1989; amended effective January 1, 2009; April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-35. Release detection recordkeeping. All underground storage tank system owners and operators must maintain records in accordance with section 33-24-08-24 demonstrating compliance with all applicable requirements of sections 33-24-08-30 through 33-24-08-35. These records must include the following:

1. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years or for another reasonable period of time determined by the department, from the date of installation;

2. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, except that the results of tank tightness testing conducted in accordance with subsection 3 of section 33-24-08-33 must be retained until the next test is conducted; and

3. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located onsite must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

History: Effective December 1, 1989.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-36. Applicability (delivery prohibition).

1. Tank owners and operators and product deliverers are responsible for ensuring that product is not delivered, deposited, or accepted into an underground storage tank identified by the department as ineligible to receive product.

2. For purposes of this section the term "underground storage tank" means those tanks that satisfy the definition of petroleum underground storage tank system in section 33-24-08-03, except for those tanks identified as excluded or deferred storage tanks.

History: Effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-44. ~~[Reserved]~~ Unattended cardtrol facilities. A facility that normally has no employee or other responsible person onsite, or is open to dispense fuel at times when no employee or responsible person is onsite, shall have a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, operator, or local emergency responders, and an emergency shutoff device, if the facility dispenses fuel.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-45. ~~[Reserved]~~ Operator designations. Owners or operators of underground storage tank systems must designate a class A, class B, and class C operator for each tank system, except unattended cardtrol facilities which are not required to designate a class C operator. Either a class A, or class B, or class C operator must be present onsite during the operation of the tank system, except unattended cardtrol facilities which must have a posted sign in accordance with section 33-24-08-44.

Separate individuals may be designated for each class of operator or an individual may be designated to more than one operator class. An individual who is designated to more than one operator class must be trained in each operator class for which the individual is designated. Owners or operators must notify the department (for example, written or electronic notice: name of owner, business location address, city, state, zip code, and telephone number), and provide the name of the designated class A and class B operator for each underground storage tank facility owned. The owner or operator shall notify the department of any change of designated class A or class B operators within thirty days of the change. Documentation identifying the designated class C operators shall be maintained at each facility.

1. The class A operator has primary responsibility to operate and maintain the underground storage tank system. The class A operator's

responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements.

The class A operator shall be trained in accordance with section 33-24-08-46 and demonstrate knowledge in the following areas: general underground storage tank requirements including the areas of operation, maintenance, and recordkeeping; financial responsibility; release and suspected release reporting; temporary and permanent closure requirements; and operator training requirements.

2. The class B operator has primary responsibility for implementing the routine daily aspects of operation, maintenance, and recordkeeping for the underground storage tank system.

   The class B operator shall be trained in accordance with section 33-24-08-46 and demonstrate knowledge in the following areas: components of underground storage tank systems; materials of underground storage tank system components; methods of release detection and release prevention applied to underground storage tank components; operation and maintenance requirements of this chapter that apply to underground storage tank systems, including spill prevention, overfill prevention, release detection, corrosion protection, emergency response, and product compatibility; reporting and recordkeeping requirements; and class C operator training requirements.

   The class B operator shall ensure the performance and documentation of the onsite operator inspection in accordance with section 33-24-08-49.

3. The class C operator is responsible for handling emergencies and alarms pertaining to a spill or release from a tank system, including reporting spills and releases. The class C operator must be present onsite daily, except unattended cardtrol facilities which must have a posted sign in accordance with section 33-24-08-44. The class C operator must be trained by a class A or class B operator before assuming responsibility for the tank system.

   The class C operator shall be trained in accordance with section 33-24-08-46 and demonstrate knowledge necessary to take action in response to emergencies or alarms caused by spills or releases from an underground storage tank system.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-46. ~~[Reserved]~~ Operator training. Operator training must evaluate operator knowledge in the areas described for each class of operator in accordance with subsections 1, 2, and 3 of section 33-24-08-45.

1. By August 8, 2012, the owner or operator of an underground storage tank system regulated by this chapter, except those excluded by regulation in subsection 2 of section 33-24-08-01, and those deferred by regulation in subsection 3 of section 33-24-08-01, shall have trained class A, class B, and class C operators for each facility owned.

2. After August 8, 2012, class A and class B operators must be trained within thirty days or another reasonable period specified by the department, after assuming operation and maintenance responsibilities of the underground storage tank system. Class C operators must be trained before assuming responsibility for responding to emergencies.

3. Training of underground storage tank system operators shall be performed by the department or by a third-party trainer approved by the department, except that a trained class A, or class B, operator may train a class C operator.

NOTE: The following alternate third-party methods may be used to comply with this section: a certificate issued by a nationally recognized underground storage tank operator examination approved by the department; or written proof of successful completion of an equivalent operator training and testing program that has received prior approval from the department.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-47. ~~[Reserved]~~ Training reciprocity. The department may accept operator training certification verification from other states that have equivalent operator training requirements.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04

33-24-08-48. ~~[Reserved]~~ Operator retraining requirements. If the department determines an underground storage tank system is out of compliance, the class A or class B operator must be retrained within ninety days or another reasonable period of time determined by the department. At a minimum, an underground storage tank system is out of compliance if the system:

1. Meets any of the delivery prohibition criteria outlined in subsections 1 and 2 of section 33-24-08-37; or

2. Is not in significant compliance with other requirements, such as temporary or permanent closure, tank registration, or financial responsibility.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-49. ~~[Reserved]~~ Underground storage tank operator inspections. Beginning August 8, 2012, each underground storage tank facility shall have an onsite operator inspection conducted every thirty days, or within another reasonable time period approved by the department. The inspection shall be performed by or under the direction of the designated class B operator. The class B operator shall ensure that documentation of each inspection complies within the recordkeeping requirements of subsection 3 of section 33-24-08-24. The underground storage tank operator inspection shall document the following:

1. Release detection systems are properly operating and maintained;

2. Spill, overfill, and corrosion protection systems are in place and operational;

3. Tank top manways, tank and dispenser sumps, secondary containment sumps, and underdispenser containment are intact, and are properly maintained to be free of water, product, and debris;

4. Alarm conditions that could indicate a release are properly investigated and corrected, and are reported as suspected releases as required under section 33-24-08-40 or documented to show that no release has occurred; and

5. Unusual operating conditions and other indications of a release, or suspected release, indicated in accordance with section 33-24-08-40 are properly reported.

History: Effective April 1, 2011.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-83. Amount and scope of required financial responsibility.

1. Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

a. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than ten thousand gallons [37854 liters] of petroleum per month based on annual throughput for the previous calendar year, one million dollars; and

b. For all other owners or operators of petroleum underground storage tanks, five hundred thousand dollars.

2. Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

   a. For owners or operators of one to one hundred petroleum underground storage tanks, one million dollars; and

   b. For owners or operators of one hundred one or more petroleum underground storage tanks, two million dollars.

3. For the purposes of subsections 2 and 6 only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

4. Except as provided in subsection 5, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

   a. Taking corrective action;

   b. Compensating third parties for bodily injury and property damage caused by sudden accidental releases; or

   c. Compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms must be in the full amount specified in subsections 1 and 2.

5. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required must be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

6. Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are

acquired or installed. If the number of petroleum underground storage tanks for which assurance must be provided exceeds one hundred, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least two million dollars of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

7. The amounts of assurance required under this section exclude legal defense costs.

8. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

History: Effective December 1, 1989.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-85. Financial test of self-insurance.

1. An owner or operator, or guarantor, or both, may satisfy the requirements of section 33-24-08-83 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, or both, must meet the criteria of subsection 2 or 3 based on yearend financial statements for the latest completed fiscal year.

2. The following apply:

   a. The owner or operator, or guarantor, or both, must have a tangible net worth of at least ten times:

      (1) The total of the applicable aggregate amount required by section 33-24-08-83, based on the number of underground storage tanks for which a financial test is used to demonstrate financial responsibility to the department;

      (2) The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the department under sections 33-24-05-58, 33-24-05-77, and 33-24-05-79; and

      (3) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the department under chapter 33-25-01.

   b. The owner or operator, or guarantor, or both, must have a tangible net worth of at least ten million dollars.

   c. The owner or operator, or guarantor, or both, must have a letter signed by the chief financial officer worded as specified in subsection 4.

   d. The owner or operator, or guarantor, or both, must either:

      (1) File financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural electrification administration; or

      (2) Report annually the firm's tangible net worth to dun and bradstreet, and dun and bradstreet must have assigned the firm a financial strength rating of 4A or 5A.

e. The firm's yearend financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

3. The following apply:

   a. The owner or operator, or guarantor, or both, must meet the financial test requirements of subdivision a of subsection 6 of section 33-24-05-79, substituting the appropriate amounts specified in subdivisions a and b of subsection 2 of section 33-24-08-83 for the "amount of liability coverage" each time specified in that section;

   b. The fiscal yearend financial statements of the owner or operator, or guarantor, or both, must be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination;

   c. The firm's yearend financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification;

   d. The owner or operator, or guarantor, or both, must have a letter signed by the chief financial officer, worded as specified in subsection 4; and

   e. If the financial statements of the owner or operator, or guarantor, or both, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural electrification administration, the owner or operator, or guarantor, or both, must obtain a special report by an independent certified public accountant stating that:

      (1) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest yearend financial statements of the owner or operator, or guarantor, or both, with the amounts in such financial statements; and

      (2) In connection with that comparison, no matters came to the certified public accountant's attention which caused the certified public accountant to believe that the specified data should be adjusted.

4. To demonstrate that it meets the financial test under subsection 2 or 3, the chief financial officer of the owner or operator, or guarantor, must sign, within one hundred twenty days of the close of each financial reporting year, as defined by the twelve-month period for which financial statements used to support the financial test are prepared, a letter

worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter From Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance", and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator", and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to state requirements.]

A [insert: "financial test", and/or "guarantee"] is also used by this [insert: "owner or operator", or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other environmental protection agency regulations or state programs authorized by the environmental protection agency under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure [§§264.143 and 265.143]	$ _____
Postclosure Care [§§264.145 and 265.145]	$ _____
Liability Coverage [§§264.147 and 265.147]	$ _____
Corrective Action [§264.101(b)]	$ _____
Plugging and Abandonment [§144.63]	$ _____
Closure	$ _____
Postclosure Care	$ _____
Liability Coverage	$ _____
Corrective Action	$ _____
Plugging and Abandonment	$ _____
Total	$ _____

This [insert: "owner or operator", or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of subsection 2 of section 33-24-08-85 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subsection 3 of section 33-24-08-85 are being used to demonstrate compliance with the financial test requirements.]

ALTERNATIVE I

1.	Amount of annual underground storage tank aggregate coverage being assured by a financial test, and/or guarantee	$ ____	
2.	Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$ ____	
3.	Sum of lines 1 and 2	$ ____	
4.	Total tangible assets	$ ____	
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$ ____	
6.	Tangible net worth [subtract line 5 from line 4]	$ ____	
		Yes	No
7.	Is line 6 at least $10 million?	____	____
8.	Is line 6 at least 10 times line 3?	____	____
9.	Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?	____	____
10.	Have financial statements for the latest fiscal year been filed with the Energy Information Administration?	____	____
11.	Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?	____	____
12.	Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.]	____	____

ALTERNATIVE II

1.	Amount of annual underground storage tank aggregate coverage being assured by a test, and/or guarantee	$ ____
2.	Amount of corrective action, closure and postclosure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	$ ____
3.	Sum of lines 1 and 2	$ ____
4.	Total tangible assets	$ ____
5.	Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	$ ____
6.	Tangible net worth [subtract line 5 from line 4]	$ ____
7.	Total assets in the United States [required only if less than 90 percent of assets are located in the United States]	$ ____

		Yes	No
8.	Is line 6 at least $10 million?	____	____
9.	Is line 6 at least 6 times line 3?	____	____
10.	Are at least 90 percent of assets located in the United States? [If "No", complete line 11.]	____	____
11.	Is line 7 at least 6 times line 3? [Fill in either lines 12-15 or lines 16-18:]	____	____

12.	Current assets	$ ____
13.	Current liabilities	$ ____
14.	Net working capital [subtract line 13 from line 12]	$ ____

		Yes	No
15.	Is line 14 at least 6 times line 3?	____	____
16.	Current bond rating of most recent bond issue:	_____	
17.	Name of rating service:	_____	
18.	Date of maturity of bond:	_____	
19.	Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration?	____	____

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in subsection 4 of section 33-24-08-85 as such rules were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

5. If an owner or operator using the test to provide financial assurance finds that the owner or operator no longer meets the requirements of the financial test based on the yearend financial statements, the owner or operator must obtain alternative coverage within one hundred fifty days of the end of the year for which financial statements have been prepared.

6. The department may require reports of financial condition at any time from the owner or operator, or guarantor, or both. If the department finds, on the basis of such reports or other information, that the owner or operator, or guarantor, or both, no longer meets the financial test requirements of subsections 2 or 3 and 4 of section 33-24-08-85, the owner or operator must obtain alternate coverage within thirty days after notification of such a finding.

7. If the owner or operator fails to obtain alternate assurance within one hundred fifty days of finding that the owner or operator no longer meets the requirements of the financial test based on the yearend financial statements, or within thirty days of notification by the department that the owner or operator no longer meets the requirements of the financial test, the owner or operator must notify the department of such failure within ten days.

History: Effective December 1, 1989; amended effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-86. Guarantee.

1. An owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be:

a. A firm that:

(1) Possesses a controlling interest in the owner or operator;

(2) Possesses a controlling interest in a firm described under paragraph 1 of subdivision a of subsection 1; or

(3) Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

b. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

2. Within one hundred twenty days of the close of each financial reporting year the guarantor must demonstrate that it meets the financial test criteria of section 33-24-08-85 based on yearend financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in subsection 4 of section 33-24-08-85 and must deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within one hundred twenty days of the end of that financial reporting year the guarantor shall send via certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. If the department notifies the guarantor that the guarantor no longer meets the requirements of the financial test of subsections 2 or 3 and 4 of section 33-24-08-85, the guarantor must notify the owner or operator within ten days of receiving such notification from the department. In both cases, the guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in subsection 3 of section 33-24-08-100.

3. The guarantee must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of subsections 2 or 3 and 4 of section 33-24-08-85 and agrees to comply with the requirements for guarantors as specified in subsection 2 of section 33-24-08-86.

(2) [Owner or operator] owns or operates the following underground storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to section 33-24-08-12, and the name and address of the facility. This guarantee satisfies sections 33-24-08-80 through 33-24-08-106 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)][owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the department shall fund a standby trust fund in accordance with the provisions of section 33-24-08-98, in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor upon written instructions from the department shall

fund a standby trust in accordance with the provisions of section 33-24-08-98, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from, or alleged to arise from, such injury or damage, the guarantor, upon written instructions from the department, shall fund a standby trust in accordance with the provisions of section 33-24-08-98 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of subsections 2 or 3 and 4 of section 33-24-08-85, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate one hundred twenty days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-106 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 3 of section 33-24-08-86 as such rules were constituted on the effective date shown immediately below.

Effective date: _____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

_____

4. An owner or operator who uses a guarantee to satisfy the requirements of section 33-24-08-83 must establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the department under section 33-24-08-98. The standby trust fund must meet the requirements specified in section 33-24-08-93.

History: Effective December 1, 1989; amended effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-91. [Reserved]

33-24-08-93. Standby trust fund.

1. An owner or operator using any one of the mechanisms authorized by section 33-24-08-86, 33-24-08-88, or 33-24-08-89 must establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund must be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

2. The following apply:

a. The standby trust agreement, or trust agreement, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement", entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation", "partnership", "association", or "proprietorship"], the "Grantor", and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee".

Whereas, the department has established certain rules applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee", "surety bond", or "letter of credit"] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.)];

[Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions.

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of the Financial Assurance Mechanism.

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund", for the benefit of [the department]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided [The Fund is established initially as a standby to receive payments and shall not consist of any property.]. Payments made by the provider of financial assurance pursuant to the [department's] instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the department.

Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"].

The Trustee shall make payments from the Fund as [the department] shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third-parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

The Trustee shall reimburse the Grantor, or other persons as specified by the department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge the duties of the Trustee with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with

a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the

trust in writing sent to the Grantor and the present Trustee by certified mail ten days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the department to the Trustee shall be in writing, signed by the department, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 14. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and [the department] if the Grantor ceases to exist.

Section 15. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 16. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law.

This agreement shall be administered, construed, and enforced according to the laws of the state of North Dakota, or the Comptroller of the Currency in the case of National Association of Banks.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in subdivision a of subsection 2 of section 33-24-08-93 as such rules were constituted on the date written above.

[Signature of Grantor]
[Name of the Grantor]
[Title]
Attest:

[Signature of Trustee]
[Name of the Trustee]
[Title]
[Seal]
[Signature of Witness]
[Name of the Witness]
[Title]
[Seal]

b. The standby trust agreement, or trust agreement, must be accompanied by a formal certification of acknowledgment similar to the following.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that the owner or operator resides at [address], that the owner or operator is [title] of [corporation], the corporation described in and which executed the above instrument; that the owner or operator knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said

corporation; and that the owner or operator signed their name thereto by like order.

[Signature of Notary Public]
[Name of Notary Public]

3. The department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

4. An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this chapter.

History: Effective December 1, 1989; amended effective April 1, 1992; January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-96. Local government guarantee.

1. A local government owner or operator may satisfy the requirements of section 33-24-08-83 by obtaining a guarantee that conforms to the requirements of this section. The guarantor must be either the estate in which the local government owner or operator is located or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor must:

   a. Demonstrate that it meets the bond rating test requirement of section 33-24-08-94 and deliver a copy of the chief financial officer's letter as contained in subsection 3 of section 33-24-08-94 to the local government owner or operator.

   b. Demonstrate that it meets the worksheet test requirements of section 33-24-08-95 and deliver a copy of the chief financial officer's letter as contained in subsection 3 of section 33-24-08-95.

   c. Demonstrate that it meets the local government fund requirements of subsection 1, 2, or 3 of section 33-24-08-97, and deliver a copy of the chief financial officer's letter as contained in section 33-24-08-97 to the local government owner or operator.

2. If the local government guarantor is unable to demonstrate financial assurance under any of sections 33-24-08-94, 33-24-08-95, subsection 1 of section 33-24-08-97, subsection 2 of section 33-24-08-97, or subsection 3 of section 33-24-08-97, at the end

of the financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than one hundred twenty days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator must obtain alternative coverage as specified in subsection 3 of section 33-24-08-104.

3. The guarantee agreement must be worded as specified in subsection 4 or 5, depending on which of the following alternative guarantee arrangements is selected:

   a. If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the department, the guarantee shall be worded as specified in subsection 4.

   b. If in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the department for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in subsection 5.

4. If the guarantor is a state, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

   Local Government Guarantee With Standby Trust Made by a State

   Guarantee made this [date] by North Dakota, herein referred to as guarantor, to the department and to any and all third parties, and obligees, on behalf of [local government owner or operator].

   Recitals.

   (1) Guarantor is a state.

   (2) [Local government owner or operator] owns or operates the following underground storage tank or tanks, covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to chapter 33-24-08, and the name and address of the facility.] This guarantee satisfies sections 33-24-08-80 through 33-24-08-106 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by"

either "sudden accidental releases", or "nonsudden accidental releases", or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank or tanks in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the department and to any and all third parties:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the department shall fund a standby trust fund in accordance with the provisions of section 33-24-08-102, in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank or tanks in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor upon written instructions from the department shall fund a standby trust fund in accordance with the provisions of section 33-24-08-102, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank or tanks, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instruction is from the department, shall fund a standby trust in accordance with the provisions of section 33-24-08-102, satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-106, for the above-identified tank or tanks, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily injury or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

(8) Guarantor expressly waives notice of acceptance of this guarantee by department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 4 of section 33-24-08-96 as such rules were constituted on the effective date shown immediately below.

Effective date:_____

[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:_____

If the guarantor is a local government, the local government guarantee with standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

Local Government Guarantee With Standby Trust Made by a Local Government

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of North Dakota, herein referred to a guarantor, to the department, and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals.

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 33-24-08-94, the local government financial test requirements of section 33-24-08-95, or the local government fund under subsection 1, 2, or 3 of section 33-24-08-97.

(2) [Local government owner or operator] owns or operates the following underground storage tank or tanks covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to chapter 33-24-08, and the name and address of the facility.] This guarantee satisfies sections 33-24-08-80 through 33-24-08-106 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank or tanks in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the department shall fund a standby trust fund in accordance with the provisions of section 33-24-08-102 in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank or tanks in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor upon written instructions from the department shall fund a standby trust fund in accordance with the provisions of section 33-24-08-102, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank or tanks, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the department shall fund a standby trust in accordance with the provisions of section 33-24-08-102 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph 1, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with

the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-106 for the above-identified tank or tanks, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily injury or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 4 of section 33-24-08-96 as such rules were constituted on the effective date shown immediately below.

Effective date:_____
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:_____

5. If the guarantor is a state, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A STATE

Guarantee made this [date] by North Dakota, herein referred to as guarantor, to the department and to any and all third parties, and obligees, on behalf of [local government owner or operator].

Recitals.

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following underground storage tank or tanks covered by this guarantee: [list the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tank or tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to chapter 33-24-08, and the name and address of the facility]. This guarantee satisfies sections 33-24-08-80 through 33-24-08-106 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank or tanks in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the department and to any and all third parties and obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank or tanks in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor, upon written instructions from the department, shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank or tanks, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the department, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-106, for the above-identified tank or tanks, except that guarantor may cancel this guarantee by sending notice of certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily injury or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 5 of section 33-24-08-96 as such rules were constituted on the effective date shown immediately below.

Effective date:_____
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:_____

If the guarantor is a local government, the local government guarantee without standby trust must be worded exactly as follows, except that instructions in brackets are to be replaced with relevant information and the brackets deleted:

LOCAL GOVERNMENT GUARANTEE WITHOUT STANDBY TRUST MADE BY A LOCAL GOVERNMENT

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of North Dakota, herein referred to as guarantor, to the department and to any and all third parties, and obligees, on behalf of [local government owner or operator].

Recitals.

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of section 33-24-08-94, the local government financial test requirements of section 33-24-08-95, or the local government fund under subsection 1, 2, or 3 of section 33-24-08-97.

(2) [Local government owner or operator] owns or operates the following underground storage tank or tanks covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to chapter 33-24-08, and the name and address of the facility.] This guarantee satisfies sections 33-24-08-80 through 33-24-08-106 requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank or tanks in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], guarantor guarantees to the department and to any and all third parties and obligees that:

In the event that [local government owner or operator] fails to provide alternative coverage within sixty days after receipt of a notice of cancellation of this guarantee and the department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon written instructions from the department shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the department determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank or tanks in accordance with sections 33-24-08-50 through 33-24-08-57, the guarantor, upon written instructions from the department, shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental releases arising from the operation of the above-identified tank or tanks, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the department, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in paragraph 1, guarantor shall send within one hundred twenty days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) United States Code naming guarantor as debtor, within ten days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to chapter 33-24-08.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] must comply with

the applicable financial responsibility requirements of sections 33-24-08-80 through 33-24-08-106 for the above-identified tank or tanks, except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than one hundred twenty days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum underground storage tank; or

(e) Bodily injury or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of section 33-24-08-83.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the department, by any or all third parties, or by the [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in subsection 5 of section 33-24-08-96 as such rules were constituted on the effective date shown immediately below.

Effective date:_____
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]

Signature of witness or notary:_____

History: Effective December 1, 1989; amended effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-97. Local government fund. A local government owner or operator may satisfy the requirements of section 33-24-08-83 establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in subsection 2, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets one of the following requirements:

1. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks and is funded for the full amount of coverage required under section 33-24-08-83 or funded for part of the required amount of coverage and used in combination with other mechanism or mechanisms that provide the remaining coverage.

2. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, and is funded for five times the full amount of coverage required under section 33-24-08-83, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under section 33-24-08-83, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

3. The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the

"pay-in-period". The amount of each payment must be determined by this formula:

$$\frac{TF - CF}{Y}$$

Where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and:

a. The local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; or

b. The local government owner or operator has a letter signed by the appropriate state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter must also state that prior voter approval is not necessary before use of the bonding authority.

4. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor, or both, must sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter From the Chief Financial Officer

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" and/or "nonsudden accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank or tanks.

Underground storage tanks at the following facilities are assured by this local government fund mechanism: [list for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under section 33-24-08-83, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage", or "The local government fund is funded for ten times the full amount of coverage required under section 33-24-08-83, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage", or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the state attorney general stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in fund (market value of fund at the close of last fiscal year):
$_____
[if fund balance is incrementally funded as specified in subsection 3, insert:

Amount added to fund in the most recently completed fiscal year:
$_____
Number of years remaining in the pay-in period:

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in subsection 4 of section 33-24-08-97, as such rules were constituted on the date shown immediately below:

[Date]
[Signature]
[Name]
[Title]

History: Effective December 1, 1989; amended effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

33-24-08-102. Drawing on financial assurance mechanisms.

1. Except as specified in subsection 4, the department shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:

   a. The following conditions exist:

      (1) The owner or operator fails to establish alternate financial assurance within sixty days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanisms; and

      (2) The department determines or suspects that a release from an underground storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the department pursuant to sections 33-24-08-40 through 33-24-08-43 or 33-24-08-50 through 33-24-08-57 of a release from an underground storage tank covered by the mechanism; or

   b. The conditions of subdivision a of subsection 2 or paragraph 1 or 2 of subdivision b of subsection 2 are satisfied.

2. The department may draw on a standby trust fund when:

   a. The department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under sections 33-24-08-50 through 33-24-08-57; or

   b. The department has received either:

      (1) Certification from the owner or operator and the third-party liability claimant or claimants and from attorneys representing the owner or operator and the third-party liability claimant or claimants that a third-party liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third party

claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] underground storage tank should be paid in the amount of $[_____].

[Signatures]

Owner or Operator
Attorney for Owner or Operator
[Notary]
Date

[Signature(s)]

Claimant(s)
Attorney(s) for Claimant(s)
[Notary]
Date _____ or

(2) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under sections 33-24-08-80 through 33-24-08-106 and the department determines that the owner or operator has not satisfied the judgment.

3. If the department determines that the amount of corrective action costs and third-party liability claims eligible for payment under subsection 2 may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The department shall pay third-party liability claims in the order in which the department receives certifications under paragraph 1 of subdivision b of subsection 2 and valid court orders under paragraph 2 of subdivision b of subsection 2.

4. A government entity acting as guarantor under subsection 5 of section 33-24-08-96, the local government guarantee without standby trust, shall make payments as directed by the department under the circumstances described in subsections 1, 2, and 3.

History: Effective January 1, 2009.
General Authority: NDCC 23-20.3-03, 23-20.3-04.1
Law Implemented: NDCC 23-20.3-04.1

TITLE 54

BOARD OF NURSING

APRIL 2011

CHAPTER 54-01-03

54-01-03-01. Definitions. The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.

2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.

3. "Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.

4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.

5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.

6. "Applicant" means an individual seeking official action by the board.

7. "Approved" means that the standards established by the board are met.

8. "Assign" means a licensed nurse designates the responsibility for performance of nursing interventions to another licensed nurse.

9. "Assignment" means the distribution of work that each staff member is to accomplish.

10. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting" include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.

11. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.

12. "Certification" means a process of voluntary recognition by a national nursing organization of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty scope of practice and is developed in accordance with generally accepted standards of validity and reliability.

13. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.

14. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.

15. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.

16. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.

17. "Criminal history record information" shall have the same meaning as the phrase is defined in North Dakota Century Code section 12-60-16.1.

18. "Delegation" means the authorization for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person.

19. "Denial" means the board's refusal to issue or renew a current license or registration.

20. "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.

21. "Emergency suspension" means action by the board when there are reasonable grounds to believe the licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege has violated a statute or rule the board is empowered to enforce and continued practice would constitute a continuing and imminent threat to the public welfare.

22. "Encumber" means to place on probation.

~~22.~~ 23. "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.

~~23.~~ 24. "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.

~~24.~~ 25. "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.

~~25.~~ 26. "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.

~~26.~~ 27. "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.

28. "Letter of concern" means a letter from the board or from the executive director or the executive director's authorized designee expressing concern that a licensee, registrant, or applicant may have been engaged in conduct that is unacceptable or considered low risk of harm to the public. A letter of concern is not disciplinary action and is not an appealable action.

~~27.~~ 29. "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.

~~28.~~ 30. "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.

~~29.~~ 31. "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.

~~30.~~ 32. "Licensure" means the process by which the board grants legal privilege to an individual to engage in the practice of nursing upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.

~~31.~~ 33. "Limit" means to restrict, qualify, or otherwise modify the license or registration.

~~32.~~ 34. "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.

~~33.~~ 35. "Medication administration" means the delivery of medication by a licensed nurse or an individual delegated to and supervised by a licensed nurse, to a client whose use of that medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.

~~34.~~ 36. "Medication assistant" means an individual who has a current registration as an unlicensed assistive person, has had additional training in administration of medication, and possesses a current registration from the board as one of the following medication assistants:

a. Medication assistant I is a person who has completed all the requirements for a medication assistant program I. A medication assistant I is limited to employment in a setting in which a licensed nurse is not regularly scheduled.

b. Medication assistant II is a person who has completed additional training past the medication assistant program I and met all the requirements for a medication assistant program II. A medication assistant II may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.

c. Medication assistant III is a person who has completed two semesters of an approved nursing education program, each of which must have included a clinical nursing component, or a graduate of a board-recognized medical assistant program. A medication assistant III may be employed both in a setting in which a licensed nurse is regularly scheduled and a setting in which a licensed nurse is not regularly scheduled.

~~35.~~ 37. "Medication assistant program" means a program of study and clinical practice in the administration of routine, regularly scheduled medications which meets board requirements.

~~36.~~ 38. "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.

~~37.~~ 39. "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.

~~38.~~ 40. "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the client.

~~39.~~ 41. "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.

~~40.~~ 42. "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care which may include activities of daily living.

~~41.~~ 43. "Out-of-state nursing program" means a program whose faculty and facilities are located outside North Dakota but within the United States, which is approved by the licensing board for nurses in the particular state or United States territory and is equivalent to an "instate nursing program".

~~42.~~ 44. "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.

~~43.~~ 45. "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.

~~44.~~ 46. "Probation" means issuance of a current license or registration marked "encumbered" and identification of specific requirements, restrictions, or limitations against a nursing license or registration for a period of time.

~~45.~~ 47. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family personal relationships.

~~46.~~ 48. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.

~~47.~~ 49. "Reactivation" means issuance of a previously active license or registration.

~~48.~~ 50. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.

~~49.~~ 51. "Regularly scheduled presence of a licensed nurse" means that a licensed nurse is present a minimum of eight hours in a twenty-four-hour period of time in a setting where nursing care is continuously delivered.

~~50.~~ 52. "Reinstatement" means activation of a board-sanctioned license or registration.

~~51.~~ 53. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.

~~52.~~ 54. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.

~~53.~~ 55. "Routine, regularly scheduled medication" means the components of an identified medication regimen for an individual or groups of individuals with stable conditions which are administered on a routine basis and do not require determination of need, drug calculation, or dosage conversion.

~~54.~~ 56. "Scope of practice" means the delineation of the nature and extent of practice.

~~55.~~ 57. "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.

~~56.~~ 58. "Stable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.

~~57.~~ 59. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.

~~58.~~ 60. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.

a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.

b. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the client care area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed nurse or licensed practitioner must be in the same room or "looking over the shoulder" of the persons providing nursing care.

c. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.

~~59.~~ 61. "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.

~~60.~~ 62. "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.

~~61.~~ 63. "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.

~~62. "Temporary suspension" means action by the board when there are reasonable grounds to believe the licensee or registrant has violated a statute or rule the board is empowered to enforce and continued practice by the licensee or registrant would constitute a continuing and imminent threat to the public welfare.~~

~~63.~~ 64. "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.

~~64.~~ 65. "Voluntary surrender" means an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.

~~65.~~ 66. "Workplace impairment program" means the program administered by the board as set out in the Nurse Practices Act permitting nurses with chemical dependency, psychiatric or physical disorders, or practice deficiencies to seek treatment and remediation and participate in monitored practice, voluntarily or by the board's order.

~~66.~~ 67. "Workplace impairment program agreement" means an individualized written agreement between the nurse and the program. The agreement must include the terms and conditions for successful completion of the program.

History: Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08(2)
Law Implemented: NDCC 43-12.1-08

CHAPTER 54-02-06

54-02-06-01. Application and fee for license by endorsement. Applicants for license by endorsement must meet board requirements, including the following:

1. Submit a completed application and submit to a criminal history record check according to chapter 54-02-12;

2. Pay the nonrefundable endorsement fee of one hundred ten dollars;

3. Completed a state-approved nursing education program which meets or exceeds those requirements outlined in article 54-03.2; and

4. Has nursing practice to demonstrate continued competency which meets or exceeds four hundred hours within the preceding four years or as otherwise approved by the board.

A licensee from another jurisdiction that does not meet the practice hours must meet the requirements in section 54-02-05-05, relating to nonpracticing nurses.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 12-60-24.2(o), 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)(b)

CHAPTER 54-02-07
DISCIPLINARY ACTION

54-02-07-01.1. Grounds for discipline. Practice inconsistent with acceptable standards of nursing practice by a licensee, applicant, or registrant means behavior that may place a client or other person at risk for harm or be in violation of the standards of nursing practice. Inconsistent practice includes incompetence by reason of negligence, patterns of behavior, or other behavior that demonstrates professional misconduct and includes the following:

1. Failure to provide nursing care because of client diagnosis, age, sex, race, religion, creed, or color.

2. Cause or permit verbal, physical, emotional, or sexual abuse or harassment or intimidation to a client, client's family, or other health care provider.

3. Assign or delegate the responsibility for performance of nursing interventions to unqualified persons.

4. Failure to appropriately supervise persons to whom nursing interventions have been assigned or delegated.

5. Practice of nursing without sufficient knowledge, skills, or nursing judgment.

6. Performance of nursing interventions in a manner inconsistent with acceptable nursing standards.

7. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of board records or client, employee, or employer records.

8. Failure to adhere to the licensee's, registrant's, or applicant's professional code of ethics or other applicable standards governing the individual's practice.

9. Misappropriation of property, including any real or personal property of the client, employer, or any other person or entity or failure to take precautions to prevent such misappropriation.

10. Abandon or neglect a client who is in need of or receiving nursing care.

11. Failure to comply with mandatory requirements to report any violation of the Nurse Practices Act or duly promulgated rules, regulations, or orders of the board.

12. Practice nursing or assist in the practice of nursing while under the influence of alcohol or unauthorized drugs or while exhibiting impaired behavior.

13. Alter or falsify a license, registration, transcript, diploma, certificate, program of study, or continuing education document.

14. Use or permit the use of a nursing license or registration that has been fraudulently purchased, created, obtained, issued, counterfeited, or altered.

15. Failure to submit to a mental health, chemical dependency, or physical evaluation within the timeframe required by the board.

16. Violate any term of probation, condition, or limitation imposed by the board.

17. Failure to adhere to professional boundaries with a client or client's family.

18. Failure to comply with licensure or registration requirements.

19. Submit to a drug screen that results in a positive test for unauthorized drugs.

20. Failure to provide a written notice or report required under section 54-02-07-03.1 of this chapter.

History: Effective December 1, 1995; amended effective July 1, 1996; February 1, 1998; June 1, 2002; April 1, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-03.1. Reporting violations. Protection of the public is enhanced by reporting of incidents that may be violations of North Dakota statutes or grounds for discipline by the board. Licensees, registrants, applicants, or citizens should use the following process to report any knowledge of ~~the performance by others of~~ acts or omissions of any individual that violate North Dakota Century Code chapter 43-12.1 or these rules:

1. **Minor incident.** If the act or omission meets the criteria for management of a minor incident, the applicant, licensee, or registrant should be aware of and follow the established policy within the practice setting for minor incidents. The established policy in the licensee's or registrant's practice setting should detect patterns of unsafe behavior that may be considered minor incidents and take corrective action resulting in safe practice.

   a. A minor incident may be handled in the practice setting with a corrective action process if all the following factors exist:

      (1) Potential risk of harm to others is low;

      (2) There is no pattern of recurrence;

      (3) The licensee or registrant exhibits evidence of remediation and adherence to standards of nursing practice; and

      (4) The corrective action process results in the licensee or registrant possessing the knowledge, skills, and abilities to practice nursing safely.

   b. Other factors may be considered in determining the need to report such as the significance of the event in the particular practice setting, the situation in which the event occurred, and the presence of contributing or mitigating circumstances in the nursing care delivery system.

   c. Nothing in this rule is intended to prevent reporting of a minor incident or potential violation directly to the board.

2. **Major incident.** If the act or omission is a major incident or factors are present that indicate a duty to report, the licensee, applicant, or registrant and the licensee's, applicant's, or registrant's supervisor must

report the alleged violation to the board in the manner and form provided by the board. The report should include requested information about the act or omission, the individuals involved, and the action taken within the practice setting.

3. **Termination of employment.** When a licensee, applicant, or registrant terminates from the practice setting, either voluntarily or by request, due to conduct that may be grounds for discipline under the Nurse Practices Act, a report shall be made to the board by the licensee, applicant, or registrant and by the licensee's, applicant's, or registrant's supervisor in the manner and form provided by the board.

4. **Self-reporting.** A licensee, registrant, or applicant shall provide written notice of explanation and a copy of the applicable documents to the board within thirty days from the date of any criminal, malpractice, administrative, civil, or disciplinary action in another jurisdiction or any other action taken against the licensee, registrant, or applicant for any conduct that may affect patient safety or otherwise relates adversely to the practice of nursing.

History: Effective December 1, 1995; amended effective June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-11

54-02-07-04.1. Evidence and evaluation of treatment. The board may require the individual subject to an investigation to submit to a mental health, chemical dependency, or physical evaluation if, during the course of the investigation, there is reasonable cause to believe that any licensee, registrant, or applicant is unable to practice with reasonable skill and safety or has abused alcohol or drugs.

1. Upon failure of the person to submit to the evaluation within thirty days of the request, the board may ~~temporarily~~ suspend the individual's license or registration or deny or suspend consideration of any pending application until the person submits to the required evaluation.

2. The licensee, registrant, or applicant shall bear the cost of any mental health, chemical dependency, or physical evaluation and treatment required by the board.

3. The board may suspend or revoke an individual's license or registration if it is determined that the individual is unsafe to practice. The suspension or revocation will remain in effect until the individual demonstrates to the satisfaction of the board the ability to safely return to the practice of nursing or assist in the practice of nursing.

4. The board may deny the individual's application for licensure or registration if it is determined that the individual is unsafe to practice.

The denial will remain in effect until the individual demonstrates to the satisfaction of the board the ability to safely practice nursing or assist in the practice of nursing.

History: Effective June 1, 2002; amended effective July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05.2. ~~Temporary~~ Emergency suspension. The executive director or the executive director's authorized designee may ~~determine that temporary~~ issue an emergency suspension of a license ~~or~~, registration ~~is necessary~~, permit, or privilege to practice when continued practice of ~~the~~ a licensee ~~or~~, registrant, applicant, or any individual with authority to practice nursing under any privilege would constitute a continuing and imminent threat to the public welfare.

~~1. When it appears by credible evidence that temporary suspension may be necessary, the executive director or the executive director's authorized designee may issue an order temporarily suspending the license or registration, specifying the statute or rule.~~

~~2.~~ 1. The order of ~~temporary~~ emergency suspension shall take effect upon written notice to the licensee ~~or~~, registrant, applicant, or any other individual with authority to practice nursing under any privilege and shall remain in effect until either retracted, modified, or superseded by final disciplinary action by the board or upon agreement between the board and the licensee ~~or~~, registrant, applicant, or individual. If a hearing is not requested by the licensee, registrant, applicant, or individual within twenty days of the notice, the emergency suspension shall become effective as a final order without further notice.

~~3.~~ 2. In cases when disciplinary action is imposed, the board may additionally order that the ~~temporary~~ emergency suspension continue in effect until the later of expiration of the time permitted for appeal or termination of the appellate process.

History: Effective June 1, 2002; amended effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-05.4. Cease and desist order. When it appears by credible evidence that a cease and desist order may be necessary, the executive director of the board or the executive director's authorized designee may issue an order ~~temporarily suspending the license or registration or otherwise~~ directing ~~the~~ a

licensee ~~or~~, registrant, applicant, or any other individual with authority to practice nursing under any privilege to cease and desist certain actions.

History: Effective July 1, 2008; amended effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-06. Board decision. The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or registrant or the licensee's or registrant's practice or to reinstate a license or registration will be communicated to the licensee or registrant in the form of a board order. In addition to the terms and conditions imposed by the board, the following may apply:

1. **Revocation.** If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure or registration by the individual. The national nursing licensing examination may be waived by the board as a condition for the reissuance of a previously revoked license. The initial licensure or registration fee will be assessed for the reissuance of a revoked license or registration.

2. **Suspension.** If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license or registration. An individual whose license or registration is suspended may request reinstatement by the board at any regularly scheduled meeting following the conclusion of the time period specified in the order. The current renewal fee will be required for reissuance of a suspended license or registration.

3. **Encumbrance.** If the board issues an encumbrance order~~:~~,

   ~~a. The licensee or registrant shall promptly surrender all current licenses and registrations.~~

   ~~b. An encumbered license or registration shall be issued with the following statement "License or registration is encumbered. Please contact the board of nursing."~~

   ~~c. If a licensee or registrant has more than one license or registration, the encumbrance applies to all licenses or registrations~~ an encumbered license or registration shall be identified with the following statement: "License or registration is encumbered. Please contact the board of nursing." If a licensee or registrant has

more than one license or registration, the encumbrance applies to all licenses or registrations.

History: Effective August 1, 1988; amended effective December 1, 1995; June 1, 2002; April 1, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 28-32-13, 43-12.1-14

CHAPTER 54-02-10
RN AND LPN NURSE LICENSURE COMPACT

54-02-10-02. Definitions. As used in this compact:

1. "Adverse action" means a home or remote state action.

2. "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

3. "Board" means a party state's regulatory body responsible for issuing nurse licenses.

4. "Compact" means the nurse licensure compact.

5. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

6. "Current significant investigative information" means:

   a. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

b. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

7. "Home state" means the party state which is the nurse's primary state of residence.

8. "Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

9. "Information system" means the coordinated licensure information system.

10. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

11. "Multistate disciplinary case" means an allegation or violation by a licensee practicing on a compact privilege in a remote state. The involved compact states shall work cooperatively, each contributing toward resolution of the matter.

12. "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

~~12.~~ 13. "Nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party's state practice laws.

~~13.~~ 14. "Party state" means any state that has adopted this compact.

~~14.~~ 15. "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes or domicile.

~~15.~~ 16. "Public" means any individual or entity other than designated staff or representatives of party state boards or the national council of state boards of nursing, incorporated.

~~16.~~ 17. "Remote state" means a party state, other than the home state:

a. Where the patient is located at the time nursing care is provided; or

b. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

~~17.~~ 18. "Remote state action" means:

a. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state; and

b. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

~~18.~~ 19. "Single state license" means a license issued by a state board of nursing that authorizes practice only in the state of issuance.

~~19.~~ 20. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~20.~~ 21. "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

History: Effective May 1, 2003; amended effective July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-51

54-02-10-02.2. Limitations on multistate licensure privilege - Discipline. A home state board shall include in all licensure disciplinary orders or agreements that limit practice or require monitoring the requirement that the licensee subject to said order or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from the boards of both the home state and the other party state.

1. An individual who ~~has~~ had a license ~~or privilege to practice~~ which ~~is or~~ was surrendered, revoked, or suspended, or had an application inspection denied for cause, in a prior state of primary residence, may be issued a single state license in ~~the current~~ a new primary state of residence until such time as the individual would be eligible for ~~reinstatement in~~ an unrestricted license by the prior state or states of adverse action.

2. Once eligible for licensure in the prior states, a multistate license may be issued.

History: Effective July 1, 2008; amended effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-51

54-03.2-04-08.1. Faculty development program. A faculty developmental program that is approved by the board must be provided for all unqualified faculty. The faculty developmental program shall comply with the following requirements.

1. Each academically unqualified individual must be assigned a mentor who will supervise and interact with the individual in person at designated intervals as determined by the board.

2. The program director must notify the board of changes in mentors.

3. The program director must submit to the board the names of academically unqualifed individuals employed as faculty and the number of full-time equivalents filled by these individuals each semester.

4. The program director must submit verification that academically unqualifed individuals are continuously enrolled in a graduate program and making progress in the curriculum that will allow completion of the graduate program within the required timeframe.

History: Effective April 1, 2011.
General Authority: NDCC
Law Implemented: NDCC

CHAPTER 54-03.2-03
NURSE ADMINISTRATOR

Section

54-03.2-03-05. Employment of academically unqualified administrator. The board may approve a nursing program that employs an administrator who does not meet the educational requirements in section ~~54-03.2-03-02 or~~ 54-03.2-03-03 in the following circumstances:

1. The program maintains full approval by the board and the sponsoring institution demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials~~;~~, and

   ~~a.~~ ~~The~~ the candidate is currently enrolled in a ~~master's or~~ doctoral degree program offered by an accredited institution and can demonstrate to the satisfaction of the board a specific plan of completion within ~~four years for a master's degree and~~ seven years of hire for a doctoral degree; and

   ~~b.~~ a. The institution demonstrates to the satisfaction of the board that eighty-five percent of the ~~nursing~~ program's ~~regular~~ nursing faculty full-time equivalents have the required degree; or

   ~~c.~~ b. A faculty of seven or fewer members will have no more than one nursing faculty ~~member~~ full-time equivalent that is unqualified.

2. Other circumstances as approved by the board.

History: Effective April 1, 2004; amended effective July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17

CHAPTER 54-03.2-04
FACULTY

54-03.2-04-07. Preceptors. A preceptor provides supervision of a nursing student's practice experience and precepts at the direction of the faculty member responsible for the course in which the student is enrolled.

1. Clinical preceptors may be used to enhance clinical learning experiences, after a student has received clinical and didactic instruction in foundation courses;

2. Preceptors may not be used to replace clinical faculty in prelicensure certificate, associate, or baccalaureate degree nursing programs;

3. Interdisciplinary preceptors must hold credentials for their applicable practice;

4. The preceptor must be educated at the same or higher level as the academic program in which the student is enrolled or must have demonstrated competencies that are appropriate for the student's learning experience;

5. Criteria for selecting preceptors must be in writing;

6. The functions and responsibilities of the preceptor must be delineated in writing and provided to the preceptor;

7. The faculty member retains responsibility for the student's learning experiences and confers periodically with the preceptor and student for the purposes of monitoring and evaluating the learning experiences; and

8. A preceptor shall supervise no more than two students during any one scheduled work time or shift.

History: Effective November 1, 1996; amended effective April 1, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-08. Employment of academically unqualified faculty. ~~The~~ Any individual engaged in a teaching relationship who does not meet the qualifications in section 54-03.2-04-03 or 54-03.2-04-04 is considered academically unqualified faculty regardless of the title assigned by the institution. A program may receive continued approval with faculty who do not meet the educational requirements in section 54-03.2-04-03 or 54-03.2-04-04 in the following circumstances:

1. The program maintains full approval by the board and the administrator demonstrates to the satisfaction of the board that substantial effort was used to recruit a candidate with the required credentials~~;~~, and

   ~~a.~~ ~~The~~ the candidate is currently enrolled in a master's or doctoral degree program offered by an accredited institution and can demonstrate to the satisfaction of the board a specific plan of completion within four years of hire for the master's degree or seven years for a doctorate degree; and

   ~~b.~~ a. The administrator demonstrates to the satisfaction of the board that eighty-five percent of the ~~nursing~~ program's ~~regular~~ nursing faculty full-time equivalents have the required degree; or

   ~~c.~~ b. A program with faculty of seven or fewer members will have no more than a total of one nursing faculty ~~member who is~~ full-time equivalent held by an unqualified~~.~~ individual;

2. The board may extend the time allowed for the candidate to complete the degree by one year due to severe extenuating circumstances; or

3. Other circumstances as approved by the board.

~~3.~~ 4. A program with faculty holding less than a baccalaureate degree in nursing shall not be approved.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17(1)

54-03.2-04-08.1. Faculty developmental program. A faculty developmental program that is approved by the board must be provided for all

unqualified faculty. The faculty developmental program shall comply with the following requirements:

1. Each academically unqualified individual must be assigned a mentor who will supervise and interact with the individual in person at designated intervals as determined by the board.

2. The program director must notify the board of changes in mentors.

3. The program director must submit to the board the names of academically unqualified individuals employed as faculty and the number of full-time equivalents filled by these individuals each semester.

4. The program director must submit verification that academically unqualified individuals are continuously enrolled in a graduate program and making progress in the curriculum that will allow completion of the graduate program within the required timeframe.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17(1)

CHAPTER 54-03.2-06

54-03.2-06-01. General curriculum. The curriculum must:

1. Be planned, implemented, and evaluated by the faculty with provisions for student input;

2. Reflect the mission and purpose of the nursing education program;

3. Be organized and sequenced to meet the program outcomes;

4. Require a number of credits consistent with other programs at the same degree level;

5. Facilitate articulation for upward mobility;

6. Have a syllabus for each nursing course; and

7. Have written, measurable program outcomes, which include student learning outcomes that reflect the role ~~of~~ and scope of practice for which the graduate is being prepared.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17(1)

54-03.2-06-07. Nursing curriculum. The curriculum of the nursing education program must assure the development of evidence-based practice for the level and scope of nursing practice. The program outcomes must reflect the scope of practice and level of licensure sought as defined in chapters 54-05-01, 54-05-02, and 54-05-03.1.

1. The curriculum of all practical nurse programs must include:

   a. Content regarding biological, physical, social, and behavioral sciences and legal and ethical responsibilities for practical nursing practice;

   b. Nursing process concepts;

   c. Communication and documentation skills;

   d. Pharmacologic concepts and medication administration;

   e. Nutritional concepts;

   f. Theory and clinical experience related to health promotion and disease prevention for individual clients across the lifespan and

in a variety of clinical settings, including basic safety and infection control;

g. Learning experiences that promote client-centered care that:

(1) Involves clients in decisionmaking, self-care, and healthy lifestyles;

(2) Respects client differences, values, preferences, and expressed needs; and

(3) Is based on scientific evidence;

h. Learning experiences that promote supervision skills and socialization consistent with role and scope of practice and:

(1) Promotes functioning as a part of an interdisciplinary team; and

(2) Supervised clinical practice that includes management and care of groups of clients and delegation and supervision of unlicensed assistive persons;

i. Sufficient practice experiences to assure the development of nursing competencies of the specific role and scope; and

j. Learning experiences and methods of instruction which are consistent with the written curriculum plan.

2. Additional requirements for associate degree practical nurse programs include:

a. Historical trends in nursing;

b. Theory and clinical experience related to section 54-05-01-06 relating to role of the licensed practical nurse intravenous therapy;

c. Data collection skills;

d. Use of available health information:

(1) Contributing to plan of care and care implementation; and

(2) Computer literacy;

e. Management skills; and

f. Courses that meet the sponsoring institution's general education requirements for the associate degree.

3. The curriculum of an associate degree program leading to registered nurse licensure must include content and sufficient clinical experience to prepare the graduate to:

   a. Deliver client-centered care that respects client differences, values, preferences, and expressed needs and is based on scientific evidence:

      (1) Biological, physical, social, and behavioral sciences, including disease process, nutrition, and pharmacology;

      (2) Content regarding legal, ethical responsibilities and historical trends in nursing;

      (3) Nursing process;

      (4) Written, verbal, and therapeutic communication;

      (5) Basic decisionmaking skills;

      (6) Data collection skills to obtain obvious information; and

      (7) Health promotion and maintenance for the individual and families.

   b. Function effectively in an interdisciplinary team:

      (1) Group dynamics;

      (2) Goal-setting strategies; and

      (3) Management concepts, including delegation and supervision of other members of the health care team.

   c. Deliver evidence-based practice, including application of evidence in managing common clinical problems.

   d. Apply quality improvement concepts in nursing care:

      (1) Basic safety and infection control standards; and

      (2) Quality improvement processes.

   e. Use available health information:

      (1) Documentation of care plan, nursing care implementation, and evaluation of care provided; and

      (2) Computer literacy.

f. Inform and counsel patients and families:

(1) Concepts of informational readiness;

(2) Discharge planning; and

(3) Implementation of preestablished patient teaching plans.

g. Demonstrate nursing values and roles consistent with the scope of practice:

(1) Registered nurse standards of practice; and

(2) Ethical concepts.

h. Courses that meet the sponsoring institution's general education requirements for the associate degree.

4. The curriculum of a baccalaureate nurse program or a direct entry, prelicensure graduate program must include:

a. Content regarding legal and ethical issues; history, trends, and theories in nursing; biological, physical, social, and behavioral sciences, including pharmacotherapy; nutritional therapy; and pathophysiology;

b. Nursing process;

c. Didactic instruction and clinical experience in health promotion, prevention, restoration, and maintenance of clients across the lifespan and in a variety of clinical settings:

(1) Communicate, manage knowledge, and support decisionmaking using information technology; and

(2) Provide client-centered care that:

(a) Respects client differences, values, preferences, and expressed needs;

(b) Involves clients in decisionmaking and care management;

(c) Coordinates an interdisciplinary team to cooperate, collaborate, communicate, and integrate client care and health promotion;

(d) Employs evidence-based practice to integrate best research with clinical expertise and client values for optimal care; and

(e) Applies quality improvement processes:

[1] Quality improvement theory;

[2] Measurement of quality in terms of structure, process, and client outcomes; and

[3] Participation in development of changes in processes through utilization of change theory and systems of care with the objective of improving quality;

d. Experiences that promote the development of leadership and management skills and professional socialization:

(1) Responsibilities as a member of the profession;

(2) Management and leadership ~~theory~~;

(3) Group dynamics and group leadership skills; and

(4) Systems and organizational theory;

e. Learning experiences and clinical practice to include management and care of groups of clients and delegation and supervision of health care providers:

(1) Infection control and safety;

(2) ~~Epidemiology~~ Quality and safety;

(3) Public or community health ~~theory~~; and

(4) Case management ~~theory~~;

f. Sufficient practice experiences to assure the development of nursing competencies to:

(1) Provide development of client-centered care;

(2) Provide opportunities to participate in interdisciplinary teams;

(3) Utilize or integrate research with clinical experience;

(4) Apply the principles of quality improvement; and

(5) Utilize technology and information management;

g. Learning experiences and methods of instruction must be consistent with the written curriculum plan; and

h. Courses that meet the sponsoring institution's general education requirements for the ~~baccalaureate~~ degree.

5. The curriculum preparing for licensure as an advanced practice registered nurse must include content and sufficient experience from nursing and related academic disciplines to meet requirements for a graduate degree with a nursing focus:

a. ~~Advanced theory and research appropriate to the area of nursing specialization;~~ The curriculum must prepare the graduate to practice:

(1) One of the following four identified advanced practice registered nursing roles as a certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, and certified nurse practitioner; and

(2) At least one of the following six population foci: family individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health, or gender-related or psychiatric mental health.

b. ~~Advanced nursing practice experience relevant to the focus of nursing specialization;~~ The curriculum shall include separate graduate level courses in the following:

(1) An advanced practice nursing core, including legal, ethical, and professional responsibilities of the advanced practice registered nurse.

(2) Advanced physiology and pathophysiology, including general principles that apply across the lifespan.

(3) Advanced health assessment, including assessment of all human systems, advanced assessment techniques, concepts, and approaches.

(4) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, and pharmacotherapeutics of all broad categories of agents.

c. ~~Adequate role preparation for advanced nursing practice; and~~ Each instructional track or major shall have supervised clinical

experience that is directly related to the role and population foci, including pharmacotherapeutic management of patients.

(1) A preceptor for an advanced practice registered nurse student must be a licensed practitioner with graduate level preparation with comparable practice focus.

(2) Clinical supervision must be congruent with current national professional organizations and nursing accrediting body standards applicable to the advance practice registered nurse role and population focus.

d. ~~Courses to meet the sponsoring institution's requirements for a graduate degree.~~ The curriculum must include the following:

(1) Preparation that provides a basic understanding of the principles for decisionmaking in the identified role.

(2) Provisions for the recognition of prior learning and advanced placement for individuals who hold a master's degree in nursing and are seeking preparation in a different role and population foci.

(3) Preparation in a speciality area of practice is optional, but if included, must build on the advanced practice registered nurse role and competencies in at least one of the six population foci.

(4) Courses to meet the sponsoring institution's requirements for a graduate degree.

(5) Additional required components of graduate education programs preparing advanced practice registered nurses as determined by the board.

e. Post-master's nursing students shall complete the requirements of the master's advanced practice registered nurse program through a formal graduate level certificate in the desired role and population foci and must demonstrate the same advanced practice registered nurses outcome competencies as the master's level student.

6. Delivery of instruction by distance education methods must meet the standards for nursing education according to article 54-03.2, be congruent with the nursing program curriculum plan, and enable students to meet the goals, competencies, and objectives of the education program and standards of the board.

7. Out-of-state prelicensure programs provided in this state must meet the standards for nursing education according to article 54-03.2.

History: Effective April 1, 2004; amended effective August 1, 2005; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17

CHAPTER 54-03.2-07

54-03.2-07-02. Initial approval status. The board may grant initial approval status to a proposed nursing education program that complies with chapter 54-03.2-08.

1. Before a nursing education program is permitted to admit students, the program shall submit evidence of the ability to meet the standards for nursing education according to chapter 54-03.2-01.

2. The board may continue initial approval status:

   a. Prior to the graduation of the first class, when review of materials specified in article 54-03.2, the most recent annual report, and the most recent survey report reveals substantial compliance with the rules; or

   b. After graduation of the first class, when review of the criteria for full approval reveals time is needed to fully comply with the rules.

History: Effective November 1, 1996; amended effective April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-17
Law Implemented: NDCC 43-12.1-17(1)

CHAPTER 54-03.2-10
INNOVATION IN NURSING EDUCATION

54-03.2-10-01. Statement of intent. A nursing education program may apply to implement an innovative approach by complying with the provisions in this chapter. Nursing education programs approved to implement innovative approaches shall continue to provide quality nursing education that prepares graduates to practice safely, competently, and ethically within the scope of practice as defined in North Dakota Century Code chapter 43-12.1. The rules set forth in this chapter are intended to:

1. Foster innovative models of nursing education to address the changing needs in health care;

2. Assure that innovative approaches are conducted in a manner consistent within the board's role of protecting the public; and

3. Assure that innovative approaches conform to the quality outcome standards and core education criteria established by the board.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-02. Eligibility. A nursing education program is eligible to apply under the following conditions:

1. The nursing education program shall hold full board approval without conditions for the past five years;

2. There have been no substantial complaints against the program in the past five years; and

3. There have been no violations of article 54-03.2 in the past two years.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-03. Application. The following information shall be provided to the board at least sixty days prior to the board meeting upon which action will be taken. The application may be no more than fifteen pages, including appendices, with a one-page executive summary.

1. Identifying information.

   a. Name of program.

   b. Name of program administrator.

   c. Contact information.

2. A brief description of the current program, including accreditation and board approval status.

3. Identification of regulations affected by the proposed innovative approach.

4. Length of time that the proposed innovative approach will be implemented and studied.

5. Description of the proposed innovative approach, including objectives.

6. Brief explanation of reason to implement innovative approach at the current time.

7. Explanation of differences between proposed innovative approach and current program operation.

8. Rationale with available evidence to support proposed innovative approach.

9. Identification of resources that support the proposed innovative approach.

10. Expected impact of proposed innovative approach on program, including the following:

    a. Administration.

    b. Student policies.

    c. Student learning outcomes.

    d. Faculty resources.

    e. Fiscal resources.

11. Plan for implementation, including timeline.

12. Plan for evaluation of proposed innovation, including the following:

    a. Measurable criteria and outcomes.

    b. Method for evaluation.

    c. Frequency of evaluation.

13. Additional application information as requested by the board.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-04. Standards for approval. Approval of innovations in nursing education involves submission of a comprehensive report by the nursing program that ensures quality nursing education that prepares nurses to provide client-centered care as a member of the interdisciplinary team. The report should include the following:

1. Eligibility criteria in section 54-03.2-10-03 and application criteria in section 54-03.2-10-04 are met.

2. The innovative approach will not compromise the quality of education or safe practices of students.

3. Human and financial resources are sufficient to support the innovative approach.

4. Rationale supported with current evidence supports the implementation of the innovative approach.

5. Implementation plan is reasonable to achieve the desired outcomes of the innovative approach.

6. Timeline provides for a sufficient period to implement and evaluate the innovative approach.

7. Plan for periodic evaluation is comprehensive and supported by appropriate methodology.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-05. Review of application and board action.

1. Annually the board may establish the number of innovative approach applications it will accept, based upon board resources.

2. The board shall evaluate all applications to determine if they meet eligibility criteria in section 54-03.2-10-03 and the standards established in section 54-03.2-10-04.

3. The board shall inform the education program of the approval process.

4. If the application meets the standards, the board may:

   a. Approve the application; or

   b. Approve the application with modifications as agreed between the board and the nursing education program.

5. If the submitted application does not meet the criteria in sections 54-03.2-10-03 and 54-03.2-10-04, the board may deny approval or request additional information.

6. The board may rescind the approval or require program modifications if:

   a. The board receives substantial evidence indicating adverse impact; or

   b. The nursing program fails to implement the innovative approach as presented and approved.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-06. Periodic evaluation.

1. The education program shall submit progress reports conforming to the evaluation plan annually or as requested by the board.

2. The final evaluation report shall conform to the evaluation plan, detailing and analyzing the outcomes data.

3. If any report indicates that students were adversely impacted by the innovation, the nursing program shall provide documentation of corrective measures undertaken and their effectiveness.

4. Nursing education programs must maintain eligibility with criteria in section 54-03.2-10-03.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

54-03.2-10-07. Requesting continuation of the innovative approach.

1. If the innovative approach has achieved the desired outcome and the final evaluation has been submitted, the program may request that the innovative approach be continued.

2. Request for the innovative approach to become an ongoing part of the education program must be submitted with supporting evidence thirty days before a regular board meeting.

3. The board may grant the continued approval for an extended time of the innovative approach if the desired outcomes were met and public protection has not been compromised.

4. All continued innovations will be considered by the board for possible revisions to the applicable rules.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-17

CHAPTER 54-03.2-10.1
CHAPTER NAME

CHAPTER 54-04.1-03

54-04.1-03-01. Amount of loans. To the extent funds are available, educational loans will be made in the following amounts:

1. Students accepted into a nondegree licensed practical nurse program may receive a loan of no more than one thousand dollars.

2. Students in an associate degree licensed practical or registered nurse program may receive a loan of no more than two thousand dollars for the entire program, including a one plus one program.

3. Students in a baccalaureate registered nurse program may receive a loan of no more than ~~two~~ three thousand ~~five hundred~~ dollars.

4. Graduate nurse students including students in a post-master's certificate program may receive a loan of no more than ~~three~~ four thousand dollars to complete studies for a master's degree in nursing.

5. Graduate nurse students pursuing a doctorate may receive a loan of up to five thousand five hundred dollars.

~~5.~~ 6. Licensed practical nurses or registered nurses may receive a loan of no more than the cost of the course for a board-approved nurse refresher course.

History: Effective October 1, 1987; amended effective October 1, 1989; March 1, 1992; February 1, 1998; May 1, 2003; April 1, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(2)(h)

CHAPTER 54-04.1-04
REPAYMENT BY EMPLOYMENT

54-04.1-04-06. Loan forgiveness for military deployment. The loan may be forgiven at the discretion of the board upon proof of military deployment.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(2)(h)

CHAPTER 54-05-03.1
ADVANCED PRACTICE REGISTERED NURSE

54-05-03.1-02. Board authority - Title - Abbreviation. The board shall authorize advanced nursing practice to a registered nurse who has submitted evidence of advanced knowledge, skills, and abilities in a defined area of nursing practice. ~~Since 1991 individuals have been~~ Individuals are licensed as advanced practice registered nurses in the ~~categories~~ roles of ~~certified~~ nurse midwife, ~~certified registered~~ nurse anesthetist, clinical nurse specialist, or nurse practitioner and in the population foci of family across the lifespan, adult-gerontology, neonatal, pediatrics, women's health or gender related or psychiatric mental health. Each advanced practice registered nurse shall use the designation APRN and applicable ~~category~~ role designation for purposes of identification and documentation. ~~The title to be used must be submitted to the board for approval prior to usage.~~ No person may use ~~an~~ the advanced practice registered nurse (APRN) title plus the person's respective role title without the express authority of the board of nursing to do so.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-04. Initial requirements for advanced practice registered nurse licensure. Applicants for advanced practice registered nurse licensure must:

1. Possess a current license to practice as a registered nurse in North Dakota or in a compact state;

2. Submit evidence of completion of an ~~advanced practice track within the nursing education~~ accredited graduate level advanced practice registered nurse program ~~accredited by a national accrediting body~~ in one of the four roles and with at least one population focus;

3. Submit evidence of current certification by a national nursing certifying body in the ~~specialty~~ advanced practice registered nurse role and population foci appropriate to educational preparation. Primary source verification of certification is required;

4. Not have an encumbered license or privilege to practice in any state or territory;

5. Submit a completed notarized application and pay the fee of one hundred dollars; and

~~5.~~ 6. Submit a scope of practice statement according to established board guidelines for review and approval by the board of nursing.

7. Applicants who have been issued a registered nurse temporary permit and meet all of the qualifications for advanced licensure may be issued a temporary advanced practice registered nurse license with the same date of expiration. The advanced practice registered nurse license will be issued to coincide with the renewal date of the initial registered nurse license~~.~~; and

~~Applicants for whom there is no appropriate certifying examination may submit other evidence verifying initial competence as established by the board. Evidence of an equivalent mechanism will not be accepted after January 1, 2005, and individuals will no longer be licensed without an approved advanced practice registered nurse examination.~~

8. After December 31, 2015, all applicants for advanced practice registered nurse licensure must meet the licensure requirements in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; June 1, 2001; April 1, 2004; July 1, 2008; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)(b)(c)(d)

54-05-03.1-05. Temporary permit. An applicant for advanced licensure who possesses a current registered nurse license, and has submitted a complete application, the required fee, and evidence of meeting all educational requirements, may be issued a ninety-day temporary advanced practice registered nurse permit for practice in an advanced practice registered nurse category if the applicant:

1. Is applying for licensure under section 54-05-03.1-04;

2. ~~Is completing practice requirements for national nursing certification for the advanced practice registered nurse category;~~

3. ~~3.~~ Has applied as a first-time candidate to the next national nursing certification examination for the advanced practice registered nurse category; ~~or~~

~~4.~~ 3. Is awaiting certification results based upon initial application~~.~~; or

4. Temporary permit will not include prescriptive authority.

~~If the applicant fails the first certification examination for which the applicant is eligible, the applicant may continue to practice if supervised by a licensed provider of an appropriately related specialty or practice and the board is notified. If the applicant fails the second certification examination for which the applicant is eligible, the individual may no longer practice in the advanced practice registered nurse role.~~

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)(b)(c)(d)

54-05-03.1-06. Requirements for advanced practice registered nurse licensure renewal. The advanced practice registered nurse license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the advanced practice registered nurse license must have an active registered nurse license and:

1. Complete the advanced practice registered nurse license renewal application;

2. Pay an advanced practice registered nurse licensure renewal fee of forty dollars; and

3. Submit evidence of current national certification in the appropriate advanced practice registered nurse role and with at least one population focus, or participate in a competence maintenance program ~~as established~~ recognized by the board~~; and~~.

~~4. Submit a scope of practice statement for review and approval by the board.~~

Any individual holding a license to practice nursing as an advanced practice licensee in this state that is valid on December 31, 2015, shall be deemed to be licensed as an advanced practice registered nurse under the provisions of this chapter with the individual's current privileges and shall be eligible for renewal of such license under the conditions and standards prescribed in this chapter.

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-10(1)

54-05-03.1-09. Requirements for prescriptive authority. Applicants for prescriptive authority shall:

1. Be currently licensed as an advanced practice registered nurse in North Dakota.

2. Submit a complete, notarized prescriptive authority application and pay the fee of fifty dollars.

3. Submit a completed transcript with degree posted from an accredited graduate level advanced practice registered nurse program and which includes evidence of completion of advanced pharmacotherapy, physical assessment, and pathophysiology.

4. Provide evidence of completion of thirty contact hours of education or equivalent in pharmacotherapy related to the applicant's scope of advanced practice that:

   a. Have been obtained within a three-year period of time immediately prior to the date of application for prescriptive authority; or

   b. ~~Other methods that may~~ May otherwise be approved by the board.

~~4.~~ 5. Submit an affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice. The affidavit must address all of the following areas:

   a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;

   b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but no less than once every two months;

c. Methods of documentation of the collaboration process regarding prescriptive practices; and

d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.

History: Effective March 1, 1992; amended effective November 1, 1996; December 1, 1997; April 1, 2004; March 24, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-02(7), 43-12.1-09(2)(c)(d)

54-05-03.1-10. Authority to prescribe. The advanced practice registered nurse plans and initiates a therapeutic regimen that includes ordering and prescribing medical devices and equipment, nutrition, diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

1. A permanent advanced practice registered nurse license with the addition of prescriptive authority shall be issued following review and approval of the completed application by the board.

2. Between meetings of the board, board staff may review the prescriptive authority application and grant a temporary permit to prescribe if all the requirements are met.

3. The advanced practice registered nurse with prescriptive authority may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws. Notice of the prescriptive authority granted will be forwarded to the board of pharmacy.

4. A prescriptive authority advanced practice registered nurse license does not include drug enforcement administration authority for prescribing controlled substances. Each licensee must apply for and receive a drug enforcement administration number before writing prescriptions for scheduled drugs.

5. The licensee may prescribe, administer, sign for, dispense over-the-counter, legend, and controlled substances, and procure ~~pharmaceutical~~ pharmaceuticals, including samples following state and federal regulations.

6. The signature on documents related to prescriptive practices must clearly indicate that the licensee is an advanced practice registered nurse.

7. The advanced practice registered nurse with prescriptive authority may not prescribe, sell, administer, distribute, or give to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.

8. Notwithstanding any other provision, a practitioner who diagnoses a sexually transmitted disease, such as chlamydia, gonorrhea, or any other sexually transmitted infection, in an individual patient may prescribe or dispense, and a pharmacist may dispense, prescription antibiotic drugs to that patient's sexual partner or partners, without there having been an examination of that patient's sexual partner or partners.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2004; January 1, 2009; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-08(1)

54-05-03.1-11. Prescriptive authority renewal. Prescriptive authority is valid for the same period of time as the applicant's advanced practice registered nurse and registered nurse license. The applicant for renewal must:

1. Renew the applicant's registered nurse license.

2. Submit verification of current certification by a national nursing certification body in the specific area of nursing practice.

3. Submit a completed advanced practice registered nurse with prescriptive authority renewal application.

4. Pay the advanced practice registered nurse renewal fee of forty dollars and the fifty dollar renewal fee for prescriptive authority.

5. Provide evidence of completion of fifteen contact hours of education during the previous two years in pharmacotherapy related to the scope of practice. These contact hours may fulfill the registered nurse renewal continuing education requirement. The education or its equivalent as approved by the board may include academic credits, attendance at approved seminars and courses, or participation in approved correspondence or home study continuing education courses.

~~6. Submit a verification of affidavit from the licensed physician who will be participating in the collaborative prescriptive agreement acknowledging the manner of review and approval of the planned prescriptive practices. Information in the affidavit must also indicate that the advanced practice registered nurse's scope of prescriptive practice is appropriately related to the collaborating physician's medical specialty or practice. The affidavit must address all of the following areas:~~

~~a. Broad classifications of drugs or devices to be commonly prescribed by the advanced practice registered nurse;~~

~~b. Methods and frequency of the collaboration for prescriptive practices, which must occur as client needs dictate, but no less than once every two months;~~

~~c. Methods of documentation of the collaboration process regarding prescriptive practices; and~~

~~d. Alternative arrangements for collaboration regarding prescriptive practices in the temporary or extended absence of the physician.~~

History: Effective March 1, 1992; amended effective November 1, 1996; June 1, 2001; April 1, 2004; March 24, 2004; April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-10(1)

CHAPTER 54-05-03.2
SPECIALTY PRACTICE REGISTERED NURSE

54-05-03.2-05. Requirements for specialty practice registered nurse licensure renewal. The specialty license is valid for the same period of time as the applicant's registered nurse license. Applicants for renewal of the license must:

1. Renew the registered nurse license;

2. Complete the specialty practice registered nurse license renewal application;

3. Pay the licensure renewal fee of fifty dollars;

4. Submit evidence of current certification; and

5. ~~Submit a scope of practice statement for review and approval by the board~~ Meet the requirements in section 54-05-03.2-08.

History: Effective June 1, 2002; amended effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(7)

54-05-03.2-05.1. Reactivation of a license. A specialty practice registered nurse previously licensed in North Dakota who applies for reactivation must meet board requirements, including the following:

1. Complete the application and submit to a criminal history record check according to section 54-02-12-01;

2. Pay the nonrefundable renewal fee and thirty dollar reactivation fee; and

3. Meet the requirements in section 54-02-05-05.1 regarding practice requirements for license renewal, section 54-02-05-08 regarding

continuing education requirements for license renewal, ~~and~~ section 54-05-03.2-05 regarding requirements for specialty practice registered nurse licensure renewal, and section 54-05-03.2-08 regarding change in scope of practice; or

4. Submit other evidence the applicant wishes to submit which would provide proof of nursing competence acceptable to the board.

History: Effective July 1, 2008; amended effective April 1, 2011.
General Authority: NDCC 12-60-24.2(o), 43-12.1-08
Law Implemented: NDCC 43-12.1-09.1, 43-12.1-10(1), 43-12.1-20

54-05-03.2-08. Change in scope of practice. The specialty practice registered nurse must notify the board in writing of a change in scope of practice within five working days and submit completed scope of practice statement within sixty days of the change.

History: Effective April 1, 2011.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-09(2)(f)

TITLE 67.1

EDUCATION STANDARDS AND PRACTICES BOARD

CHAPTER 67.1-02-02

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

1. **Two-year renewal license.**

   a. A two-year renewal license will be issued to applicants with less than eighteen months of successful contracted teaching in North Dakota who have completed all of the requirements on the application form, pay the required fee of fifty dollars, and submit the same recommendations as are required by paragraph 3 of subdivision a of subsection 2. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years after the applicant's birthdate.

   b. A two-year reentry license will be issued to an applicant reentering the profession after an absence of five years who has completed all of the requirements on the application form. Prior to applying for the reentry license, the applicant must submit to a fingerprint screening for criminal records in accordance with North Dakota Century Code section 15.1-13-14. An applicant reentering the profession must complete eight semester hours of reeducation credit during the applicant's first two years of contracted employment as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

   c. A two-year reentry license will be issued to an applicant from out of state who has had an absence from the profession of more than five years, or to an applicant who cannot submit four semester hours of credit taken during each of the past two five-year periods if employed in education out of state. Such an applicant must meet the requirements of North Dakota initial licensure as stated

in section 67.1-02-02-02 and must also complete the requirements for reentry education as stated in this section and in section 67.1-02-02-09. The fee for the reentry license is seventy dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

d. A two-year renewal license will be issued for substitute teaching to those applicants who have completed all of the requirements on the application form. A substitute teacher must maintain a valid teaching license using the two-year renewal cycle, but is not required to submit reeducation hours unless the person signs a contract. The fee for this two-year renewal is fifty dollars. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of two years on the applicant's birthdate.

e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

f. For the school year 2005-06 and beyond, all elementary teachers new to the profession, but previously licensed, will need to complete the praxis II elementary test 10011 and praxis II principles of learning and teaching test 30522 during the school year meeting North Dakota cut scores. Contracted classroom teaching experience will be accepted from all other states toward the requirements of this subdivision. A new to the profession teacher is defined as one who has never been contracted as a kindergarten through grade 12 teacher.

2. **Five-year renewal license.**

a. The initial five-year renewal will be issued to those applicants who have successfully taught eighteen months in the state on a valid North Dakota license and who have completed all of the requirements on the application form. Applications for renewal may only be submitted six months prior to the expiration of the current license and will expire after a minimum of five years on the applicant's birthdate.

(1) All five-year license applications must be accompanied by a fee of one hundred twenty-five dollars.

(2) Succeeding five-year renewals require evidence of thirty teaching days of contracted service and completion of a minimum of four semester hours of reeducation credit to avoid reverting to entry status. As licenses are renewed, after July 1, 2011, six semester hours of reeducation credit

will be required for the new five-year period. All reeducation credit must be documented by college transcripts.

(3) Three recommendations are required. Two of the recommendations must be secured from the most recent employing board and the applicant's credentialed principal and superintendent. One of the recommendations may be a person of the applicant's choice with knowledge of the applicant's teaching potential and character. If the applicant has not taught in the last three years or it is impossible to secure recommendations from credentialed principals or superintendents, then recommendations must be secured from individuals who can speak with regard to the teaching potential and character of the applicant. Signatures on recommendations must be within a six-month period of the submission of the application for renewal.

(4) For the school year 2005-06 and beyond, all elementary teachers new to the profession, but previously licensed, will need to complete the praxis II elementary test 10011 and praxis II principles of learning and teaching test 30522 during the school year meeting North Dakota cut scores. Contracted classroom teaching experience will be accepted from all other states toward the requirements of this paragraph. A new to the profession teacher is defined as one who has never been contracted as a kindergarten through grade 12 teacher.

b. A renewal applicant who has completed the four semester hours of credit but has not been contracted for at least thirty days under the five-year license will revert to the two-year renewal cycle.

c. Probationary license. An applicant who has failed to complete the four semester hours of reeducation credit, whether the application has been contracted or not, will either not be renewed, or may agree to be placed on a two-year probationary license. Eight semester hours of reeducation semester credit must be supplied as a condition of the two-year probationary license. A second probationary license will not be issued.

d. If recommendations are not adequate to issue a five-year license, the education standards and practices board shall provide a hearing following North Dakota Century Code chapter 28-32. Following the hearing procedure, the education standards and practices board shall make a determination whether to issue a renewal to the applicant or deny relicensure.

e. In extraordinary circumstances, the board may waive or extend the time for completion of the reeducation credits.

f. Once the requirements have been met for the probationary license, a two-year renewal license will be issued.

History: Effective July 1, 1995; amended effective October 1, 1998; October 16, 1998; April 14, 1999; June 1, 1999; March 1, 2000; August 1, 2002; July 1, 2004; April 1, 2006; July 1, 2008; July 1, 2010.
General Authority: NDCC 15.1-13-09, 15.1-13-10
Law Implemented: NDCC 15.1-13-09, 15.1-13-10, 15.1-13-11

TITLE 69

PUBLIC SERVICE COMMISSION

CHAPTER 69-05.2-09

69-05.2-09-02. Permit applications - Operation plans - Maps and plans. Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

1. Scale, date, permit boundaries, company name, legal subdivision boundaries, and legend.

2. Lands to be affected throughout the operation and any change in a facility or feature caused by the operations, if the existing facility or feature was shown under chapter 69-05.2-08.

3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal removal subarea.

4. Pit layout and proposed sequence of mining operations, crop line, spoil placement areas, final graded spoil line, highwall areas to be backsloped, and areas for stockpiling suitable plant growth material or other suitable strata.

5. Location of proposed surface water management structures and identification of permanent water impoundments or stream channel alignments.

6. Location of coal processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.

7. Buildings, utility corridors, proposed and existing haul roads, mine railways, and other support facilities.

8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section 33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.

9. Each explosive storage and handling facility.

10. Each air pollution collection and control facility.

11. Each habitat area to be used to protect and enhance fish and wildlife and related environmental values.

12. Each source of waste and each waste disposal facility relating to coal processing or pollution control.

13. Each bond area, scheduled according to the proposed sequence of operations. Include the bond or guarantee amount for each area.

14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal mining activities prior to January 1, 1970:

    a. Detailed maps and other available information that clearly depicts the boundaries of the site that was previously affected by mining activities before January 1, 1970. This includes the identification of any sinkholes and other features that are the result of any past underground coal mining activities.

    b. The applicant must identify and describe potential environmental and safety problems related to prior mining activity at the site and those that could be reasonably anticipated to occur. This identification must be based on a due diligence investigation which includes visual observations at the site, a record review of past mining at the site, and any necessary environmental sampling tailored to the current condition of the site.

    c. With regard to potential environmental and safety problems referred to in subdivision b, a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met.

Maps and plans required under subsections 5, 6, and 12 must be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a qualified registered land surveyor, or qualified professional geologist with assistance from experts in related fields. However, maps, plans, and cross sections submitted according to section 69-05.2-09-09 may only be prepared

by, or under the direction of, and certified by a qualified registered professional engineer or qualified registered land surveyor.

History: Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-14

69-05.2-22-07. Performance standards - Revegetation - Standards for success.

1. Success of revegetation must be measured by using statistically valid techniques approved by the commission. Comparison of ground cover and productivity may be made on the basis of reference areas, through the use of standards in technical guides published by the United States department of agriculture, or through the use of other approved standards. If reference areas are used, the management of the reference area during the responsibility period required in subsection 2 must be comparable to that required for the approved postmining land use of the permit area. If standards are used, they must be approved by the commission and the office of surface mining reclamation and enforcement. Approved standards are contained in the commission's Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.

2. The period of responsibility under the performance bond requirements of section 69-05.2-12-09 will begin following augmented seeding, planting, fertilization, irrigation, or other work, except for cropland and prime farmland where the period of responsibility begins at the date of initial planting of the crop being grown or a precropland mixture of grasses and legumes, and must continue for not less than ten years. <u>However, for eligible lands that are remined, the revegetation responsibility period must continue for not less than five years.</u>

3. Vegetation establishment, for the purpose of the third stage bond release provided for in subdivision c of subsection 7 of North Dakota Century Code section 38-14.1-17, will be determined for each postmining land use according to the following procedures:

   a. For native grassland, tame pastureland, and fish and wildlife habitat where the vegetation type is grassland, ground cover on the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence. All species used in determining ground cover must be perennial species not detrimental to the approved postmining land use.

   b. For cropland, vegetation will be considered established after the successful seeding of the crop being grown or a precropland mixture of grasses and legumes.

   c. For prime farmland, annual average crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for a minimum of three crop years.

d. For woodland, shelterbelts, and fish and wildlife habitat where the vegetation type is woodland, the number of trees and shrubs must be equal to or greater than the approved standard. Understory growth must be controlled. Erosion must be adequately controlled by mulch or site characteristics.

e. For fish and wildlife habitat where the vegetation type is wetland, the basin must exhibit the capacity to hold water and support wetland vegetation. Ground cover of the contiguous areas must be adequate to control erosion.

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:

a. For native grassland, the following must be achieved for any two years after year six of the responsibility period:

(1) Ground cover and productivity of the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence; and

(2) Diversity, seasonality, and permanence of the vegetation of the permit area must equal or exceed the approved standard.

b. For tame pastureland, ground cover and productivity of the permit area must be equal to or greater than that of the approved standard with ninety percent statistical confidence for any two years after year six of the responsibility period.

c. For cropland, crop production from the permit area must be equal to or greater than that of the approved reference area or standard with ninety percent statistical confidence for any two years after year six of the responsibility period.

d. For prime farmlands, a showing that the requirements for the restoration of productivity as specified in subdivision c of subsection 3 have been met and that the ten-year period of responsibility has elapsed.

e. For woodlands and fish and wildlife habitat where the vegetation type is woodland, the following must be achieved during the growing season of the last year of the responsibility period:

(1) The number of woody plants established on the permit area must be equal to or greater than the number of live woody plants of the same life form of the approved standard with ninety percent statistical confidence. Trees, shrubs,

half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

(a) Be healthy;

(b) Be in place for at least two growing seasons;

(c) If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required. Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;

(2) The ground cover must be equal to or greater than ninety percent of the ground cover of the approved standard with ninety percent statistical confidence and must be adequate to control erosion; and

(3) Species diversity, seasonal variety, and regenerative capacity of the vegetation on the permit area must be evaluated on the basis of species stocked and expected survival and reproduction rates.

f. For shelterbelts, the following must be achieved during the growing season of the last year of the responsibility period:

(1) Trees, shrubs, half-shrubs, root crowns, or root sprouts used in determining success of stocking must meet the following criteria:

(a) Be healthy;

(b) Be in place for at least two growing seasons;

(c) If any replanting of woody plants took place during the responsibility period, the total number planted during the last six years of that period must be less than twenty percent of the total number of woody plants required.

Any replanting must be by means of transplants to allow for adequate accounting of plant stocking; and

(d) Volunteer trees and shrubs of approved species will be considered at least two years of age and can be counted toward meeting success standards; however, volunteer trees must be at least thirty inches [76 centimeters] in height to be included in the count. Suckers on shrubby vegetation can be counted as volunteer plants when it is evident the shrub community is vigorous and expanding;

(2) Shelterbelt density and vigor must be equal to or greater than that of the approved standard; and

(3) Erosion must be adequately controlled.

g. For fish and wildlife habitat, where the vegetation type is wetland, vegetation zones and dominant species must be equal to those of the approved standard during the growing season of the last year of the responsibility period. In addition, wetland permanence and water quality must meet approved standards.

h. For fish and wildlife habitat, where the vegetation type is grassland, the following must be achieved during the growing season of the last year of the responsibility period:

(1) Ground cover must be equal to or greater than that of the approved standard with ninety percent statistical confidence and must be adequate to control erosion.

(2) Species diversity, seasonal variety, and regenerative capacity of the vegetation must meet or exceed the approved standard.

i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In addition, the ground cover may not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission. If lands affected by coal mining activities prior to January 1, 1970, are remined or otherwise redisturbed, the applicable standard must be met for the last two consecutive years of the minimum five-year responsibility period that applies to remined lands. However, if the postmining land use for the remined area is woodlands, shelterbelts, or fish and wildlife habitat,

the applicable standard must be met for just the last year of the responsibility period.

j. For areas to be developed for water, residential, or industrial and commercial uses within two years after the completion of grading or soil replacement, the ground cover on these areas may not be less than required to control erosion.

k. For areas to be developed for recreation, woody plants must meet or exceed the stocking and plant establishment standards for woodlands or shelterbelts found in paragraph 1 of subdivision e or in subdivision f as applicable. In addition, ground cover must not be less than required to achieve the approved postmining land use.

l. If a reclaimed tract contains a mixture of prime and nonprime farmlands, the commission may approve a single yield standard for the entire tract based on the soil types that occurred on the prime and nonprime areas prior to mining. The operator must provide a detailed description and comparison of the soil mapping units, acreages, and yield calculations in the reclamation plan as required by subsection 8 of section 69-05.2-09-15. When a single yield standard is approved, the operator must demonstrate that the standard has been achieved for any three years starting no sooner than the sixth year of the responsibility period. If this option is approved, the operator must also meet the applicable requirements of section 69-05.2-26-05 for the entire tract.

5. Throughout the liability period the permittee must:

a. Maintain any necessary fences and use proper management practices; and

b. Conduct periodic measurements of vegetation, soils, and water prescribed or approved by the commission.

History: Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007; April 1, 2011.
General Authority: NDCC 38-14.1-03
Law Implemented: NDCC 38-14.1-24

CHAPTER 69-06-02
UTILITY REPORTING REQUIREMENTS

CHAPTER 69-06-02.1
REQUESTS FOR JURISDICTIONAL DETERMINATION

69-06-02.1-01. Filing. A utility planning to construct an energy conversion or transmission facility may request a jurisdictional determination from the commission. A request for jurisdictional determination must be in writing.

History: Effective April 1, 2011.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

69-06-02.1-02. Contents. A request for a jurisdictional determination must contain:

1. A description of the size of the facility;
2. A description of the type of the facility;
3. A description of the area to be served;
4. A map of the study area for the proposed site or corridor;
5. A description of the ownership and operation responsibility of the facility;
6. A description of the facilities and equipment that will be used and how they will be maintained;
7. A description of the owner's or operator's plans for selling, transmitting, or distributing the output of the plant;
8. A description of how the facility will be physically and electronically interconnected with other energy conversion, transmission, and distribution facilities;
9. A description of the owner's and operator's economic evaluation of the facility; and
10. A description of how the site will be leased or other rights of access will be obtained.

History: Effective April 1, 2011.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

CHAPTER 69-06-03

69-06-03-01. Filing. Any utility planning to construct an energy conversion or transmission facility shall file a letter of intent with the commission at least one year prior to the filing of an application for a certificate unless a shorter period is requested in writing and approved by the commission. ~~A letter of intent may be filed for the sole purpose of seeking a determination of whether the commission has jurisdiction over a proposed facility.~~

History: Amended effective April 1, 2011.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

69-06-03-02. Contents. ~~All letters~~ A letter of intent ~~shall~~ must contain the following:

1. A description of the size and type of facility, and the area to be served.
2. A map of the study area for the proposed site or corridor.
3. The anticipated construction and operation schedule.
4. An estimate of the total cost of construction.

History: Amended effective April 1, 2011.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-07.1

CHAPTER 69-06-04

69-06-04-02. Designation of sites and corridors.

1. **Requirements of order.**

   a. An order approving the issuance of a certificate shall contain findings that the application, with modifications, if any, meets the site or corridor evaluation process requirements of the Act, and any special conditions the commission may require.

      (1) Any modifications or special conditions required by the commission shall be deemed to be accepted unless the applicant petitions for a rehearing.

      (2) If the applicant rejects any modifications or special conditions and proposes alternatives which it would accept, such a proposal shall be treated by the commission as an amendment to the application.

      (3) If the applicant rejects any modifications or special conditions without either requesting a rehearing or proposing alternatives, the commission shall rescind its order and deny the application.

   b. The width of a corridor must be at least ten percent of its length, but not less than one mile [1.61 kilometers] or greater than six miles [9.66 kilometers] unless ~~approved~~ otherwise determined by the commission.

   c. An order denying the issuance of a certificate shall contain findings that state:

      (1) The reason for such denial.

      (2) What modification in the application would make it acceptable or that there is no modification that would be acceptable based upon the record before the commission.

2. **Issuance of a certificate.** When a site or corridor is approved, the commission shall issue a certificate in accordance with the order which shall:

   a. Describe the authority granted.

b. Contain any special conditions that the commission may require.

History: Amended effective April 1, 2011.
General Authority: NDCC 49-22-18
Law Implemented: NDCC 49-22-08

CHAPTER 69-09-08
RENEWABLE ELECTRICITY AND RECYCLED ENERGY TRACKING SYSTEM

69-09-08-01. Purpose, application, and effective date. This chapter establishes a program to include tracking, recording, ~~and~~ verifying, and reporting the transactions associated with certificates and credits for electricity generated from renewable electricity sources as defined by North Dakota Century Code section 49-02-25 among electric generators, utilities, and other interested entities within this state and with similar entities in other states. This chapter applies to all public utilities, electric cooperatives, and municipal electric utilities. The tracking program will be effective as specified in the commission's order that designates a program administrator and implements these rules.

History: Effective July 1, 2006; amended April 1, 2011.
General Authority: NDCC 49-02-01, 49-02-24, 49-02-25, 49-02-26
Law Implemented: NDCC 49-02-24, 49-02-25, 49-02-26

69-09-08-08. Annual reporting requirements for retail providers. The annual progress report required by North Dakota Century Code section 49-02-34 must be filed in the form and detail the commission may require.

History: Effective April 1, 2011.
General Authority: NDCC 49-02-34
Law Implemented: NDCC 49-02-34

TITLE 75

DEPARTMENT OF HUMAN SERVICES

APRIL 2011

CHAPTER 75-03-07

75-03-07-01. Purpose. Repealed effective January 1, 2011.

75-03-07-02. Objective of rules. Repealed effective January 1, 2011.

75-03-07-03. Definitions. The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02.

History: Effective December 1, 1981; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02, 50-11.1-06, 50-11.1-08

75-03-07.1-07. Minimum sanitation requirements.

1. The provider shall operate according to the recommendations by the federal centers for disease control and prevention, including washing hands, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and individually designated cloth towels or paper towels must be available at each sink. Clean towels must be provided at least daily.

2. The provider shall ensure that the residence, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The provider shall establish routine cleaning procedures to protect the health of the children.

3. Pets and animals.

   a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children and may approve additional pets that do not pose a health or safety risk to children.

   b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

   c. The provider shall ensure parents are aware of the presence of pets and animals in the child care.

   d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.

   e. The provider shall ensure that all contact between pets and children is closely supervised. The provider shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.

   f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.

h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-07.1-08. Infant care.

1. **Environment and interactions.**

a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.

c. The provider shall respond to comfort an infant's or toddler's physical and emotional distress:

(1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

d. The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

e. The provider shall take children outdoors or to other areas within the child care for a part of each day to provide some change of physical surroundings and to interact with other children.

f. The provider shall ensure that infants are not shaken or jostled.

g. The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

h. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

2. **Feeding.**

a. The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider.

b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

d. The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.

e. The provider shall ensure that an infant is not fed by propping a bottle.

f. The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

3. **Diapering.**

a. The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.

b. The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.

c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

d. The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the child care.

4. **Sleeping.**

a. The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

b. The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

c. The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.

d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

e. The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket, a pacifier, and a security item that does not pose a risk of suffocation to the infant.

f. The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.

g. The provider shall ensure that each infant has an individual infant blanket or infant sleep sack.

h. The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.

i. The provider shall check on sleeping infants regularly or have a monitor in the room with sleeping infants.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

75-03-08-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;

2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specified outdoor space of the residence.

History: Effective ~~October 1, 2010~~ January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04

75-03-08-08.1. Duties of the provider.

1. A provider shall maintain, whenever services are provided, at least one staff member who:

   a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and

   b. Is certified or trained in a department-approved program to provide first aid.

2. Substitute staff are exempt from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.

3. The provider shall have an adult staff member responsible for caring for or teaching children present in the family child care at all times to supervise staff members under the age of eighteen and children in care.

4. A staff member may not at any time place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.

5. The provider shall report to the authorized agent within twenty-four hours:

a. A death or serious accident or illness requiring hospitalization of a child while in the care of the family child care or attributable to care received in the family child care;

b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;

c. Poisonings or errors in the administration of medication;

d. Closures or relocations of child care programs due to emergencies; and

e. Fire that occurs or explosions that occur in or on the premises of the family child care.

6. The provider shall develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive for the program.

7. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.

8. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.

9. The provider shall select an emergency designee.

10. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.

11. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.

12. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-04, 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-08-24. Specialized types of care and minimum requirements.

1. **Infant care.**

   a. Environment and interactions.

      (1) A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

      (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, such as being held, rocked, talked with, or sung to.

      (3) The staff members responsible for caring for or teaching children or emergency designee shall respond promptly to comfort an infant's or toddler's physical and emotional distress:

         (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

         (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

      (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

      (5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the family child care for a part of each day to provide some change of physical surroundings and to interact with other children.

      (6) The provider shall ensure that infants are not shaken or jostled.

      (7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

(1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider.

(2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

(3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

(4) The provider shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.

(5) The provider shall ensure that an infant is not fed by propping a bottle.

(6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the family child care, if children requiring diapering are in care.

(2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.

(3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

(4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the family child care.

d. Sleeping.

(1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

(2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

(3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.

(4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

(5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket, a pacifier, and a security item that do not pose a risk of suffocation to the infant.

(6) The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.

(7) The provider shall ensure that each infant has an individual infant blanket or infant sleep sack.

(8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.

(9) The provider shall check on sleeping infants regularly or have a monitor in the room with the sleeping infant.

2. **Night care.**

   a. Any family child care offering night care shall provide program modifications for the needs of children and their parents during the night.

   b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.

   c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.

   d. The provider shall ensure that children under the age of six are supervised directly when bathing.

   e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:

      (1) Pillows and mattresses have clean coverings.

      (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.

      (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.

      (4) Each bed or cot has sufficient blankets available.

   f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-04, 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-09-07. Application for and nontransferability of group child care license.

1. An application for license must be submitted to the authorized agent. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and valid only for the premises indicated on the license.

3. An application for a new license must be filed upon change of provider or location.

4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after January 12, 2011. Existing operators will be exempt from this provision until January 1, 2016, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-09-08. Duties of group child care provider.

1. The provider of a group child care is responsible for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. The provider shall:

   a. Establish the child care program;

   b. Apply for a license for the group child care;

   c. Possess knowledge or experience in management and interpersonal relationships;

   d. Formulate written policies and procedures for the operation of the group child care;

   e. Notify the authorized agent of any major changes in the operation or in the ownership of the group child care, including staff member changes;

f. Maintain records of enrollment, attendance, health, and other required records;

g. Select an emergency designee;

h. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care;

i. Ensure the group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;

j. Ensure preadmission visits for children and their parents are offered so the facility's program, fees, operating policies, and procedures can be viewed and discussed, including:

(1) An explanation of how accidents and illnesses may be handled;

(2) The methods of developmentally appropriate discipline and guidance techniques that are to be used;

(3) The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;

(4) Hiring practices and personnel policies for staff members; and

(5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;

k. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;

l. Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care. Providing unlimited access does not prohibit a group child care from locking its doors while children are in care;

m. Provide parents with the name of the group child care provider, the group child care supervisor, staff members, and the emergency designee;

n. Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;

o. Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive as expected at the group child care; and

p. Ensure, whenever services are provided, that at least one staff member, on duty meets current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid. Substitute staff are exempt from this requirement. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.

2. If the provider is also the group child care supervisor, the provider shall also meet the qualifications of the supervisor in section 75-03-09-10.

3. The provider shall report to the authorized agent within twenty-four hours:

a. A death or serious accident or illness requiring hospitalization of a child while in the care of the group child care or attributable to care received in the group child care;

b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;

c. Poisonings or errors in the administering of medication;

d. Closures or relocations of child care programs due to emergencies; and

e. Fire that occurs and explosions that occur in or on the premises of the group child care.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-18. Minimum sanitation and safety requirements.

1. In facilities other than an occupied private residence with license capabilities of up to eighteen children and where meals are prepared, the provider shall ensure that the state department of health conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

2. The provider shall ensure that the group child care bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.

3. The provider shall ensure that the group child care building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the staff members.

4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.

5. The provider shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The provider shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

6. The provider shall ensure that the group child care ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

7. The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.

8. The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas.

Outdoor play areas must be inspected daily for hazards and necessary maintenance.

9. The provider shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The provider shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks . The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

10. The provider shall ensure that indoor floors and steps are not slippery and do not have splinters. The provider shall ensure that accumulations of water, ice, snow, or debris are removed from steps and walkways as quickly as possible.

11. The provider shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

12. The provider shall take steps to keep the group child care free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care. Insect repellant may be applied outdoors on children with parental permission.

13. The provider shall ensure that exit doorways and pathways are not blocked.

14. The provider shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.

15. The provider shall ensure that combustible materials are kept away from light bulbs and other heat sources.

16. The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].

17. A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of

lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

18. The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes, are individually identified and stored in a sanitary manner.

19. Pets and animals.

    a. The provider shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

    b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

    c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.

    d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.

    e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.

    f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

    g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.

h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

20. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care and shall empty, clean, and sanitize wading pools daily.

21. All swimming pools used by children must be approved annually by the local health unit.

History: Effective December 1, 1981; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-09-24. Specialized types of care and minimum requirements.

1. Infant care.

   a. Environment and interactions.

      (1) A group child care serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

      (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.

      (3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.

         (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

         (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

      (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

(5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to interact with other children.

(6) The provider shall ensure that infants are not shaken or jostled.

(7) The provider shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(8) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

(1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent or medical provider.

(2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

(3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

(4) The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.

(5) The provider shall ensure that an infant is not fed by propping a bottle.

(6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing

range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The provider shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the group child care if children requiring diapering are in care.

(2) The provider shall ensure that diapers are changed promptly when needed and in a sanitary manner.

(3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

(4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the group child care.

d. Sleeping.

(1) The provider shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

(2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

(3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.

(4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

(5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket, a pacifier, and a security item that does not pose a risk of suffocation to the infant.

(6) The provider shall ensure that mattresses and sheets are properly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled

or wet, when cribs are used by different infants, or at least weekly.

(7) The provider shall ensure that each infant has an individual infant blanket or infant sleep sack.

(8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.

(9) The provider shall check on sleeping infants regularly or have a monitor in the room with the sleeping infant.

2. Night care.

a. Any group child care offering night care shall provide program modifications for the needs of children and their parents during the night.

b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.

c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.

d. The provider shall ensure that children under the age of six are supervised directly when bathing.

e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:

(1) Pillows and mattresses have clean coverings.

(2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.

(3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.

(4) Each bed or cot has sufficient blankets available.

f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

g. For a group child care not operating out of an occupied private residence, staff members responsible for caring for or teaching children must be awake and within hearing range during sleeping hours to provide for the needs of children and to respond to an emergency.

3. Drop-in group child care.

   a. If a group child care serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.

   b. The provider shall ensure that the program reflects the individual needs of the children who are provided drop-in care.

   c. The provider shall ensure that records secured comply with all enrollment requirements contained in section 75-03-09-22, except the immunization verification record requirement.

   d. The provider shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the group child care, its equipment, and the staff members.

   e. A group child care may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care to exceed the total number of children for which the group child care is licensed.

4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:

   a. Subsection 5 of section 75-03-09-20, subdivision f of subsection 2 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.

   b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-10-07. Application for and nontransferability of child care center license. An application for a license must be submitted to the authorized agent.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and is valid only for the premises that are indicated on the license.

3. An application for a new license must be filed by the operator upon change of operator or location.

4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after January 1, 2011. Existing operators will be exempt from this provision until January 1, 2016, after which time all operators will be subject to the requirements of this subsection.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-10-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

2. The operator shall ensure that the child care center bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats must be designated individually , and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.

3. The operator shall ensure that the child care center's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.

4. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use cloth towels, or paper towels must be available at each sink.

5. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

6. The operator shall ensure that the child care center ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

7. The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.

8. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.

9. The operator shall ensure that potential hazards, such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

10. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.

11. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

12. The operator shall take steps to keep the child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the child care center. Insect repellant may be applied outdoors on children with written parental permission.

13. The operator shall ensure that exit doorways and pathways are not blocked.

14. If the center is providing care to children in wheelchairs, the operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.

15. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.

16. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.

17. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius] .

18. The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

19. The operator shall ensure that personal items including combs, pacifiers, and toothbrushes are individually identified and stored in a sanitary manner.

20. Pets and animals.

    a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and

dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.

d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.

e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.

f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

21. Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center and shall empty, clean, and sanitize wading pools daily.

22. All swimming pools used by children must be approved annually by the local health unit.

23. Water supply:

a. The operator shall ensure that the child care center has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health.

b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.

c. The child care center must have hot and cold running water. The water in the faucets used by children may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

24. Toilet and sink facilities:

a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members.

b. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one sink and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.

c. The operator shall ensure that separate restrooms are provided for boys and girls six years of age and over, and partitions are installed to separate toilets in these restrooms.

d. The operator shall provide child-sized toilet adapters, training chairs, or potty chairs for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.

e. The operator shall provide at least one handwashing sink per toilet room facility or diapering area. The operator shall ensure that sanitary hand-drying equipment, single-use cloth towels, or paper towels are available near handwashing sinks.

f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

25. The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the state department of health.

26. Laundry:

a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.

b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation.

c. The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.

d. The operator shall ensure that in an existing child care center where physical separation of laundry and kitchen areas is impractical, procedures are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.

e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas.

f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius].

g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the center shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-10-24. Specialized types of care and minimum requirements.

1. Infant care.

   a. Environment and interactions.

      (1) A child care center serving children from birth to twelve months shall provide an environment which protects the children from physical harm.

      (2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member

responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.

(3) A staff member shall respond to comfort an infant's or toddler's physical and emotional distress:

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

(4) The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.

(5) Staff members responsible for caring for or teaching children shall take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings and to allow them to interact with other children.

(6) The operator shall ensure that low chairs and tables, high chairs with trays, or other age-appropriate seating systems are provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(7) The operator shall ensure that infants are not shaken or jostled.

(8) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

(1) The operator shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.

(2) The operator shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent.

Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.

(3) The operator shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.

(4) The operator shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent within twenty-four hours.

(5) The operator shall ensure that an infant is not fed by propping the bottle.

(6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The operator shall ensure that there is a designated cleanable diapering area, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.

(2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when needed.

(3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.

(4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

d. Sleeping.

(1) The operator shall ensure that infants are placed on their back initially when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.

(2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

(3) The operator shall ensure that if an infant falls asleep while not in a crib, unless the infant's parent has provided a note from the infants medical provider specifying otherwise or portable crib, the infant must be moved immediately to a crib or portable crib, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise.

(4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.

(5) The operator shall ensure that all items are removed from the crib or portable crib, except for one infant blanket, a pacifier, and a security item that does not pose a risk of suffocation to the infant. The infant's face must remain uncovered when sleeping.

(6) The operator shall ensure that mattresses and sheets are properly fitted. The operator shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when used by different infants, or at least weekly.

(7) The operator shall ensure that each infant has an individual infant blanket or infant sleep sack.

(8) The operator shall ensure that toys or objects hung over an infant crib or portable crib are secured and are of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.

(9) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants regularly or that a monitor is in the room with the infants.

e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

a. Any child care center offering night care shall provide program modifications for the needs of children and their parents during the night.

b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's needs.

c. The operator shall encourage parents to leave their children in care and pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule.

d. The operator shall ensure that children under the age of six are supervised when bathing.

e. The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and shall ensure:

(1) Pillows and mattresses have clean coverings;

(2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, but at least weekly. If beds are used by different children, sheets and pillowcases are laundered before use by other children; and

(3) Each bed or cot has sufficient blankets available.

f. The operator shall require each child in night care to have night clothing and a toothbrush marked for identification.

g. The operator shall ensure that during sleeping hours, staff members are awake and within hearing range to provide for the needs of children and to respond to an emergency.

3. Drop-in child care.

a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.

b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.

c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-10-22, except the immunization verification record requirement.

d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the child care center, its equipment, and the staff members.

e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.

4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:

a. Subsections 12, 14, and 15 of section 75-03-10-20, subdivision f of subsection 2 of section 75-03-10-22, and subsection 1 of section 75-03-10-25; and

b. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11-06. Provisional license.

1. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional license for the operation of a preschool although the preschool educational facility applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.

2. A provisional license must:

   a. State that the operator has failed to comply with all applicable standards and rules of the department;

   b. State the items of noncompliance;

   c. Expire at a set date, not to exceed six months from the date of issuance; and

   d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:

   a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and

   b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.

4. Any provisional license issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the director's designee and must be acknowledged in writing by the applicant or operator.

5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.

6. The department may not issue a provisional license if the preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.

7. The operator shall display prominently the provisional license and agreement.

8. The operator shall provide parents written notice that the preschool is operating on a provisional license and the basis for the provisional license.

History: Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11-16. Minimum emergency evacuation and disaster plan.

1. Each operator shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:

   a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;

   b. What will be done if parents are unable to pick up their child as a result of the emergency; and

   c. What will be done if the preschool has to be relocated or must close as a result of the emergency.

2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

CHAPTER 75-03-11.1

75-03-11.1-03. Definitions. The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the facility.

2. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.

3. "Director" means an individual responsible for overseeing the general operation of, and implementing the policies and procedures of, the school-age child care program.

4. "Emergency designee" means an individual designated by the school-age child care program to be a backup staff member for emergency assistance or to provide substitute care.

5. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.

6. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operations of a school-age child care program.

7. "School-age child care program satellite" means a location used by a licensed school-age child care program other than the building or location listed as the main location on the license.

8. "School-age child care program" or "program" means a program licensed to provide early childhood services exclusively to school-age children before and after school, during school holidays, and during summer vacation.

9. "Substitute staff" means staff who work less than thirty-two hours per month and are not regularly scheduled for work.

10. "Supervisor" means any person with the responsibility for organizing and supervising daily program activities.

11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a firefighter for fire safety week, a practicum student, or a foster grandparent.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02

75-03-11.1-04. Effect of licensing and display of license.

1. The issuance of a license to operate a school-age child care program is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.

2. The current license must be displayed prominently in the premises to which it applies.

3. The license must specify the maximum number of children for whom the school-age child care program, including any satellite locations, may provide care. The school-age child care program, including satellite locations, may not admit a greater number of children than the license allows.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04

75-03-11.1-05. Denial or revocation of license.

1. The department may deny or revoke a license under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.

2. If an operator appeals an action to revoke a license, the operator may continue the operation of the school-age child care program pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code sections 50-11.1-07.8 and 50-11.1-12.

3. The department may revoke a license to operate a school-age child care program without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and

safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

75-03-11.1-06. Provisional license.

1. The director of a regional human service center, or the director's designee, in consultation with the department may issue a provisional license for the operation of a school-age child care program although the applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.

2. A provisional license must:

   a. State that the operator has failed to comply with all applicable standards and regulations of the department;

   b. State the items of noncompliance;

   c. Expire at a set date, not to exceed six months from the date of issuance; and

   d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the date of issuance of the provisional license, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. The department may issue a provisional license only to an applicant or operator who has waived, in writing:

   a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and

   b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.

4. Any provisional license issued must be accompanied by a written statement of violations signed by the director of the regional human

service center or the director's designee and must be acknowledged in writing by the applicant or operator.

5. Subject to the exceptions contained in this section, a provisional license entitles the operator to all rights and privileges afforded the operator of an unrestricted license.

6. The department may not issue a provisional license if the school-age child care program is not in compliance with section 75-03-11.1-17 or 75-03-11.1-18.

7. The operator shall display prominently the provisional license and agreement.

8. The operator shall provide parents written notice that the school-age child care program is operating on a provisional license and the basis for the provisional license.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

75-03-11.1-06.1. Restricted license. The department may issue a restricted license:

1. To restrict an individual's presence when children are in care;

2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform parents that the operator is licensed, but is restricted to operating in certain rooms or floors of the facility or restricted from using specific outdoor space of the facility.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04

75-03-11.1-07. Application for and nontransferability of school-age child care program license.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.

2. A license issued under this chapter is nontransferable and is valid only for the premises indicated on the license.

3. An application for a new license must be filed upon change of operator or location.

4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This subsection applies to new licenses issued on or after January 1, 2011. Existing operators will be exempt from this provision until January 1, 2016, after which time all operators will be subject to the requirements of this subsection.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

75-03-11.1-08. Duties of school-age child care program operator. The operator of a school-age child care program is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator:

1. Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:

   a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operation has satellite sites, the director shall be present a combined total of sixty percent of the school-age program's hours of operation.

   b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.

   c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.

   d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;

2. Shall apply for a license for the school-age child care program;

3. Shall provide an environment that is physically and socially adequate for children;

4. Shall notify the authorized agent of any major changes in the operation of, or in the ownership or governing body of the school-age child care program, including staff member changes;

5. Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage;

6. Shall formulate written policies and procedures for the operation of the school-age child care program relating to:

   a. Hiring practices and personnel policies for all staff members;

   b. Methods for obtaining references and employment histories of staff members;

   c. Methods of conducting staff member performance evaluations;

   d. Children's activities, care, and enrollment; and

   e. The responsibilities and rights of staff members and parents;

7. Shall maintain enrollment, attendance, health, and other required records;

8. Shall select an emergency designee;

9. Shall maintain necessary information to verify staff member qualifications and to ensure safe care for the children in the school-age child care program;

10. Shall inform parents of enrolled children and other interested parties about the school-age child care program's goals, policies, procedures, and content of the program, including:

    a. How accidents and illnesses will be handled;

    b. Methods of developmentally appropriate discipline and guidance techniques to be used; and

    c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;

11. Shall advise parents of enrolled children of the school-age child care program's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;

12. Shall provide parents of enrolled children information regarding the effective date, duration, scope, and impact of any significant changes in the school-age child care program's services;

13. Shall ensure that the school-age child care program is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;

14. Shall ensure that the school-age child care program has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;

15. Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;

16. Shall ensure that written policies are established which address the provision of emergency medical care, the care of a child with special needs if a child with special needs is in care, and the treatment of illness and accident;

17. Shall ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the school-age child care program by a child or by another on the child's behalf;

18. Shall provide parents with unlimited access and opportunities for parents to observe their children while in care and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;

19. Shall provide parents, upon request, with progress reports on their children;

20. Shall ensure that provisions are made for safe arrival and departure of all children, and a system is developed to ensure that children are released only as authorized by the parent;

21. Shall develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive as expected at the program;

22. Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, which must include, at a minimum:

a. Written permission from the parents allowing a child to leave the program without supervision; and

b. Consistent sign-out procedures for released children;

23. Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and shall develop a written policy to address reporting by staff members;

24. Shall ensure that a staff member is on duty at all sites who meets current certification requirements in cardiopulmonary resuscitation by the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training program and in a department-approved first-aid program;

25. Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the school-age child care program is also the director;

26. Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen are directly supervised by an adult staff member; and

27. Shall report to the authorized agent within twenty-four hours:

a. The death or serious accident or illness requiring hospitalization of a child while in the care of the program or attributable to care received in the program;

b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;

c. Poisonings or errors in the administration of medication;

d. Closures or relocations of child care programs due to emergencies; and

e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.1. Minimum qualifications of a school-age child care program director.

1. The director shall be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care;

2. The director shall possess knowledge and experience in management and interpersonal relationships;

3. The director shall hold at least one of the following qualifications, in addition to those set out in subsection 1:

   a. A bachelor's degree in the field of elementary education;

   b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or directly related fields with at least six months of experience in a child care program or similar setting;

   c. An associate degree in the field of early childhood development with at least six months of experience in a child care program or similar setting;

   d. A teaching certificate in elementary education with at least six months of experience in a child care program;

   e. A current certification as a child development associate or similar status with at least one year of experience in a child care program or similar setting;

   f. A bachelor's degree with twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields with at least one year of experience in a child care program or similar setting; or

   g. Certification from a Montessori teacher training program with one year of experience in a Montessori school, school-age child care program, or similar setting, and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or fields directly related; and

4. The director shall certify annual completion of a minimum of thirteen hours of department-approved training related to child care.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.2. Duties of school-age child care program director. The school-age child care program director, in collaboration with the school-age child care program operator, shall:

1. Plan, supervise, and conduct daily activities in the school-age child care program;

2. Maintain enrollment, health, attendance, and other required records;

3. Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;

4. Designate a supervisor for each school-age child care program site; and

5. Perform other duties as delegated by the operator.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.3. Minimum qualifications of school-age child care program supervisor.

1. A supervisor shall hold at least one of the following qualifications:

   a. An associate degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;

   b. Current certification as a child development associate;

   c. Certification from a Montessori teacher training program; or

   d. A high school diploma or high school equivalency with at least one year of experience in a child care program or similar setting.

2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.

3. The supervisor shall be an adult of good physical, emotional, social, and cognitive health, and shall use mature judgment when making decisions impacting the quality of child care. A supervisor must possess knowledge and experience in building and maintaining interpersonal relationships.

4. The supervisor shall meet current certification requirements in basic cardiopulmonary resuscitation that meets the requirements

of the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training programs.

5. The supervisor shall be certified or trained in a department-approved program to provide first aid.

6. The supervisor shall certify annual completion of a minimum of thirteen hours of department-approved training related to child care annually.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.4. Minimum qualifications for all school-age child care program staff members responsible for caring for or teaching children.

1. Each staff member shall be at least sixteen years of age, shall be an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.

2. Each staff member shall certify the staff member's own annual completion of department-approved training related to child care as set forth below:

   a. Staff members working more than thirty hours per week shall certify a minimum of thirteen hours of department-approved training annually;

   b. Staff members working fewer than thirty hours and at least twenty hours per week shall certify a minimum of eleven hours of department-approved training annually;

   c. Staff members working fewer than twenty hours and at least ten hours per week shall certify a minimum of nine hours of department-approved training annually; and

   d. Staff members working fewer than ten hours per week shall certify a minimum of seven hours of department-approved training annually.

3. The director shall provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address:

   a. Emergency health, fire, and safety procedures for the school-age child care program;

b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;

c. Any special health or nutrition problems of the children assigned to the staff member;

d. Any special needs of the children assigned to the staff member;

e. The planned program of activities at the school-age child care program;

f. Rules and policies of the school-age child care program; and

g. Child abuse and neglect reporting laws.

4. Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

5. A staff member may not place a child in an environment that would be harmful or dangerous to the child's physical, cognitive, social, or emotional health.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.5. Minimum qualifications for volunteers. If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

History: Effective January 1, 1999; amended effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-08.6. Duties of school-age child care program supervisor. The supervisor, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;

2. Plan daily and weekly schedules of activities and make those plans available to parents; and

3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

History: Effective January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-09. Staffing and group size requirements.

1. The number of staff members responsible for caring for or teaching children and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the school-age child care program.

2. Staffing requirements and maximum group size.

   a. The operator of a school-age child care program shall ensure that the program is sufficiently staffed at all times to meet the child to staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children and maximum group size of children must be:

      (1) For one to fourteen children, one staff member; and

      (2) For fifteen children or more, two staff members, with a maximum group size of thirty children.

      (3) The provisions in this subsection relating to maximum group size do not apply to school-age child care program operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a school-age child care program. Any school-age child care program operator who discontinues operation of the school-age child care program under a valid license, or who fails to renew the license when it expires, will not be exempt from the requirements relating to maximum group size if the operator subsequently reapplies for a school-age child care program license. This exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.

b. A staff member may be counted in the required ratio only for the time the staff member is directly responsible for a group of children.

c. The director shall ensure that staff members responsible for caring for or teaching children and children under the age of eighteen are supervised by an adult at all times while in the school-age child care program.

3. Children using the licensed program for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

75-03-11.1-13. Minimum health requirements for all applicants, operators, and staff members.

1. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appear questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.

2. A staff member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-15. Minimum standards for provision of transportation.

1. The operator shall establish a written policy governing the transportation of children to and from the school-age child care program, if the school-age child care program provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the school-age child care program. If the school-age child care program provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a school-age child care program, children must be protected by adequate staff member supervision, safety precautions, and liability insurance.

   a. Staffing requirements must be maintained to assure the safety of the children while being transported.

   b. A child may not be left unattended in a vehicle.

3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.

4. The driver must be at least eighteen years of age and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-16. Minimum emergency evacuation and disaster plan.

1. The operator shall establish and post an emergency disaster plan for the safety of the children in care. The operator shall develop written disaster plans in cooperation with local emergency management agencies. The plan must include:

   a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;

   b. What will be done if parents are unable to pick up their child as a result of an emergency; and

   c. What will be done if the school-age child care program has to be relocated or must close as a result of the emergency.

2. Fire and emergency evacuation drills must be performed in accordance with the state fire marshal's guidelines.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-17. Fire inspections.

1. The operator shall ensure that annual fire inspections are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the authorized agent.

2. The operator shall ensure that the school-age child care program is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

3. The operator shall ensure that the school-age child care program provides:

   a. The fire inspector's written statement of compliance with the local fire code, if there is one; or

   b. The fire inspector's written statement that the school-age child care program has been inspected and that the inspector is satisfied that the school-age child care program meets minimum fire and safety standards.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-18. Minimum sanitation and safety requirements.

1. The operator shall ensure that the state department of health conducts an annual inspection. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

2. The operator shall ensure that the school-age child care program's building, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The operator shall establish routine maintenance and cleaning procedures to protect the health of the children and the staff members.

3. The operator shall ensure that the school-age child care program ground areas are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.

4. The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers to restrict children from those unsafe areas.

Outdoor play areas must be inspected daily for hazards and necessary maintenance.

5. The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with lids. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.

6. The operator shall ensure that wading pools used by the school-age child care program are strictly supervised and are emptied, cleaned, and sanitized daily.

7. The operator shall ensure that all swimming pools are approved annually by the local health unit.

8. The operator shall ensure that all school-age child care program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, have painted surfaces repainted or shall submit evidence that the paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

9. The operator shall ensure that indoor and outdoor equipment, toys, and supplies are safe, strong, nontoxic, and in good repair. The operator shall ensure that all toys are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

10. The operator shall ensure that indoor floors and steps are not slippery and do not have splinters. The operator shall ensure that steps and walkways are kept free from accumulations of water, ice, snow, or debris.

11. The operator shall ensure that elevated areas, including stairs and porches, have railings and safety gates where necessary to prevent falls.

12. If the school-age child care program is providing care to children in wheelchairs, the operator shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.

13. The operator shall ensure that exit doorways and pathways are not blocked.

14. The operator shall ensure that light bulbs in areas used by children are properly shielded or shatterproof.

15. The operator shall ensure that combustible materials are kept away from light bulbs and other heat sources.

16. The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age child care program is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].

17. The operator shall ensure that school-age child care program bathroom sinks, toilets, tables, chairs, and floors are cleaned daily. Cots and mats must be individually designated and cleaned and sanitized at least weekly. If different children use the same cots or mats, the cots or mats must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.

18. The operator shall ensure that personal items including combs and toothbrushes are individually identified and stored in a sanitary manner.

19. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use cloth towels must be available at each sink.

20. The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways are not accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.

21. Water supply standards:

    a. The operator shall ensure that the school-age child care program has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health;

b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and

c. The school-age child care program must have hot and cold running water.

22. Toilet and sink facilities:

a. The operator shall provide toilet and sink facilities which are easily accessible to the areas used by the children and staff members;

b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;

c. A minimum of one sink and one flush toilet must be provided for each fifteen children;

d. The operator shall provide separate restrooms for boys and girls and shall ensure that partitions are installed to separate toilets in these restrooms;

e. The operator shall provide at least one handwashing sink per toilet room facility; and

f. The operator shall provide safe step stools to allow children to use standard-size toilets and sinks or the operator shall ensure the availability of child-size toilets and sinks.

23. The operator of a school-age child care program not on a municipal or public water supply or wastewater disposal system shall ensure the school-age child care program's sewage and wastewater system has been approved by the state department of health.

24. Laundry:

a. If the school-age child care program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;

b. The operator shall ensure that soiled linens are placed in closed containers or hampers during storage and transportation;

c. The operator shall ensure that in all new or extensively remodeled school-age child care programs, the handling, sorting, or washing of soiled linens or blankets takes place in a designated area that is

separated by a permanent partition from food preparation, serving, and kitchen areas;

d. The operator shall ensure that in an existing school-age child care program where physical separation of laundry and kitchen areas is impractical, procedures are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;

e. The operator shall ensure that sorting of laundry is not allowed in food preparation, serving, or kitchen areas;

f. If the school-age child care program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred forty degrees Fahrenheit [60 degrees Celsius]; and

g. The operator shall ensure that if the water temperature is less than one hundred forty degrees Fahrenheit [60 degrees Celsius], bleach or sanitizer is used in the laundry process during the rinse cycle or the program shall use a clothes dryer that reaches a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius].

25. The operator shall take steps to keep the school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the school-age child care program. Insect repellant may be applied outdoors on children with written parental permission.

26. Pets and animals:

a. The operator shall ensure that only small pets that are contained in an aquarium or other approved enclosed container, cats, and dogs are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children or may approve additional pets that do not pose a health or safety risk to children.

b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.

c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.

d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.

e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.

f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.

g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.

h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-19. Minimum requirements regarding space and lighting.

1. Each school-age child care program shall provide adequate indoor and outdoor space for the daily activities of all children within the licensed capacity of the school-age child care program.

2. Adequate space must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the school-age child care program at one time, the total appropriate outdoor space available must not be less than what is required for the number of children in the largest class or group of the program multiplied by seventy-five square feet [6.96 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors daily.

3. The school-age child care program must be properly lighted. If the lighting of the school-age child care program appears questionable, the department may require the operator to obtain additional lights so that a

minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-20. Program requirements.

1. The school-age child care program operator shall have a plan of daily individual or small group activities appropriate to the ages and needs of the children in the school-age child care program. The plan must include activities which foster sound social, cognitive, emotional, and physical growth, and the plan must be developed with consideration of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The plan must be flexible and subject to modification for individual child differences.

3. The plan must be written and varied to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The plan must describe how the activities planned meet the children's developmental needs, including the special needs of children. The written plan must be made available to parents.

4. The plan must include firsthand experiences for children to learn about the world in which they live.

5. Learning experiences must be conducted in consultation with parents to ensure harmony with the lifestyle and cultural background of the children.

6. The plan must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.

7. If the children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.

8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and

social development and to broaden the child's life experience. Each school-age child care program must have enough play materials and equipment so that at any one time, each child in attendance can be involved individually or as a group.

9. The cultural diversity of the children must be reflected in the plan through incorporation of their language, food, celebration, and lifestyles, if appropriate.

10. Equipment and furniture must be durable and safe, and must be appropriately adapted for children's use.

11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The school-age child care program shall supplement, augment, and reinforce the child's activities at home and school.

13. At the time of enrollment, the director or supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and the parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.

14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.

15. The director or supervisor shall contact parents to offer them meaningful opportunities to participate in general program policymaking.

16. Staff members shall stress hygiene practices appropriate for a child's age and development.

17. The director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.

18. Each child's cultural and ethnic background and primary language or dialect must be respected by the staff members.

19. Each school-age child care program shall have a designated area where a child can sit quietly or lie down to rest.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-21. Minimum standards for food and nutrition.

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a school-age child care program must be treated in a sanitary and safe manner with sanitary and safe equipment.

2. When parents bring sack lunches for their children, the operator shall supplement lunches when necessary to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.

3. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day. The operator shall serve nutritious meals to children in care during any normal mealtime hour.

4. When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the authorized agent, and other appropriate individuals.

5. The operator shall consider information provided by the children's parents as to the children's eating habits, food preferences, or special needs in creating the feeding schedules and in tailoring menus.

6. The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

7. The operator or staff members may encourage children to eat the food served, but the operator or staff members may not coerce or force-feed children.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-22. Records.

1. The operator shall keep a copy of this chapter on the premises of the school-age child care program and all satellite sites and shall make it available to staff members at all times.

2. The operator shall maintain the following records:

   a. The child's full name, birth date, and current home address;

   b. Legal names of the child's parents, and the business and personal telephone numbers where they can be reached;

   c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child cannot be reached immediately in an emergency;

   d. A written statement from the parents authorizing emergency medical care;

   e. Names and telephone numbers of individuals authorized to take the child from the school-age child care program; and

   f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually.

3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.

4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services are kept confidential, and that access is limited to staff members, the parents, and to the following, unless protected by law:

   a. The authorized agent and department representatives;

   b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and

   c. Individuals who possess written authorization from the child's parent. The school-age child care program shall have a release of

information form available and shall have the form signed prior to the release of information.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-23. Discipline - Punishment prohibited. Disregard of any of the following disciplinary rules or disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation.

1. The school-age child care program must have a written policy regarding the discipline of children. The operator shall provide the policy to, and discuss the policy with, the staff members before the school-age child care program begins operation or before staff members begin working with children.

2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation.

3. Authority to discipline may not be delegated to children nor may discipline be administered by children.

4. Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of a staff member responsible for caring for or teaching children. A staff member may not isolate a child in a locked room or closet.

5. A child may not be punished for lapses in toilet training.

6. A staff member may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing a child or in the presence of a child.

7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.

8. A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.

9. A staff member may not use deprivation of meals or snacks as a form of discipline or punishment.

10. A staff member or any other adult at the school-age child care program may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.

11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.

12. A staff member may not withhold active play from children as a means of discipline or punishment, beyond a brief period of separation.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-01, 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-24. Specialized types of care and minimum requirements.

1. **Night care.**

   a. Any school-age child care program offering night care shall provide program modifications for the needs of children and their parents during the night;

   b. In consultation with parents, attention must be given by the staff member responsible for caring for or teaching children to provide for a transition into this type of care appropriate to the child's needs;

   c. The operator shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parent's work schedule;

   d. The operator shall ensure that comfortable beds and cots, complete with a mattress or pad, are available and shall ensure:

      (1) Pillows and mattresses have clean coverings;

      (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, but at least weekly. The operator shall ensure that if beds are used by different children, sheets and pillowcases are laundered before use by other children; and

      (3) Each bed or cot has sufficient blankets available;

   e. The school-age child care program shall require each child in night care to have night clothing and a toothbrush marked for identification; and

f. The operator shall ensure that during sleeping hours, staff members responsible for caring for or teaching children are awake and within hearing range to provide for the needs of children and to respond to an emergency.

2. **Drop-in school-age child care.**

a. If a school-age child care program serves drop-in children, it shall be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.

b. The operator shall ensure that the program reflects the individual needs of the children who are provided drop-in care.

c. The operator shall ensure that admission records comply with all enrollment requirements contained in section 75-03-11.1-22.

d. The operator shall ensure that admittance procedures provide for a period of individual attention for the child to acquaint the child with the school-age child care program, its equipment, and the staff members.

e. A school-age child care program may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the school-age child care program to exceed the total number of children for which the school-age child care program is licensed.

3. **Drop-in school-age child care programs.** An operator shall ensure that a school-age child care program serving only drop-in care children complies with this chapter, but is exempt from the following provisions:

a. Subsections 12, 14, and 15 of section 75-03-11.1-20; subdivision f of subsection 1 of section 75-03-11.1-22; and subsection 1 of section 75-03-11.1-25; and

b. A school-age child care program serving only drop-in children is exempt from the outdoor space requirements.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

75-03-11.1-25. Minimum requirements for care of a child with special needs. An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of a child with special needs. The

operator shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. When a child with special needs is admitted, the director or supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medication and procedures.

2. The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04

75-03-11.1-26. Minimum provisions regarding emergency care for children. The school-age child care program shall have written plans to respond to illness, accidents, and emergencies, including burns, serious injury, and ingestion of poison. The operator shall ensure that parents of enrolled children are advised of these plans. Plans must:

1. Establish emergency response procedures;

2. Provide accessible posting of emergency response procedures and training for all staff members concerning those emergency procedures;

3. Require the availability of at least one working flashlight;

4. Require at least one department-approved first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff members at all times;

5. Provide a working telephone immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted;

6. Require that the program inform parents in writing of any first aid administered to their child within twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid, and require an injury report to be made a part of the child's record;

7. Require a plan for responding to minor illnesses and minor accidents when children are in the care of the school-age child care program;

8. Require written permission to dispense medication and require proper instructions for the administration of medication be obtained from the parent of a child in the school-age child care program who requires medication:

   a. Medication prescribed by a medical provider must be accompanied by the medical provider's written instructions as to its dosage and storage, and labeled with the child's name and date.

   b. The program shall keep a written record of the administration of medication, including over-the-counter medication, for each child. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. The program shall include completed medication records in the child's record.

   c. Medication must be stored in an area inaccessible to children, and medication stored in a refrigerator must be stored collectively in a spillproof container;

9. Require a supervised, temporary isolation area be designated for a child who is too ill to remain in the school-age child care program, or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:

   a. Parents are notified immediately and asked to pick up their child; and

   b. First aid is provided and medical care sought, as necessary;

10. Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions. The program may obtain this guidance directly or through current published material regarding exclusion and return to the school-age child care program;

11. Identify a source of emergency health services readily available to the school-age child care program, including:

   a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and

   b. Provisions for emergency transportation, specifically when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain

with the child until medical personnel assume responsibility for the child's care and until the parent is notified; and

12. Require information be provided to parents, as needed, concerning child health and social services available in the community.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08
Law Implemented: NDCC 50-11.1-01

75-03-11.1-27. Effect of conviction on licensure and employment.

1. An applicant, operator, director, or supervisor may not be, and a school-age child care program may not employ or allow, in any capacity that involves or permits contact between the emergency designee, substitute staff member, or staff member and any child cared for by the school-age child care program, an operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age child care program applicant, operator, director, or supervisor, or the school-age child care program operator in the case of an emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. The operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.

5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

75-03-11.1-28. Child abuse and neglect decisions. An operator shall ensure safe care for the children receiving services in the school-age child care program. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator

shall furnish information satisfactory to the department from which the department can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability to the applicant or operator and to the director of the regional human service center or the director's designee for consideration and action on the application or license. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-04, 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

75-03-11.1-29. Correction of violations.

1. Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program and applicable satellite location until the violation has been corrected or for five days, whichever is longer.

2. Violations noted in a correction order must be corrected:

   a. For a violation of section 75-03-11.1-09, subsections 3 and 20 of section 75-03-11.1-18, and section 75-03-11.1-23, within twenty-four hours.

   b. For a violation requiring the hiring of a school-age child care program director with those qualifications set forth in section 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section 75-03-11.1-08.3, within sixty days.

   c. For a violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.

   d. For a violation that requires substantial building remodeling, construction, or change, within sixty days.

   e. For all other violations, within twenty days.

3. All time periods for correction begin on the date of receipt of the correction order by the operator.

4. The regional supervisor of early childhood program services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the operator and a showing that the need for the extension is created by unforeseeable circumstances and the operator has diligently pursued the correction of the violation.

5. The operator shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms that the corrections have been made.

6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

75-03-11.1-30. Fiscal sanctions.

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of subsections 3, 13, and 19 of section 75-03-11.1-20 and section 75-03-11.1-23 for each day that the operator has not verified correction, after the allowable time for correction of violations ends.

2. The department shall assess a fiscal sanction of fifteen dollars per day for each violation of section 75-03-11.1-08; subsections 1, 2, 4, 5, 10, 17, and 20 of section 75-03-11.1-18; subsection 1 of section 75-03-11.1-19; subsections 3 and 11 of section 75-03-11.1-20; section 75-03-11.1-23; and subdivision a of subsection 1 of section 75-03-11.1-24 for each day that the operator has not verified correction, after the allowable time for correction of violations ends.

3. The department shall assess a fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of violations ends.

History: Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-07.4, 50-11.1-08
Law Implemented: NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

75-03-11.1-31. Appeals. An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of receipt of the applicant's or operator's written notice of the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

History: Effective June 1, 1995; amended effective January 1, 1999; January 1, 2011.
General Authority: NDCC 50-11.1-08
Law Implemented: NDCC 50-11.1-08, 50-11.1-10

75-03-11.1-32. Appeals. Repealed effective January 1, 1999.

75-03-36-13. Criminal conviction - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home, or a child-placing agency owner or employee, must not have been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults, threats, coercion, and harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

   b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the North Dakota statutes identified in subdivision a; or

   c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed

after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.

5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective April 1, 2010.
General Authority: NDCC 50-12-05
Law Implemented: NDCC 50-12