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TITLE 33

STATE DEPARTMENT OF HEALTH

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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 July 1, ~~2013~~2015, 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; January 1, 2013; April 1, 2014; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-03-04. Exceptions.

The provisions of sections 33-15-03-01, 33-15-03-02, 33-15-03-03, and 33-15-03-03.1 shall not apply in the following circumstances:

1. Where the presence of uncombined water is the only reason for failure of an emission to meet the requirements.

2. When smoke is emitted for the purpose of training or research when approved by the department, including training schools for firefighting personnel.

3. ~~Where an applicable opacity standard is established for a specific source.~~[Reserved]

4. [Reserved]

5. Where fugitive emissions are caused by agricultural activities related to the normal operations of a farm. However, agricultural practices such as tilling of land, application of fertilizers, harvesting of crops, and other activities shall be managed in such a manner as to minimize dust from becoming airborne.

History: Amended effective February 1, 1982; January 1, 2013; July 1, 2016.
General Authority: NDCC 23-25-03, 28-32-02
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-12

33-15-12-01.1. Scope.

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 July 1, ~~2013~~2015, 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; January 1, 2013; April 1, 2014; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

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

1. **Permit to construct required.**

   a. 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.

   b. 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.

   c. General permits. The department may issue a general permit to construct covering numerous similar sources which are not subject to permitting requirements under chapter 33-15-13 or 33-15-15 or subpart B of section 33-15-22-03. Any general permit shall comply with all requirements applicable to other permits to construct and shall identify criteria by which sources may qualify for the general permit. A proposed general permit, any changes to a general permit, and any renewal of a general permit is subject to public comment. The public comment procedures under subsection 6 of section 33-15-14-02 shall be used. 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 permit to construct. Without repeating the public participation procedures under subsection 6 of section 33-15-14-02, the department may grant a source's request for authorization to construct under the general permit.

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	7.8
PM_{10}		5			
NO_2	1.0				7.5
CO			500		2000
$PM_{2.5}$	0.3	1.2			

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 or on the department's website, 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.

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.

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 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; January 1, 2013; July 1, 2016.
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.

   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 or on the department's website, 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~~Provide notice 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~~must have a maximum term of five years. Applications for renewal of such permits must be submitted ninety days prior to ~~such anniversary date~~the expiration date stated in the permit. 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; July 1, 2016.
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

33-15-14-06. 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.

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.

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

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.

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.

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.

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

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

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.

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

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

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). For purposes of this definition, air contaminant subject to regulation does not include greenhouse gases as defined in title 40, Code of Federal Regulations, 86.1818-12(a). 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.

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

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).

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

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.

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.

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.

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.

(4) Greenhouse gases.

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

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.

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.

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.

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. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of~~

~~nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).~~

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.

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 those associated with 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 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) 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.~~ For all sources, the term of the permit may not exceed five years. The permit expires on the date listed on the permit.

(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 alternative 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. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information;

[3] 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 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; January 1, 2013; July 1, 2016.
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 title 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 July 1, ~~2013~~2015, are incorporated by reference into this chapter. This includes revisions to the rules that were 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)(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.

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)(1)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(2)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
40 CFR 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(23)(i)	The following is added: Greenhouse gases: 75,000 tpy CO_2 equivalent.
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.
	The following is deleted: For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues and waste from agriculture, forestry and related industries as well as the

nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

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)(51)

The paragraph is deleted in its entirety and replaced with the following:

Reviewing authority means the department.

40 CFR 52.21(b)(53)

This paragraph is deleted in its entirety and replaced with the following:

Lowest achievable emission rate (LAER) has the meaning given in 40 CFR 51.165(a)(1)(xiii) which is incorporated by reference.

40 CFR 52.21(b)(54)

This paragraph is deleted in its entirety and replaced with the following:

Reasonably available control technology (RACT) has the meaning given in 40 CFR 51.100(o) which is incorporated by reference.

40 CFR 52.21(b)(58)

This paragraph is deleted in its entirety.

40 CFR 52.21(d)

The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

(1) The concentration permitted under the national primary and secondary ambient air quality standards.

(2) The concentration permitted by the ambient air quality standards in chapter 33-15-02.

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

The following subparagraphs are added:

52.21(i)

(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 national ambient air quality standard or any standard in chapter 33-15-02.

40 CFR 52.21(l)(1)

This subparagraph is deleted and replaced with the following:

All estimates of ambient concentrations required under this chapter shall be based on applicable air quality models, technical data bases (including quality assured air quality monitoring results), and other requirements specified in appendix w of 40 CFR 51 ("guideline on air quality models" as it exists on January 1, 2012) as supplemented by department guidance. 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(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 or on the department's website, 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(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 national ambient air quality standard or any ambient air quality standard in chapter 33-15-02; 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

History: Effective February 1, 2005; amended effective April 1, 2009; April 1, 2011; January 1, 2013; April 1, 2014; July 1, 2016.
General Authority: NDCC 23-25-03, 23-25-04.1
Law Implemented: NDCC 23-25-03, 23-25-04.1

CHAPTER 33-15-20

33-15-20-01. General provisions.

1. **Applicability.** The provisions of this chapter apply to any oil or gas well ~~production~~ facility which emits ~~sulfur or sulfur compounds~~air contaminants to the atmosphere.

2. **Definitions.** As used in this chapter, all terms not defined herein shall have the meaning given them in section 33-15-01-04 or in North Dakota Century Code chapter 23-25.

   a. "Actively producing" means a well has been producing for thirty days or more from initial production through the wellhead equipment.

   b. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the North Dakota state industrial commission.

   ~~b.~~c. "Completion" means an oil well must be considered completed when the first oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after casing has been run. A gas well must be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole must be considered complete when all North Dakota state industrial commission provisions of plugging are complied with.

   ~~c.~~d. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

   ~~d.~~e. "Continuous burning pilot" means a stable auxiliary flame supported by a reliable fuel source which is independent of wellhead production.

   ~~e.~~f. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seven-tenths pounds per square inch [1034 grams per square centimeter] absolute at a base temperature of sixty degrees Fahrenheit [15.5 degrees Celsius].

   ~~f.~~g. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the North Dakota state industrial commission.

   ~~g.~~h. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.

   ~~h.~~i. "Oil" means and includes crude petroleum oil and other hydrocarbons regardless of specific gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.

   ~~i.~~j. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the North Dakota state industrial commission.

   ~~j.~~k. "Operator" means any person or persons who, duly authorized, is in charge of the development of a lease or the operation of a producing property.

   ~~k.~~l. "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas he produces.

~~l.~~m. "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool.

~~m.~~n. "Production facility" means all equipment, wells, flow lines, separators, treaters, tanks, flares, gathering lines, and auxiliary nontransportation-related equipment used in the exploration, development, or subsequent production or handling of oil and gas from an oil or gas well or wells which are located on one or more contiguous or adjacent surface properties, and are under the control of the same person (or persons under common control).

~~n.~~o. "Recomplete" or "recompletion" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

~~o.~~p. "Reservoir" means pool or common source of supply.

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-02. Registration and reporting requirements.

1. The owner or operator of any actively producing oil or gas well that is completed or recompleted on or after July 1, 1987, shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form and gas analysis must be submitted to the department within ninety days of the ~~completion or recompletion of the well~~well achieving active production status. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter.

2. ~~The owner or operator of any oil or gas well that has been completed or recompleted prior to July 1, 1987, and emits ten tons per year or more of sulfur (all sulfur compounds expressed as S) from any associated production facility shall submit an oil and gas well registration form available from the department, and an analysis of any gas produced from the well. The registration form must contain sufficient information to allow the department to determine if the oil or gas well and associated production facility is in compliance with all applicable sections of this chapter. The registration form and gas analysis must be submitted to the department by January 1, 1988, unless the emissions are the result of a modification or change that occurs after July 1, 1987. For wells that are subject to this subsection due to a modification or change which occurred after July 1, 1987, the registration form and gas analysis must be submitted within ninety days of the modification or change.~~[Reserved]

3. The owner or operator of any oil or gas well subject to this section shall inform the department of any change to the information contained on the registration form for a particular well and shall submit a new gas analysis if the composition or the volume of the gas produced from the well has changed from the previous analysis to cause an increase of ten tons per year or more of sulfur (all sulfur compounds expressed as S).

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

33-15-20-03. Prevention of significant deterioration applicability and source information requirements.

1. Any oil or gas well production facility that ~~emits or has the potential to emit two hundred fifty tons per year or more of any air contaminant regulated under North Dakota Century Code chapter 23-25, as determined by the department,~~is a major stationary source or a major modification as defined in chapter 33-15-15, shall comply with the permitting requirements of chapter 33-15-15.

2. To determine prevention of significant deterioration of air quality (PSD) applicability for sulfur dioxide, the following formula must be used:

$$E = 0.00084\ ~~R\ T~~(R)(T)\ (\%\ H_2S)$$

Where: E = sulfur dioxide emission rate (tons/yr).

R = the average daily amount of gas burned, incinerated and/or flared (thousand cubic feet per day at 60°F and 14.7 pisa-MCFD) based upon a thirty-day period. The thirty-day period must be the last thirty operating days of a one hundred eighty-day period following the completion or recompletion of a well. In cases where the well is shut in for extended periods during the one hundred eighty-day period following completion or recompletion, a case-by-case determination of PSD can be requested of the department.

T = days of operation per year (day/yr). This number must be three hundred sixty-five unless there are verifiable physical limitations or a federally enforceable permit that limits the number of operating days.

% H_2S = mole percent hydrogen sulfide content as determined by the most recent gas analysis.

The formula is derived as follows:

$$E = \frac{(\text{Mcf})}{\text{day}}\left(\frac{1000\ \text{cf}}{\text{Mcf}}\right)\left(\frac{\%\ H_2S}{100}\right)\left(\frac{\text{lb-mole}}{379.5\ \text{cf}}\right)\left(\frac{64.06\ \text{lb}\ SO_2}{\text{lb-mole}}\right)\left(\frac{\text{days}}{\text{year}}\right)\left(\frac{\text{ton}}{2000\ \text{lb}}\right)$$

$$E = 0.00084\ \frac{(\text{Mcf})}{\text{day}}\left(\frac{\text{days of operation}}{\text{year}}\right)(\%\ H_2S)$$

Emissions from all onsite equipment at the production facility must be included in the total annual emission determination.

3. The owner or operator of any oil or gas well production facility subject to subsection 1 of this section shall provide information to demonstrate that emissions from the facility do not significantly contribute to exceeding the ambient air quality standards, as defined in chapter 33-15-02, or class I or class II increments, as defined in chapter 33-15-15; and shall address other requirements as specified in chapter 33-15-15.

History: Effective October 1, 1987; amended effective June 1, 1990; June 1,1992; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 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 July 1, ~~2013~~2015, 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; January 1, 2013; April 1, 2014; July 1, 2016.
General Authority: NDCC 23-25-03
Law Implemented: NDCC 23-25-03

CHAPTER 33-15-23

33-15-23-02. Permit to construct fees.

Any person constructing, installing, or establishing a new stationary source or altering an existing source which requires a permit to construct under subsections 1 and 3 of section 33-15-14-02 is required to pay a permit to construct application filing fee and a permit to construct processing fee to the state department of health.

1. **Application fee.** A nonrefundable filing fee of ~~one hundred fifty~~three hundred twenty-five dollars must be submitted with the permit application.

2. **Processing fee.** The applicant shall pay a processing fee based on actual processing costs, including computer data processing costs, incurred by the department for all sources which would involve a major analysis the cost of which would exceed ~~one hundred fifty~~three hundred twenty-five dollars as determined by the department. The following procedures and criteria will be utilized in establishing the fee:

   a. A record of all permit to construct application processing costs incurred must be maintained by the department.

   b. Upon request, the department, in consultation with the applicant, will prepare an estimate of the processing fee and the billing schedule that will be utilized in processing the application. ~~If the applicant chooses, the applicant may withdraw the application at this point without paying any processing fees.~~

   c. Statements will be sent to the applicant containing the actual processing costs incurred by the department.

   d. The applicant must pay the processing fee regardless of whether a permit to construct is issued, denied, or withdrawn.

   e. Any source that initiates operation under a permit to construct prior to receiving a permit to operate is subject to the fees outlined in section 33-15-23-03 or 33-15-23-04, whichever is applicable.

History: Effective August 1, 1995; amended effective January 1, 2013; July 1, 2016.
General Authority: NDCC 23-25-03, 23-25-04.2
Law Implemented: NDCC 23-25-03, 23-25-04.2

CHAPTER 33-15-25

33-15-25-02. Best available retrofit technology.

1. ~~**Submission of best available retrofit technology analysis.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, part 51, section 301, that contributes to visibility impairment in a class I federal area shall submit a best available retrofit technology analysis to the department. The analysis shall be submitted within nine months after being notified by the department that the existing stationary facility contributes to visibility impairment.~~[Reserved]

2. **Installation of best available retrofit technology.** The owner or operator of any existing stationary facility as defined in title 40, Code of Federal Regulations, section 301, which contributes to visibility impairment in a class I federal area shall install and operate best available retrofit technology. The equipment shall be installed and operating as expeditiously as practicable but in no event later than five years after the United States environmental protection agency's approval of North Dakota's state implementation plan revision for best available retrofit technology.

3. **Operation and maintenance of best available retrofit technology.** The owner or operator of a facility required to install best available retrofit technology under subsection 1 shall establish procedures to ensure such equipment is properly operated and maintained.

History: Effective January 1, 2007; amended effective July 1, 2016.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

33-15-25-03. ~~Guidelines for best available retrofit technology determinations under the regional haze rule.~~

~~Title 40, Code of Federal Regulations, part 51, appendix y, as published in the federal register on July 6, 2005, is incorporated by reference into this chapter.~~

~~**The owner or operator of a fossil-fuel-fired steam electric plant with a generating capacity greater than seven hundred fifty megawatts of electricity shall comply with the requirements of appendix y. All other facility owners or operators shall use appendix y as guidance for preparing their best available control retrofit technology determinations.**~~**[Reserved]**

History: Effective January 1, 2007; amended effective July 1, 2016.
General Authority: NDCC 23-25-03, 23-25-04
Law Implemented: NDCC 23-25-03, 23-25-04

TITLE 48

STATE BOARD OF ANIMAL HEALTH

JULY 2016

TITLE 48
STATE BOARD OF ANIMAL HEALTH

[Repealed effective July 1, 2016]

~~Article~~

TITLE 48.1

STATE BOARD OF ANIMAL HEALTH

JULY 2016

ARTICLE 48.1-01
GENERAL ADMINISTRATION

CHAPTER 48.1-01-01
DEFINITIONS

48.1-01-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 36-01. Additionally:

1. "Certificate of veterinary inspection" means a legible official regulatory certificate on an official form that documents the health status of an animal. It is signed by the inspecting veterinarian, who must be licensed by the state of origin and accredited by the United States department of agriculture, attesting to the veracity of the information contained within it.

2. "Designated epidemiologist" means a state or federal epidemiologist designated by the state veterinarian to make decisions about the use and interpretation of diagnostic tests and field investigation data and the management of animals.

3. "Importation permit" and "importation permit number" mean authorization obtained from the board or the state veterinarian for the movement of animals into the state and within the state as needed.

4. "State veterinarian" means the veterinarian appointed by the agriculture commissioner with the consent of the board. The state veterinarian ascertains all obtainable information in relation to diseases of animals and executes all orders and rules of the board.

5. "USDA-APHIS-VS" means United States department of agriculture, animal and plant health inspection service, veterinary services.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-01-02
AGENTS OF THE BOARD

48.1-01-02-01. Agents of the board.

The board or state veterinarian may appoint agents to engage in animal health work on behalf of the board or state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-10

48.1-01-02-02. Vouchers for services.

All vouchers for services performed by agents of the board performing animal health work of any kind, must be submitted within thirty days following the end of the month services were performed.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-10

CHAPTER 48.1-01-03
PENALTIES

48.1-01-03-01. Penalties.

1. The board may order any domestic animal or nontraditional livestock brought into this state, which is not in compliance, to be brought into compliance, returned to the state of origin, or in the alternative, be slaughtered or destroyed.

2. If, after a hearing, the board finds that a person has brought, kept, or received any domestic animal or nontraditional livestock in the state not in compliance with the rules, a civil penalty, not to exceed five thousand dollars per violation, may be assessed against that person.

3. Any person who knowingly violates any rule adopted by the board is guilty of an infraction, for which a maximum fine of one thousand dollars may be imposed against that person.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 12.1-32-01, 36-01-08, 36-01-28,

CHAPTER 48.1-01-04
WAIVERS AND EXEMPTIONS

48.1-01-04-01. Waivers and exemptions.

1. The board may waive any rule of the board for reasonable cause.

2. An individual petitioning to receive a waiver of any rule of the board must apply to the board, stating specifically why there is a compelling need to have a rule waived and showing that the grant of waiver will not threaten or adversely affect any domestic or wild animal or threaten public health or safety.

3. The state veterinarian may authorize an exemption to importation requirements in this title based upon an epidemiological evaluation and risk assessment.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

CHAPTER 48.1-01-05
QUARANTINES

Section

48.1-01-05-01. State veterinarian quarantine authority.

The board authorizes the state veterinarian to quarantine:

1. Any domestic animal or nontraditional livestock that is infected, or may be infected, with contagious or infectious disease or which has been exposed, or may be exposed, to contagious or infectious diseases.

2. Any city, civil township, county, or areas within a county in North Dakota and any enclosure, building, or any domestic animal or nontraditional livestock therein, which is infected or may be infected or exposed or may be exposed to any contagious or infectious disease.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-06, 36-01-12

48.1-01-05-02. Designation and identification of premises.

The board may require identification and designation of premises where exposed or infected animals are or have been located. Premises must be identified and designated by readily visible suitable placards as determined by the board. Placards may not be removed unless the removal has been approved by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-12

48.1-01-05-03. Quarantines.

Animals imported which are not in compliance with importation requirements must be quarantined until the disease status of the animals can be determined and until all vaccination and test requirements can be verified.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-12

48.1-01-05-04. Identification of exposed or infected animals.

The board may require individual identification of exposed or infected animals prior to relocating or movement of that animal. The method and type of identification must be in a manner prescribed by the board or state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48.1-01-05-05. Exception to prohibition and notice requirements upon sale or gift of animal infected with or exposed to contagious or infectious disease.

The provisions of North Dakota Century Code section 36-14-01 do not apply to animals infected with or suspected of being exposed to any contagious or infectious disease provided that:

1. The disease is not subject to quarantine as indicated by the reportable disease list maintained by the board; and

2. The animals:

   a. Are not reasonably known to be infected with contagious disease; or

   b. Remain in slaughter channels.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-01-06
VIRULENT PRODUCTS

48.1-01-06-01. Sale of virulent products.

All persons, except licensed veterinarians practicing in the state, are prohibited from distributing or selling any products containing any live germs, cultures, or viruses for the treatment or vaccination of any domestic animals or nontraditional livestock without a written permit by the state veterinarian.

1. Nontransferable permits will be issued to all qualified applicants, as determined by the board, and may be obtained only upon written application by the person selling the product through retail distribution channels.

2. A written application for a permit shall be provided in a form as approved by the state veterinarian.

3. The board may revoke a permit to sell virulent products for violation of North Dakota Century Code chapter 36-01, or any rules adopted pursuant to that chapter.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-01-06-02. Permit requirements - Virulent products.

An applicant for a permit to sell or distribute virulent products shall:

1. Agree not to sell or distribute any of the following vaccines:

   a. Brucella vaccines.

   b. Pseudorabies vaccines.

   c. Rabies vaccines.

   d. Anthrax vaccines.

   e. Contagious ecthyma (live).

   f. Erysipelas (live cultures).

   g. Johne's Disease (paratuberculosis) vaccines.

   h. Anaplasmosis vaccines.

   i. Vaccines for foreign animal diseases.

   j. Other vaccines as ordered by the board.

2. Complete four hours of training, approved by the state veterinarian, annually for the applicant and all employees pertaining to the use of virulent vaccines.

3. Store live germs, cultures, or viruses offered for sale, or sold, in a dark place at a temperature of not more than forty-five degrees Fahrenheit [7.22 degrees Celsius] and not less than thirty-

five degrees Fahrenheit [1.67 degrees Celsius] until such time as they are sold. Live germs, cultures, or viruses may not be sold after their expiration date. A working thermometer must be present in a refrigerated unit containing live germs, cultures, or viruses offered for sale.

4. Offer for sale, products in their original containers only.

5. Agree not to accept, for return, retail purchases of live germs, cultures, or viruses.

6. When approved for and provided a permit, comply with subsections 1 through 5, with respect to all farm sales.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-01-07
RENDERING PLANTS - COLLECTION OF DEAD ANIMALS

Section

48.1-01-07-01. Rendering plants - Collection of dead animals.

Dead animals must be picked up by rendering plants within twenty-four hours after death, between May first and November first.

History: Effective July 1, 2016.
General Authority: NDCC 36-07-01
Law Implemented: NDCC 36-07-02, 36-14-19

ARTICLE 48.1-02
AUCTION MARKETS

CHAPTER 48.1-02-01
AUCTION MARKETS

48.1-02-01-01. Auction markets - Definition.

Auction market means any licensed livestock market, public stockyard, and animal auction sale. Auction markets shall comply with this chapter. A producer on that producer's property, selling animals, other than farmed elk, owned by that producer is exempt from this chapter.

History: Effective July 1, 2016.
General Authority: NDCC 36-05-10
Law Implemented: NDCC 36-05-10

48.1-02-01-02. Testing and inspections.

Auction market operators shall employ a licensed accredited veterinarian as the veterinary inspector for the auction market for required inspection, testing, and vaccination. The veterinary inspector shall act as an authorized agent of the board to enforce inspection laws and regulations.

1. Animals rejected by the veterinary inspector must be consigned direct for slaughter to an inspected establishment. A report of sales must be furnished by sale management upon request of the state veterinarian.

2. The state veterinarian may order unfit animals to return to the farm of origin.

History: Effective July 1, 2016.
General Authority: NDCC 36-05-10
Law Implemented: NDCC 36-05-10

48.1-02-01-03. Diseased animals at auction markets.

Auction markets shall set aside paved pens for diseased animals delivered to the market. Diseased animals must be marked in a manner approved by the state veterinarian and sold directly to slaughter facilities. The official permit of the United States department of agriculture for movement of diseased animals must accompany shipment of diseased animals from market to slaughter.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-05-07

48.1-02-01-04. Pens.

Auction markets must be maintained in sanitary condition.

1. Three-inch [7.62-centimeter] concrete floors are required for all hog pens and alleys and must be cleaned and disinfected periodically as may be prescribed by the board.

2. All cattle alleys and seventy-five percent of the total yard area used for cattle in auction markets must be paved with concrete, so constructed as to ensure proper drainage and disinfection.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-05-07

48.1-02-01-05. Cleaning and disinfection of trucks, trailers, and other conveyances used for hauling diseased animals to auction markets.

Persons hauling diseased animals to auction markets shall clean and disinfect trucks by a method approved by the state veterinarian before leaving auction markets.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-02-01-06. Auction market facilities.

Licensed auction markets shall provide and maintain adequate facilities that are safe, sanitary, and in good condition and that adequately allow brand inspectors and veterinary inspectors to perform their required duties.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-05-07, 36-05-10

48.1-02-01-07. Fees.

Auction market operators may levy a charge on purchasers of animals for use of testing or vaccination facilities or labor furnished to assist the veterinary inspector. The rate of the charge must be posted in a conspicuous place on the premises. The charge must be kept separate from and not included in veterinary fees.

History: Effective July 1, 2016.
General Authority: NDCC 36-05-11
Law Implemented: NDCC 36-05-11

48.1-02-01-08. Farmed elk auction.

A farmed elk auction permit is required to conduct auctions where farmed elk are offered for sale or trade.

1. The application for an auction permit must be submitted to the board at least thirty days prior to the date of auction.

2. Once issued, the permit is valid for that date and an alternate date.

a. Information concerning reporting requirements, disease testing, certificates of veterinary inspection, and animal welfare must be clearly stated in the auction announcement.

b. All potential buyers and sellers shall register at the auction and provide their name, address, and phone number. An accredited veterinarian shall be available during the auction.

c. Animals unfit for sale as defined in North Dakota Century Code section 36-05-10.1 must receive veterinary care and may not be offered for sale.

d. Access to the auction ground must be controlled at all times. All animals must be checked in and out by auction personnel.

3. The auction sale permit holder shall notify the board within twenty-four hours of any unexplained diseases or deaths that occur in farmed elk while on the permitholder's premises.

4. The auction sale permitholder shall submit to the board records from the sale within thirty days after the sale. Any documents required by the board must be provided.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

48.1-02-01-09. Nontraditional livestock category 2 and category 3 auction.

1. Sales of category 2 and category 3 nontraditional livestock, as defined in section 48.1-09-01-02, conducted through a process in which they are held out for sale to the public, through auction, bidding, or otherwise published or announced for sale, require a nontraditional livestock auction permit, and veterinary inspection of animals. All nontraditional livestock are subject to all other regulations while in the state.

2. The application for an auction permit must be submitted to the board at least thirty days prior to the date of auction. Once issued, the permit is valid for that event only.

3. Immediately prior to the beginning of the auction of a nontraditional livestock animal, information concerning requirements for nontraditional livestock license, disease testing, and certificates of veterinary inspection, must be provided by sales management to potential buyers.

4. All potential buyers and sellers shall register at the auction and provide nontraditional livestock license numbers, if applicable.

a. A ten-day grace period, in which to apply for a license, may be granted to purchasers of category 2 animals provided adequate facilities are available to house the animals.

b. Purchasers of category 3 animals shall have a current nontraditional livestock license for that species in place prior to taking possession of category 3 animals.

5. The nontraditional livestock auction permitholder shall ensure that an accredited veterinarian, licensed in the state, is available during the permitted nontraditional livestock auction sale.

a. The accredited veterinarian shall inspect the animals prior to sale on the day of sale.

b. Nontraditional livestock unfit for sale, as determined by the veterinarian, may not be accepted for sale or trade.

6. Auction sale operators shall submit records on all animals consigned for the auction to the board as specified in the auction permit within ten days of the date of the auction.

7. Facilities and records may be inspected by the board or its agent during standard working hours. Any documents required by the board must be provided.

8. A nontraditional livestock private treaty sale, that does not meet the above criteria, is exempt from the requirements of this chapter. However, prior to a private treaty sale of nontraditional livestock, the seller shall notify the buyer if a North Dakota nontraditional license is required.

9. Private sales or exchanges on the auction grounds on the dates of auction are prohibited.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

ARTICLE 48.1-03
BRAND INSPECTION

CHAPTER 48.1-03-01
BRAND INSPECTION

48.1-03-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 36-01 except:

1. "Association" means the North Dakota stockmen's association.

2. "Buying station" means a point where cattle, horses, or mules are gathered for sale and is also referred to as a weigh station or scale.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-03-01-02. Feedlot registration.

1. Any person who operates a dry lot cattle feeding operation within the confines of permanently fenced lots may make application to the chief brand inspector of the association for a registered feedlot number and permit. After the association has received application and a fee, an agent of the association, within thirty days, shall make investigation to determine that the following requirements are satisfied:

   a. Operator's lots must be of permanently fenced dry lot status.

   b. Operator must commonly practice feeding cattle to finish for slaughter.

2. Commercial feedlots, which custom feed cattle for other persons, and do not have ownership of the cattle, are not eligible for registered feedlot numbers and permits.

   a. Producers intending to have cattle fed at a commercial lot may apply for a registered feedlot permit individually and the operators of a commercial lot are responsible for submitting the necessary documentation on behalf of the producers.

   b. The association may issue a registration number and permit valid for ten years unless rescinded for cause.

3. All cattle placed in a registered feedlot must be accompanied by a brand inspection certificate. Such certificate may be a market clearance, a local brand inspection certificate, or a recognized brand inspection certificate from another state.

a. Cattle purchased or acquired by a registered feedlot operator from a North Dakota producer must be inspected before being mixed with other cattle and the producer shall pay inspection costs.

b. Cattle raised by a registered feedlot operator and placed in the operator's own feedlot must be inspected at the time they are placed in the feedlot and the regular inspection fee shall be paid by the operator.

c. Cattle to be placed in a registered feedlot which come from outside the state, but which are not accompanied by a brand inspection certificate, must be inspected without charge before being mixed with other cattle.

4. The operator of a registered feedlot shall maintain certain cattle inventory records. The chief brand inspector shall prescribe a permit form for this purpose. The form must show number of cattle in the lot, number sold, date and place where cattle were sold, number of cattle remaining in the lot, number of replacement cattle placed in the lot, and such other information as may be necessary, including death losses.

a. Cattle shipped from a registered feedlot directly to market are not subject to brand inspection or payment of inspection fees at the market. These cattle must be shipped on a chief brand inspector permit form. This form must be made in triplicate:

(1) One copy must be delivered to the brand inspector at the market along with shipment;

(2) One copy must be sent to the chief brand inspector along with the fees no later than ten days after the end of each quarter (quarters being March, June, September, December) for those cattle shipped during the previous three months; and

(3) One copy must be retained by the operator.

b. If the above permit form fails to accompany shipment of cattle to market, cattle are subject to inspection and regular fees must be charged for the service.

c. The operator of a registered feedlot shall pay an annual assessment of twenty-five dollars plus fifty cents per head on each head shipped on the above permit form. Operators will be billed the twenty-five dollar portion of the annual assessment by the chief brand inspector in December for the annual assessment of the following year.

5. Cattle sold from a registered feedlot, but which are not sold for slaughter, must be inspected and the seller bears the cost of inspection at the regular fee.

6. Registered feedlots are subject to inspection at any reasonable time at the discretion of the chief brand inspector, and the operator shall show cattle inventory records and inspection certificates to cover all cattle in the operator's feedlot.

7. The chief brand inspector, for good cause, may suspend or revoke a registration.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-30
Law Implemented: NDCC 36-01-30

48.1-03-01-03. Brand inspection.

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a

recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.

2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.

3. A claim for feed, pasture, or gathering may not be submitted at market. All such claims must be referred to and approved for payment from proceeds of sale by the association, unless payment is authorized in writing by the owner of the brand carried by such livestock.

4. Sales agency, packing plant, and buying stations where inspection is conducted must furnish necessary help, without charge, to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.

5. All cattle, horses, or mules entering an inspection point must be placed in pens assigned to individual sellers and must be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.

6. No cattle, horses, or mules may be inspected when loaded in trucks or after dark or by artificial light, unless approved by the chief brand inspector. The chief brand inspector may grant approval to premises which meet artificial light specifications and may extend or remove such approval.

7. The association shall provide a sufficient and competent force of brand inspectors at inspection points to conduct the brand inspection in an efficient and timely manner.

8. Brand inspectors may not inspect their own livestock.

9. Meat processing facility inspections:

   a. The association, upon a recommendation by the chief brand inspector, shall make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee.

   b. Brand inspectors, when directed to do so by the chief brand inspector, may go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses.

10. Brand inspection fees and expenses are as follows:

    a. A permanent inspection permit may be obtained from the association, for horses and mules only, by payment of a twenty-five dollar inspection fee.

    b. A fee of one dollar and fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by:

       (1) The owner of the cattle, horses, or mules; or

       (2) The commission firm, sales agency, buying station operator, or packing plant company when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant. Upon a sale, the commission firm, sales agency, buying station operator, or packing plant company shall:

(a) Collect and withhold from the proceeds of such sale the inspection fee; and

(b) Pay the association upon demand the entire amounts collected without any deductions.

c. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the shipper, owner, or consignor shall pay the inspector mileage at the same rate per mile [1.61 kilometers] paid to state officials, in addition to the regular brand inspection fee.

11. The following auction markets outside the state are designated official brand inspection markets for North Dakota origin cattle, horses, and mules: Mobridge livestock auction, Mobridge, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana. If any of the above markets, or other markets designated by the board, where the association provides brand inspection closes for a period of three months or longer, the market must file a written request and follow the same criteria as listed for new requests for brand inspection services.

a. The request must be from a market within thirty-five miles of the state border, unless granted an exemption by the board.

b. The number of potential inspections must be at a level that is feasible for the association to hire personnel to perform the inspection services.

c. The auction markets must file a bond with the association in an amount to assure that any shortage of income from inspections will cover all expenses incurred in performing the services.

d. The auction markets must agree to abide by all North Dakota livestock inspection laws and rules. Failure to do so may result in immediate suspension or revocation of brand inspection services.

History: Effective July 1, 2016.
General Authority: NDCC 4.1-72-01
Law Implemented: NDCC 4.1-72-01, 4.1-73-23, 4.1-74-01, 36-05-10

ARTICLE 48.1-04
BISON

CHAPTER 48.1-04-01
BISON

48.1-04-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Bison imported into the state must be accompanied by an official certificate of veterinary inspection except:

   a. Bison originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board;

   b. Bison consigned to a state or federally inspected slaughtering establishment;

   c. Bison granted an exception by the board, if in the determination of the state veterinarian the animals are free of contagious or infectious diseases;

   d. Bison leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days; and

   e. Other bison as otherwise provided for by these rules.

2. Certificate of veterinary inspection for bison must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that bison:

   a. Have not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Have not met any pre-entry quarantine conditions imposed by law;

   c. Have been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Bison entering the state must be officially identified by a method approved by the state veterinarian.

5. Bison from foreign countries must be permanently, officially identified with a method prescribed by the state veterinarian and an electronic identification compatible with the federal animal identification plan.

a. Bison from Canada can be imported into the state with either a CAN tattoo in an ear or a CAN brand on the right hip, as the form of permanent identification.

b. Bison from other countries will be permanently identified as prescribed by the state veterinarian.

6. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

7. Any bison that is infected, or recently exposed to any contagious or infectious disease, may not be imported.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-04-01-02. Importation disease testing and vaccination requirements.

1. Brucellosis. Bison over eighteen months of age must have a negative brucellosis test within thirty days prior to entry into the state. The following may be exempt from the brucellosis test requirement:

a. Steers;

b. Spayed females; and

c. Bison originating from brucellosis-free states or areas that do not require North Dakota origin bison to be tested prior to entry, as approved by the board.

2. Scabies. Bison originating from states where, in the determination of the board, scabies treatment is necessary must be treated with a method approved by the board:

a. Two dippings, ten to fourteen days apart.

b. In lieu of dipping, bison may be treated with an approved avermectin administered by a licensed accredited veterinarian.

3. Trichomonas foetus.

a. Bulls over twenty-four months of age and all nonvirgin bulls over twelve months of age must have three consecutive, weekly, negative Trichomoniasis foetus culture tests or one negative PCR test prior to importation.

(1) Regulatory testing must be performed in a laboratory approved by the state veterinarian.

(2) No breeding is to occur between the time of the tests and the time a bull is sold, loaned, or leased.

b. A certificate of veterinary inspection for bulls covered under this rule must bear one of the following statements:

"Trichomonas foetus has not been diagnosed in the herd of origin."

or

"The bull(s) represented on this Certificate of Veterinary Inspection have three consecutive negative Trichomonas foetus culture tests that were at least a week apart or one negative PCR test within sixty days prior to entry and there has been no female contact since the first qualifying test."

c. The following may be exempt from Trichomonas foetus testing:

(1) Virgin bulls aged twenty-four months of age or less. A signed statement from the owner or manager stating that bulls have had no potential breeding contact with females must be listed on certificate of veterinary inspection.

(2) Bulls imported into the state for immediate slaughter only or those consigned directly to a licensed slaughter establishment or to a licensed livestock market and then directly to a licensed slaughter establishment.

(3) Bulls imported into the state and held in confinement, including exhibition and/or rodeo purposes, based upon a risk assessment by the state veterinarian.

(4) Bulls imported as part of a state veterinarian-approved seasonal grazing operation without change of ownership, based upon a risk assessment by the state veterinarian.

(5) Bulls used in semen collection operations, based upon a risk assessment by the state veterinarian.

4. Tuberculosis.

a. Bison entering the state must be accompanied by documentation that each animal was tested for tuberculosis within thirty days prior to entry into the state, and that the results of the test were negative for tuberculosis.

(1) Bison, sixty days of age or older, that originate from any area, where in the determination of the board, tuberculosis may exist, must:

(a) Be negative to an official test for tuberculosis within thirty days prior to entering the state; or

(b) Originate from a tuberculosis accredited-free herd (date of last test and accredited herd number listed on certificate of veterinary inspection).

b. The following may be exempt from the tuberculosis test requirement:

(1) Nursing calves accompanying negative-tested dams.

(2) Bison originating from tuberculosis-free states or areas that do not require North Dakota origin bison to be tested prior to entry, as approved by the board.

(3) Steers and spayed females that are:

(a) Officially identified prior to entry;

(b) Listed by official identification individually on a certificate of veterinary inspection; and

(c) Have undergone an epidemiological risk assessment and determined to be low risk by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-04-01-03. Disease control.

1. Anthrax.

a. Bison located on farms where anthrax has been diagnosed must be vaccinated. Bison must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

b. Sale of hides removed from bison infected with anthrax is prohibited.

2. Brucellosis.

a. The recommended brucellosis eradication uniform methods and rules as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

b. Condemnation of infected bison.

(1) The state veterinarian shall determine when an animal is infected with brucellosis, and if infected, shall condemn the animal.

(2) Bison which are condemned due to brucellosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) Animals must be slaughtered within thirty days following condemnation.

c. Brucellosis vaccination of calves.

(1) Female bison animals may be vaccinated from four through twelve months (one hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian.

(2) Vaccinated animals must be marked in accordance with a method approved by the state veterinarian.

(3) The state veterinarian shall submit reports of vaccination, on the appropriate form provided by USDA-APHIS-VS, to the board within thirty days.

d. Sale of bison out of brucellosis-infected herds. Herds of bison infected with brucellosis must be quarantined, with the quarantine prohibiting sale of all intact bulls and females except to licensed, monitored feedlots or for slaughter under written permit. Such bison must be held separate and apart. The state veterinarian may grant an exception by official permit as provided in this section.

3. Tuberculosis.

a. Uniform methods and rules - Tuberculosis. The current uniform methods and rules on bison tuberculosis eradication as they appear in publication of USDA-APHIS-VS are

hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

b. Condemnation of infected bison.

(1) The state veterinarian shall determine when an animal is infected with tuberculosis, and if infected, shall condemn the animal.

(2) All bison that are determined to be infected with tuberculosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) All animals must be slaughtered within thirty days following condemnation.

c. Reactors to tuberculosis must be accompanied by the proper official permit and are to be slaughtered in slaughter establishments under the supervision of the federal government or in another facility approved by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-04-01-04. Removal or damaging of official identification or brands.

Official identification or brands may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 33-01-08

ARTICLE 48.1-05
CATTLE

CHAPTER 48.1-05-01
CATTLE

48.1-05-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Cattle imported into the state must be accompanied by an official certificate of veterinary inspection except:

   a. Cattle originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board;

   b. Cattle consigned to a state or federally inspected slaughtering establishment;

   c. Cattle granted an exception by the board, if in the determination of the state veterinarian the animals are free of contagious or infectious diseases;

   d. Cattle leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days; and

   e. Other cattle as otherwise provided for by these rules.

2. Certificate of veterinary inspection for cattle must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that cattle:

   a. Have not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Cattle entering the state must be officially identified by a method approved by the state veterinarian.

5. Cattle from foreign countries must be permanently officially identified with a method prescribed by the state veterinarian and an electronic identification compatible with the federal animal identification plan.

6. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

7. Cattle infected, or recently exposed to any contagious or infectious disease, may not be imported.

8. Calves, under four months of age, not accompanying dams, may not be resold within sixty days of importation. Purchasers shall take possession of imported calves at the premises of the seller.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-05-01-02. Importation disease testing and vaccination requirements.

1. Brucellosis.

a. Female cattle over twelve months of age. No female cattle over twelve months (three hundred sixty-five days) of age may be imported unless officially calfhood vaccinated against brucellosis. Female cattle imported for exhibition purposes are exempt from this requirement.

b. Test-eligible cattle, as determined by the board, must have a negative brucellosis test within thirty days prior to entry into North Dakota and must comply with uniform methods and rules in control of brucellosis as published by USDA-APHIS-VS. A valid test for brucellosis must be a blood test conducted by a state or federal laboratory or by a veterinarian approved in the state of origin.

c. Exemption. The board may exempt the following cattle:

(1) Steers;

(2) Spayed females; and

(3) Cattle affected by drought conditions when:

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

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

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

2. Scabies.

a. Cattle originating from states where, in the determination of the board, scabies treatment is necessary must be treated with a method approved by the board:

(1) Two dippings, ten to fourteen days apart.

(2) In lieu of dipping, cattle may be treated with an approved avermectin administered by a licensed accredited veterinarian.

b. Scabies affected or exposed cattle must be quarantined and treated with an approved avermectin.

3. Trichomonas foetus.

a. Bulls over twenty-four months of age and all nonvirgin bulls over twelve months of age must have three consecutive, weekly, negative Trichomoniasis foetus culture tests or one negative PCR test prior to importation.

(1) Regulatory testing must be performed in a laboratory approved by the state veterinarian.

(2) No breeding is to occur between the time of the tests and the time a bull is sold, loaned, or leased.

b. A certificate of veterinary inspection for bulls covered under this rule must bear one of the following statements:

"Trichomonas foetus has not been diagnosed in the herd of origin."

or

"The bull(s) represented on this Certificate of Veterinary Inspection have three consecutive negative Trichomonas foetus culture tests that were at least a week apart or one negative PCR test within sixty days prior to entry and there has been no female contact since the first qualifying test."

c. No nonvirgin and nonpregnant female cattle may be imported for breeding or grazing purposes into the state.

d. The following may be exempt from Trichomonas foetus testing:

(1) Virgin bulls aged twenty-four months of age or less. A signed statement from the owner or manager stating that bulls have had no potential breeding contact with females must be listed on certificate of veterinary inspection.

(2) Bulls imported into the state for immediate slaughter only or those consigned directly to a licensed slaughter establishment or to a licensed livestock market and then directly to a licensed slaughter establishment.

(3) Bulls imported into the state and held in confinement, including exhibition and/or rodeo purposes, based upon a risk assessment by the state veterinarian.

(4) Bulls imported as part of a state veterinarian-approved seasonal grazing operation without change of ownership, based upon a risk assessment by the state veterinarian.

(5) Nonvirgin and nonpregnant female cattle to be used in confined dairy operations, based upon a risk assessment by the state veterinarian.

(6) Nonvirgin and nonpregnant female cattle, each accompanied by its own offspring and prior to rebreeding.

(7) Cattle used in embryo transplant or semen collection operations, based upon a risk assessment by the state veterinarian.

4. Tuberculosis.

a. Dairy breed cattle sixty days of age or older, other than steers and spayed heifers, must be negative to an official test for tuberculosis within thirty days prior to entering the state.

b. United States-born cattle used for rodeo or timed events must have a negative bovine tuberculosis test within the last twelve months prior to importation into the state.

c. Cattle of Mexican origin, M-branded or MX-branded, entering the state, must be accompanied with proof of two negative bovine tuberculosis tests by USDA-accredited veterinarians with the last test within sixty days prior to importation into the state.

(1) Cattle of Mexican origin need a negative whole herds tuberculosis test on the birth herd of origin.

(2) Cattle of Mexican origin require 484 electronic identification tags for identification.

d. Cattle entering the state that originate from any modified accredited state, or any other area where in the determination of the board tuberculosis may exist, must be accompanied by documentation that each animal was tested for tuberculosis within thirty days prior to entry into the state, and that the results of the test were negative for tuberculosis. The following may be exempt from the tuberculosis test requirement, but must still be officially identified:

(1) Steers;

(2) Spayed females;

(3) Cattle originating from a tuberculosis accredited-free herd;

(4) Cattle originating from a closed herd which have been whole-herd tested negative for tuberculosis within twelve months prior to importation; and

(5) Nursing calves accompanying negative-tested dams.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-01, 36-14-04.1

48.1-05-01-03. Disease control.

1. Anthrax.

a. Cattle susceptible to anthrax located on farms where anthrax has been diagnosed must be vaccinated. Animals shall be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

b. Sale of hides removed from cattle infected with anthrax is prohibited.

2. Brucellosis.

a. The recommended brucellosis eradication uniform methods and rules as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

b. Condemnation of infected cattle.

(1) The state veterinarian shall determine when an animal is infected with brucellosis, and if infected, shall condemn the animal.

(2) Cattle that are condemned due to brucellosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) Animals must be slaughtered within thirty days following condemnation.

c. Brucellosis vaccination of calves.

(1) Female bovine animals may be vaccinated from four through twelve months (one hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian.

(2) Vaccinated animals must be marked in accordance with a method approved by the state veterinarian.

(3) The state veterinarian shall submit reports of vaccination on the appropriate form provided by USDA-APHIS-VS, to the board within thirty days.

d. Sale of cattle out of brucellosis-infected herds. Herds of cattle infected with brucellosis must be quarantined, with the quarantine prohibiting sale of all intact bulls and females, except to licensed, monitored feedlots or for immediate slaughter, under written permit. Such cattle must be held separate and apart. The state veterinarian may grant an exception to the quarantine by official permit based upon an epidemiological risk assessment.

e. Collection of milk or cream samples. Collection of milk and cream samples for conducting the brucellosis ring test is required. A producer of cream or milk shall furnish samples of the cream or milk to an agent of the board and, upon request, shall allow board agents to enter the premises and collect samples.

3. Tuberculosis.

a. Uniform methods and rules - Tuberculosis. The current uniform methods and rules on bovine tuberculosis eradication as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

b. Condemnation of infected cattle.

(1) The state veterinarian shall determine when an animal is infected with tuberculosis, and if infected, shall condemn the animal.

(2) Cattle that are determined to be infected with tuberculosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) Animals must be slaughtered within thirty days following condemnation.

c. Reactors to tuberculosis must be accompanied by the proper official permit and are to be slaughtered in slaughter establishments under the supervision of the federal government or in another facility approved by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-05-01-04. Removal or damaging of official identification of brands.

Official identification or brands may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-06
EQUINE

CHAPTER 48.1-06-01
EQUINE

48.1-06-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Equine species imported into the state must be accompanied by an official certificate of veterinary inspection except:

   a. Equine species consigned to a state or federally inspected slaughter establishment;

   b. Other equine species as otherwise provided for by these rules;

   c. Equine species granted an exception by the board; and

   d. Equine species leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days.

2. Certificate of veterinary inspection for equine species must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that an equine:

   a. Has not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

5. An equine species that is infected, or recently exposed to any infectious or contagious disease, may not be imported.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-14-04.1
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-06-01-02. Importation disease testing requirements.

Equine infectious anemia. Equine species require negative tests for equine infectious anemia within twelve months prior to date of importation, unless originating from states exempted from test requirements by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-06-01-03. Disease control.

1. Anthrax.

   a. Equine species susceptible to anthrax located on farms where anthrax has been diagnosed must be vaccinated. Equine species must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

   b. Sale of hides removed from equine species infected with anthrax is prohibited.

2. Equine infectious anemia. Equine species testing and confirmed positive for equine infectious anemia must be:

   a. Positively and individually identified in accordance with a permanent marking method prescribed by the state veterinarian;

   b. Accompanied by an official permit; and

   c. Held separate and apart from all equine species.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-06-01-04. Removal or damaging of official identification or brands.

Official identification or brands may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-07
FARMED ELK

CHAPTER 48.1-07-01
DEFINITIONS - GENERAL REQUIREMENTS

48.1-07-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 36-01. Additionally:

1. "Herd" means two or more elk, or a herd of elk commingled with other hoof stock maintained on common ground, or two or more herds of elk and other hoof stock under common ownership or supervision which are geographically separated, but can have an interchange or movement without regard to health status.

2. "Trace herd" means a herd in which an animal affected by chronic wasting disease has resided up to sixty months before its death, or any herd that has received animals from an affected herd within sixty months prior to the death of the affected animal.

3. "Zone 1" means that area bordered by a line that begins at the junction of the Montana border and Missouri River, runs east along the Missouri River to state highway 49, south to state highway 21, west to state highway 22, to the Slope-Bowman County line, and west to Montana.

4. "Zone 2" means that area bordered by a line that begins at the Minnesota state line on United States highway 2 and runs west to Towner and north along the Souris River to the Canadian border.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

48.1-07-01-02. Farmed elk premises description.

An owner, before acquiring or possessing farmed elk on such owner's premises, shall provide to the board a description and a sketch or map of the premises and facilities.

1. The sketch or map must include, at a minimum, the proposed exterior boundary, location of the holding and handling facilities, location of the quarantine area, and the proposed location of all gates. The board may require additional information.

2. An owner may not acquire or possess farmed elk on such owner's premises and facility until an agent of the board has inspected and approved the facility.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-05

48.1-07-01-03. Holding and handling facilities.

Farmed elk operators, at all times, shall have access to permanent or portable holding and handling facilities that enable proper handling, marketing, and individual identification of all farmed elk on the premises.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-05

48.1-07-01-04. Quarantine facility.

1. Farmed elk premises must have an approved quarantine facility within its boundary or submit an action plan to the state veterinarian which guarantees access to an approved quarantine facility within the state.

2. If the state veterinarian imposes a quarantine, the farmed elk owner shall provide an onsite quarantine facility or make arrangements at the owner's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

3. The quarantine facility must meet standards prescribed by the state veterinarian concerning isolation, separate feed and water, escape security, and the humane holding and care of any quarantined elk for extended periods of time.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02, 36-25-05

48.1-07-01-05. Fencing requirements.

1. A farmed elk owner shall comply with the following fencing standards:

    a. Conventional perimeter fences must be at least twelve and one-half gauge and must be:

        (1) At least eight feet [2.44 meters] high, if construction was completed on or after July 1, 2016.

        (2) At least seven feet [2.13 meters] high, if construction was completed on or before June 30, 2016.

    b. The fence must be a mesh of a size to prevent escape.

c. Any supplemental wires must be at least twelve and one-half gauge and spaced no more than six inches [152.40 millimeters] apart.

d. Posts must be of sufficient strength to keep farmed elk securely contained. The posts of the perimeter fence must extend to the upper limits of the height requirement and be spaced no more than twenty-four feet [7.32 meters] apart.

e. Gates in the perimeter fence must be secured.

2. Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02, 36-25-05

48.1-07-01-06. Welfare of animals.

A farmed elk operator may not display or house any elk in such a manner as to endanger the health and safety of the public or the elk, as determined by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

48.1-07-01-07. Identification.

1. Farmed elk must be individually identified as prescribed by the state veterinarian. The form of identification must be permanent and unique to each animal. The permanent identification must be an official tag or other form approved by the state veterinarian.

2. When loss of an animal identification is discovered, the animal must be identified with approved identification as soon as reasonably possible.

3. Identification assigned to an individual farmed elk may not be transferred to any other animal.

4. Newborn farmed elk must be individually identified prior to removal of the animal from the farmed elk premises or within twelve months of birth, whichever comes first.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-08

48.1-07-01-08. Farmed elk reporting.

1. An owner of farmed elk shall submit to the board an annual farmed elk inventory report by March first of each year.

2. An owner shall record inventory information on the forms provided by the board and such forms must be filled out completely and accurately.

3. An owner shall report all purchases, sales, or other animal transfers, escapes, recaptures, births, deaths, or diseased farmed elk on the inventory report form.

4. Manifests and bills of sale must be submitted to the board within seven days of the occurrence.

History: Effective July 1, 2016.

General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

48.1-07-01-09. Bill of sale and transportation.

1. Farmed elk to be transferred, bought, or sold must have an itemized bill of sale, certificate of veterinary inspection, or manifest at transfer of ownership that must include individual official identification, species, age, sex, number of animals, buyer and seller and their respective addresses, date of sale, and farmed elk facility numbers. All manifests and bills of sale must be submitted to the board within fourteen days of the occurrence.

2. Farmed elk transported within the state, which have been harvested on a private elk farm, must be accompanied by a bill of sale if there is a change of ownership.

3. Farmed elk may be transported from out of state through the state only if:

   a. Animals proceed directly through the state and the owner or transporter does not unload the animals; and

   b. Animals are not sold, bartered, traded, or otherwise transferred while in the state. Transfer does not include moving animals to another transport vehicle.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02, 36-25-08, 36-25-10

48.1-07-01-10. Release or abandonment.

A person may not release or abandon any farmed elk without prior written authorization from the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

48.1-07-01-11. Escaped farmed elk.

1. The owner of farmed elk, or the owner's agent, shall report an escape to the board within one business day of discovery.

2. The owner shall cause any farmed elk to be recaptured or destroyed within ten days of the animal escape, except when public safety or the health of the domestic or wild population is at risk, in which case the animal may be disposed of immediately.

   a. Upon request, the state veterinarian may grant a ten-day extension.

   b. The state veterinarian may authorize an agent to seize, capture, or destroy farmed elk that have escaped the control of the owner or owner's agent.

3. The owner, or the owner's agent, shall notify the board within one business day of the capture or death of an escaped animal.

4. The board or its designated agent may inspect any recaptured animal before it is returned to the elk farm.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-05

48.1-07-01-12. Inspection by board personnel.

A farmed elk owner shall allow inspection of records, holding facilities, and farmed elk by an agent of the board during normal working hours. The owner may accompany the person conducting the inspection. The inspection must be scheduled.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-09

CHAPTER 48.1-07-02
IMPORTATION REQUIREMENTS

48.1-07-02-01. Importation requirements.

Farmed elk may be imported into the state only after the owner of the farmed elk:

1. Obtains a certificate of veterinary inspection. The certificate of veterinary inspection must include specific disease test results, vaccinations, and health statements required by this chapter;

2. Obtains an importation permit number from the office of the state veterinarian. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that a farmed elk:

   a. Has not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   e. May be a threat to the health and well-being of the human or animal population of the state, or both.

3. Submits to the office of the state veterinarian the genetic purity test results in compliance with 48.1-07-02-02. The genetic purity test results must be included with the certificate of veterinary inspection;

4. Submits to the office of the state veterinarian a chronic wasting disease risk assessment form in compliance with subsection 2 of 48.1-07-03-01, unless the state veterinarian waives such requirement under subsection 2 of 48.1-07-03-01; and

5. Completes and submits satisfactory proof of additional disease testing or vaccinations as may be required from the office of the state veterinarian if the state veterinarian has reason to believe other diseases, parasites, or other health risks are present.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-14-04.1, 36-25-02

48.1-07-02-02. Genetic purity requirements for interstate and intrastate movement.

A person may not import farmed elk into zone 1 or zone 2 from points outside the state or move farmed elk into zone 1 or zone 2 from points inside the state unless the farmed elk are genetically pure. An importation permit from the office of the state veterinarian may be required for such movement.

1. Genetic testing for purity is required for all farmed elk before such animals may enter zone 1 or zone 2.

2. A person may not transport, attempt to transport, accept, or receive farmed elk into zone 1 or zone 2 until the person making application for the permit furnishes sufficient proof to the state veterinarian's office that the elk are genetically pure.

3. Farmed elk registered as genetically pure by a farmed elk association recognized by the board may be exempt from genetic testing requirements.

History: Effective July 1, 2016.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

CHAPTER 48.1-07-03
IMPORTATION TESTING REQUIREMENTS

48.1-07-03-01. Importation disease testing requirements.

1. Brucellosis.

   a. Sexually intact farmed elk six months of age and older must test negative for brucellosis by two different official tests prescribed by the state veterinarian, administered within thirty days prior to importation into the state. The following exemptions may apply:

      (1) Farmed elk originating from certified brucellosis-free cervid herds may be exempt from testing requirements.

      (2) Farmed elk originating from brucellosis-monitored cervid herds, must test negative for brucellosis by two different official tests within ninety days prior to importation into the state.

   b. Additional testing may be required at the discretion of the state veterinarian or in accordance with the uniform methods and rules for the control of brucellosis in cervidae as published by USDA-APHIS-VS.

2. Chronic wasting disease requirements:

   a. Farmed elk must pass a satisfactory risk assessment for chronic wasting disease, conducted by the office of the state veterinarian. The office of the state veterinarian will notify an applicant submitting a chronic wasting disease risk assessment form of the decision within ten days of the form submission. Persons seeking an importation permit for these species must ship the animals within thirty days of approval from the office of the state veterinarian. After thirty days, a new risk assessment form application must be submitted and approved prior to shipment.

   b. The office of the state veterinarian may waive the requirement for a risk assessment if:

      (1) The risks to be assessed are minimal and the person applying for the importation permit has met all other statutory and rule requirements; or

      (2) The herd of origin has been under surveillance for chronic wasting disease for at least sixty months. The surveillance must meet the standards prescribed by the state veterinarian.

   c. The following statement must be verified on the certificate of veterinary inspection for farmed elk by the herd veterinarian:

      "These animals and the herd they originate from have no history of emaciation, depression, excessive salivation or thirst, or neurological disease. In the event of these symptoms, appropriate diagnostic measures were taken to rule out a transmissible spongiform encephalopathy. These animals have not been exposed to an elk or deer diagnosed positive for a transmissible spongiform encephalopathy."

   d. No farmed elk may be imported from a herd where chronic wasting disease has been diagnosed or a herd that has had chronic wasting disease traced to it unless that herd has undergone sixty months of surveillance after the last case of or exposure to chronic

wasting disease. The surveillance must meet the standards prescribed by the state veterinarian.

3. Paratuberculosis (Johne's disease). The following statement, signed by an accredited veterinarian in the state or province of origin, must appear on the certificate of veterinary inspection:

"To the best of my knowledge, animals listed herein are not infected with paratuberculosis (Johne's disease) and have not been exposed to animals infected with paratuberculosis."

4. Tuberculosis.

a. Minimum specific disease test results and health statements that must be included on a certificate of veterinary inspection include:

(1) Tuberculosis requirements for states with tuberculosis-modified accredited cervid status:

(a) Farmed elk that are moved directly to slaughter at an approved slaughtering establishment do not require tuberculosis testing.

(b) Farmed elk from a herd with a current accredited-free cervid status for tuberculosis may be moved to any approved elk facility provided that they meet the following requirements:

[1] Farmed elk are accompanied by a certificate stating the accredited herd completed the testing necessary for accredited status with negative results within thirty-six months prior to the movement.

[2] Farmed elk, except animals nursing negative-tested dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official test for bovine tuberculosis within ninety days of movement or consignment.

(c) Farmed elk from a farmed elk tuberculosis-qualified herd may be moved to any approved elk facility provided they meet the following requirements:

[1] Farmed elk are accompanied by a certificate stating all animals in the movement, except animals nursing negative-tested dams, were negative to an official test for bovine tuberculosis conducted within six months prior to the movement.

[2] Farmed elk, except animals nursing negative-tested dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official test for bovine tuberculosis within ninety days of movement or consignment.

(d) Farmed elk from a farmed elk tuberculosis-monitored herd may be moved to any approved elk facility provided the farmed elk are accompanied by a certificate stating that all animals in the movement, except animals nursing negative-tested dams, were negative to an official test for bovine tuberculosis conducted within ninety days prior to the movement.

(e) Farmed elk from herds of unknown cervid tuberculosis status may be moved to any approved elk facility provided they meet the following requirements:

[1] Farmed elk are accompanied by a certificate stating all animals in the movement, except animals nursing negative-tested dams, were negative to two official tests for bovine tuberculosis. The required test must be conducted not less than ninety days apart and with the second test conducted within ninety days of the movement.

[2] Farmed elk, except animals nursing negative-tested dams, in a consignment that is being moved from a herd located in a state or zone lacking accredited-free status for bovine tuberculosis must be from a herd that has had a negative official test for bovine tuberculosis within twelve months prior to the movement. All farmed elk in the movement, except animals nursing negative-tested dams, must be negative to a second official test for bovine tuberculosis conducted within ninety days prior to the movement unless the herd of origin herd test was conducted within ninety days prior to the movement.

b. Tuberculosis requirements for states without tuberculosis-modified accredited cervid status may be subject to additional importation requirements at the discretion of the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-25-02
Law Implemented: NDCC 36-01-08, 36-01-12, 36-25-02

CHAPTER 48.1-07-04
DISEASE CONTROL

48.1-07-04-01. Disease control.

1. Anthrax.

   a. Farmed elk susceptible to anthrax located on farms where anthrax has been diagnosed must be vaccinated. Farmed elk must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

   b. Sale of hides removed from farmed elk infected with anthrax is prohibited.

2. Brucellosis.

   a. The recommended brucellosis eradication uniform methods and rules as they appear in publication of the USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

   b. Condemnation of infected farmed elk.

      (1) The state veterinarian shall determine when an animal is infected with brucellosis, and if infected, shall condemn the animal.

      (2) Farmed elk that are condemned due to brucellosis must be marked in accordance with a method prescribed by the state veterinarian.

      (3) Animals must be slaughtered within thirty days following condemnation.

   c. Brucellosis vaccination of calves.

      (1) Female farmed elk may be vaccinated from four through twelve months (one hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian.

      (2) Vaccinated animals must be marked in accordance with a method approved by the state veterinarian.

      (3) The state veterinarian shall submit reports of vaccination on the appropriate form provided by USDA-APHIS-VS, to the board within thirty days.

   d. Sale of farmed elk out of brucellosis-infected herds. Herds of farmed elk infected with brucellosis must be quarantined, with the quarantine prohibiting sale of all intact bulls and females, except to licensed, monitored feedlots or for slaughter, under written permit. Such farmed elk must be held separate and apart. The state veterinarian may grant an exception to the quarantine by official permit based upon an epidemiological risk assessment.

3. Chronic wasting disease.

   a. If any farmed elk twelve months of age or older die for any reason, the owner shall submit the appropriate sample to an approved laboratory for chronic wasting disease

surveillance as soon as practicable. Official identification must accompany the sample to the laboratory.

b. A chronic wasting disease diagnosis will be based on postmortem sample testing confirmed by the national veterinary services laboratory.

c. The state veterinarian may grant exemptions to this surveillance.

d. Herd disposition upon diagnosis with chronic wasting disease.

(1) A herd containing farmed elk diagnosed with chronic wasting disease, or that has had chronic wasting disease traced back to the herd, must be quarantined until the herd is depopulated or until a herd plan is established.

(2) If depopulation is not practicable, the owner and the state veterinarian shall develop a herd plan according to the following:

(a) If the herd displays no evidence of disease transmission within the herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd inventory with annual verification;

[3] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure);

[4] Separation of high-risk animals (high-risk animals are pen mates of an affected animal for one year prior to the death of the affected animal and all animals related to the affected animal); and

[5] All high-risk animals must be quarantined for sixty months from the last case or exposure or euthanized and tested for chronic wasting disease.

(b) If the herd displays evidence of disease transmission within the herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure);

[3] Separation of high-risk animals;

[4] High-risk animals must be quarantined for sixty months from the last case or exposure; and

[5] The entire herd must be quarantined for sixty months from the last case or exposure.

(c) If the herd is a trace herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd inventory with annual verification;

[3] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure); and

[4] Separation of high-risk animals and quarantine for sixty months from the last exposure or death of high-risk animals and testing for chronic wasting disease.

4. Tuberculosis.

a. Uniform methods and rules - Tuberculosis. The current uniform methods and rules on cervid tuberculosis eradication as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board unless otherwise ordered by the board.

b. Marking and slaughter of condemned farmed elk.

(1) The state veterinarian shall determine when an animal is infected with tuberculosis, and if infected, shall condemn the animal.

(2) Farmed elk that are determined to be infected with tuberculosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) Animals must be slaughtered within thirty days following condemnation.

c. Reactors to tuberculosis must be accompanied by the proper official permit and are to be slaughtered in slaughter establishments under the supervision of the federal government or in another facility approved by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-01-12, 36-25-02
Law Implemented: NDCC 36-01-08, 36-01-12, 36-25-02

48.1-07-04-02. Removal or damaging of official identification or marks.

Official identification or marks may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-25-02
Law Implemented: NDCC 36-01-08, 36-25-02

ARTICLE 48.1-08
GOATS

CHAPTER 48.1-08-01
GOATS

48.1-08-01-01. Definitions.

Definitions contained in title 9, Code of Federal Regulations, part 79.1 are adopted by the board and apply to this chapter, unless otherwise defined or ordered by the board.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 9 CFR 79.1, 9 CFR 161

48.1-08-01-02. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Goats imported into the state must be accompanied by an official certificate of veterinary inspection and importation permit number except:

   a. Meat breed goats originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board;

   b. Goats consigned to a state or federally inspected slaughtering establishment;

   c. Goats granted an exception by the board, if in the opinion of the state veterinarian the animals are free of contagious or infectious diseases;

   d. Goats leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the goat has not been out of the state for more than thirty days; or

   e. Other goats as otherwise provided for by these rules.

2. Certificate of veterinary inspection for goats must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that goats:

   a. Have not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

b. Have not met any pre-entry quarantine conditions imposed by law;

c. Have been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

d. Are from or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Goats entering the state must be officially identified with an official scrapie tag or by another method approved by the state veterinarian.

5. Goats from foreign countries must be permanently officially identified with a method prescribed by the state veterinarian and an electronic identification compatible with the federal animal identification plan.

6. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

7. Goats infected, or recently exposed to any contagious or infectious disease, may not be imported into the state.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-08-01-03. Importation disease testing requirements.

1. Brucellosis.

a. Dairy breed goats over six months of age must have a valid negative brucellosis test within thirty days prior to entry into the state.

b. A valid test for brucellosis is a blood test conducted by a state or federal laboratory or by a veterinarian approved in the state of origin.

2. Scrapie. The certificate of veterinary inspection must contain a written statement, signed by the owner of the goat, stating that:

"To the best of my knowledge, the goat or goats listed on this certificate originate from a herd that has not been diagnosed as a scrapie-infected, source, or exposed flock in the past sixty months."

3. Tuberculosis. Goats sixty days of age or older must be negative to an official test for tuberculosis within thirty days prior to entering into the state. The following may be exempt from tuberculosis testing:

a. Meat breed goats that do not originate from an area where in the opinion of the board tuberculosis may exist;

b. Castrated males and spayed females that do not originate from an area where in the opinion of the board tuberculosis may exist; and

c. Nursing goat kids that accompany a negative-tested dam.

History: Effective July 1, 2016.

General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-08-01-04. Disease control.

1. Anthrax.

   a. Goats susceptible to anthrax located on farms where anthrax has been diagnosed must be vaccinated. Animals must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

   b. Sale of hides removed from animals infected with anthrax is prohibited.

2. Brucellosis.

   a. The recommended brucellosis eradication uniform methods and rules as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

   b. Condemnation of infected goats.

      (1) The state veterinarian shall determine when an animal is infected with brucellosis, and if infected, shall condemn the animal.

      (2) Goats that are condemned due to brucellosis must be marked in accordance with a method prescribed by the state veterinarian.

      (3) Animals must be slaughtered within thirty days following condemnation.

   c. Sale of goats out of brucellosis-infected herds. Herds of goats infected with brucellosis must be quarantined, with the quarantine prohibiting sale of all intact males and females, except to licensed, monitored feedlots or for slaughter, under written permit. Such goats must be held separate and apart. The state veterinarian may grant an exception to the quarantine by official permit based upon an epidemiological risk assessment.

3. Tuberculosis.

   a. Uniform methods and rules - Tuberculosis. The current uniform methods and rules on goat tuberculosis eradication as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

   b. Slaughter of condemned goats.

      (1) The state veterinarian shall determine when an animal is infected with tuberculosis, and if infected, shall condemn the animal.

      (2) Goats that are determined to be infected with tuberculosis must be marked in accordance with a method prescribed by the state veterinarian.

      (3) Animals must be slaughtered within thirty days following condemnation.

   c. Reactors to tuberculosis must be accompanied by the proper official permit and are to be slaughtered in slaughter establishments under the supervision of the federal government or in another facility approved by the state veterinarian.

4. Scrapie.

   a. Identification.

(1) The owner of a herd or the owner's agent shall officially identify all animals upon change of ownership to the herd of birth or the herd of origin if the herd of birth cannot be determined. Goats are required to be officially identified except:

(a) Slaughter goats (goats in slaughter channels) less than eighteen months of age. If a sexually intact goat is sold at an unrestricted sale (any sale that is not a slaughter or feeding for slaughter sale), it must be identified.

(b) Wether goats less than eighteen months of age.

(c) Animals shipped directly to an approved slaughter facility or an approved market when all the animals in a section of a truck are from the same premises of origin and are accompanied by an owner's statement.

(d) Animals moved for grazing or similar management reasons whenever the animals are moved from a premises owned or leased by the owner of the animals to another premises owned or leased by the owner of the animals.

(2) No animal that is required to be individually identified or that originates from any area where in the determination of the board scrapie may exist may be sold, transported, received for transportation, or offered for sale or transportation in intrastate commerce unless each animal is identified in accordance with this section.

(3) No person may remove or tamper with any means of identification required to be on animals pursuant to this section while the animals are in intrastate commerce, and, at the time of slaughter, animal identification must be maintained throughout post-mortem inspection.

(4) Goats that are scrapie-suspect, scrapie-positive, scrapie-exposed, and high-risk animals, including all low-risk exposed animals, genetically susceptible exposed animals, genetically less susceptible exposed animals, and genetically resistant exposed goats must be identified as prescribed by the state veterinarian in consultation with USDA-APHIS-VS.

(a) Tag application on these classes of goats must be by, or under the supervision of, a USDA-APHIS-VS or the board or an accredited veterinarian.

(b) All forms of identification on these classes of goats, must be recorded on an official USDA-APHIS-VS form or equivalent and forwarded to the designated scrapie epidemiologist, the state veterinarian, and USDA-APHIS-VS.

b. Reporting and investigation.

(1) Upon request by the board, the owner of a herd or the owner's agent shall have an accredited veterinarian collect and submit tissues from animals reported in accordance with section 48.1-08-01-04 to a laboratory designated by a USDA-APHIS-VS or the board.

(2) Investigation. The board, an accredited veterinarian approved to conduct scrapie program activities, or an authorized USDA-APHIS-VS representative shall:

(a) Investigate animals reported as scrapie suspect animals within seven days of notification.

(b) Designate a herd's status, within fifteen days of notification that the herd contains a scrapie-positive animal, based on an investigation by state or federal animal health authorities.

(c) Restrict the movement of newly designated scrapie-infected and source herds within seven days after they are designated.

(d) Modify infected and source herd movement restrictions only after completion of a herd plan, and after agreement by the owner to comply with a sixty month post-exposure management and monitoring plan.

(e) Conduct an epidemiological investigation of source and infected herds that includes the designation of high-risk and exposed animals and that identifies animals to be traced.

(f) Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-state traces to the appropriate state within forty-five days of receipt of notification of a scrapie-positive animal.

(g) Conduct tracebacks based on slaughter sampling within fifteen days of receipt of notification of a scrapie-positive animal at slaughter.

c. Disposition of herds.

(1) Infected herd. If a herd is determined to be a scrapie-infected herd, the herd must be quarantined. The owner has the option of:

(a) Depopulating the herd; or

(b) Signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the herd is no longer an infected herd.

(2) Source herd. If a herd is determined to be a scrapie source herd, the herd must be quarantined. The owner has the option of:

(a) Depopulating the herd;

(b) Signing an agreement with the state-federal scrapie program administrators agreeing to comply with the requirements of title 9, Code of Federal Regulations, part 79.2, until the herd is no longer a source herd; or

(c) Implementing a herd plan that meets board approval.

(3) Exposed herd. Upon designation by the board as an exposed herd, the herd must be quarantined until the owner implements a herd plan that meets the state veterinarian's approval. In the event a herd is determined to be a scrapie-exposed herd, the owner has the option of:

(a) Depopulating the herd; or

(b) Signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the herd is no longer an exposed herd.

d. Owner reporting requirements.

The owner of a herd or the owner's agent immediately shall report to the board, USDA-APHIS-VS representative, or an accredited veterinarian any suspect animal. Such animal may not be removed from the herd without written permission by the state veterinarian.

e. Herd records disclosure.

(1) The owner of a herd or the owner's agent shall allow breed associations and registries, livestock markets, and packers to disclose records to the board, to be used in an epidemiological investigation of source herds, infected herds, and exposed animals.

(2) The owner of a herd enrolled in the voluntary scrapie herd certification program described in title 9, Code of Federal Regulations, part 54, or the owner's agent, selling or otherwise disposing of breeding stock shall make animals in the herd and records required to be kept under paragraph (a)(2)(iv) of title 9, Code of Federal Regulations, part 79.2, available for inspection by USDA-APHIS-VS representatives or the board, given reasonable prior notice.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-12, 9 CFR 54, 9 CFR 79.2

48.1-08-01-05. Removal or damaging of official identification or marks.

Official identification or marks may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-09
NONTRADITIONAL LIVESTOCK

CHAPTER 48.1-09-01
DEFINITIONS - GENERAL REQUIREMENTS

48.1-09-01-01. Definitions.

For purposes of this article:

1. "Confinement" means any structure or other means intended to keep an animal within bounds or restrict its movement.

2. "Environmentally dangerous animal" means animals that are known to cause exceptionally serious depredation to the environment.

3. "Herd" means any group of livestock maintained on common ground, or two or more groups of livestock under common ownership or supervision which are geographically separated from other herds, but can have an interchange or movement without regard to health status, as determined by the state veterinarian.

4. "Hybrid" means an animal produced by interbreeding different species or subspecies. If a hybrid is produced from animals of different nontraditional livestock categories, the produced hybrid animal is classified the highest of the different nontraditional livestock categories of the different species or subspecies regardless of the hybrid ratio.

5. "Importation permit number" means authorization obtained from the board for the importation of animals into the state.

6. "Inherently dangerous animal" means any animal that is intrinsically dangerous by nature and poses life-threatening risks.

7. "License" means a document obtained from the board and issued to a person for the maintenance of a category 2 or category 3 species in the state.

8. "Maintain" means to own, possess, control, restrain, or keep in captivity.

9. "Nontraditional livestock" means any nondomestic species held in confinement or which is physically altered to limit movement and facilitate capture. Nontraditional livestock includes ova, semen, eggs, or embryos of such livestock.

10. "Nontraditional livestock auction permit" means a document that may be issued by the board for organized auctions or sales of category 2 or category 3 nontraditional livestock.

11. "Nonvenomous injurious reptile" means a reptile that is normally considered a nonvenomous or nonpoisonous species where found in its native habitat and which can cause serious bodily injury or death upon a human being.

12. "Protected species" means wild varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sage hens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, crows, white-tailed deer, mule deer, moose, elk, bighorn sheep, mountain goats, antelope (pronghorn), mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, red or gray foxes, and tree squirrels.

13. "Species category list" is a listing of species previously reviewed and currently categorized by the board.

14. "Venomous reptile" means a reptile that is normally considered a venomous or poisonous species where found in its native habitat and which can cause serious bodily injury or death upon a human being, regardless of whether an individual animal has been devenomized.

15. "Wildlife" means any member of the animal kingdom, including any mammal; fish; bird, including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement; amphibian; reptile; mollusk; crustacean; or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals or birds or animals held in private ownership.

16. "Zone 1" is that area bordered by a line that begins at the junction of the Montana border and Missouri River, runs east along the Missouri River to state highway 49, south to state highway 21, west to state highway 22 to the Slope-Bowman county line, and west to Montana.

17. "Zone 2" is that area bordered by a line that begins at the Minnesota state line on United States highway 2, runs west to Towner and north along the Souris River to the Canadian border.

18. "Zoo" means an organization with a class C exhibitor's license which follows United States department of agriculture regulations and is inspected by USDA-APHIS-VS.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.4, 36-01-12

48.1-09-01-02. Categories of nontraditional livestock.

1. Nontraditional livestock category 1 species:

a. Category 1 species of nontraditional livestock are those species generally considered domestic, or other species that are not inherently dangerous, that do not pose a health risk to humans, domestic animals, or wild animals, and do not pose a hazard to the environment, as determined by the board.

b. Category 1 species of nontraditional livestock includes turkeys, geese, and ducks morphologically distinguishable from wild turkeys, geese, ducks, pigeons, rabbits, ratites, chinchilla, Guinea fowl, ranch foxes, ranch mink, peafowl, all pheasants, quail, chukar, hedgehog, degus, and other species as ordered by the board.

c. Category 1 species of nontraditional livestock do not require a nontraditional livestock license, but owners must otherwise comply with the rules in this title.

2. Nontraditional livestock category 2 species:

a. Category 2 species of nontraditional livestock are certain protected species or those species that may pose health risks to humans or animals or may be environmentally hazardous, as determined by the board.

b. Category 2 species of nontraditional livestock includes the following species and their hybrids, all nondomestic ungulates, including all deer (cervidae) and pronghorn, zebras, nondomestic cats not listed in category 3, waterfowl, shorebirds, upland game birds not listed in category 1, crows, wolverines, otters, bats, martens, fishers, kit or swift foxes, badgers, coyotes, mink, red and gray foxes, muskrats, beavers, weasels, opossums, prairie dogs, and other ground squirrels, other species as ordered by the board and the following varieties of sheep: black Hawaiian, Corsican, painted desert, multi-horned hair, New Mexico dall, Texas dall, and desert sand.

3. Nontraditional livestock category 3 species:

a. Category 3 species of nontraditional livestock are those species that pose special concerns, including species which are inherently dangerous or environmentally hazardous.

b. Category 3 species of nontraditional livestock includes the following species and their hybrids:

(1) All wild species of the family suidae, except swine considered domestic in the state by the board.

(2) Big cats, including mountain lion, jaguar, leopard, lion, tiger, and cheetah.

(3) Bears.

(4) Wolves.

(5) Venomous reptiles and nonvenomous injurious reptiles.

(6) Primates.

(7) Nondomestic sheep and nondomestic goats not listed in nontraditional livestock category 2.

(8) Other species as ordered by the board.

4. Exempt animals. Unless the state veterinarian determines it is necessary based on disease incidence information or human health or safety concerns, the following are exempt from the importation permit and certificate of veterinary inspection requirement:

a. Arachnids.

b. Amphibians.

c. Invertebrates.

d. Nonvenomous noninjurious reptiles.

e. Tropical freshwater and saltwater fish.

f. Gerbils.

g. Guinea pigs.

h. Hamsters.

i. Mice.

j. Rats.

k. Sugar gliders.

5. Prohibited animals. The board may prohibit, by policy or rule, ownership or possession of any animal deemed to be a significant threat to human or animal health in the state.

a. Skunks and raccoons may not be imported into the state for any purpose.

(1) If the state veterinarian determines that a skunk or raccoon is being kept in captivity in violation of North Dakota Century Code section 36-01-08.4, the state veterinarian may serve upon the owner or keeper of such skunk or raccoon a notice of intent to confiscate the animal.

(2) The owner or keeper of the animal may request a hearing within ten days of receipt of the notice. Such a hearing, if requested, must be conducted by an administrative law judge, who shall make a recommended decision to the board.

(3) If the owner or keeper of the animal does not request a hearing within the prescribed time period, the state veterinarian may confiscate and place the animal at a licensed zoo, if feasible, or have it humanely destroyed.

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

6. Nontraditional livestock not otherwise referred to in this section or Century Code must be reviewed by the board for determination of importation requirements and licensure requirements prior to importation.

7. Reclassification of any species is contingent upon scientific information indicating the risks posed by these species to native wildlife populations and domestic animals and must be reviewed by the board.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.4, 36-01-12

48.1-09-01-03. License requirements for nontraditional livestock category 2 and category 3 species.

1. The owner shall obtain a license from the board before acquiring animals classified as nontraditional livestock category 2 and category 3 species. Fees must be paid under North Dakota Century Code section 36-01-08.1 before issuance of a license.

2. An owner, before acquiring or possessing category 2 or category 3 nontraditional livestock on such owner's premises, shall provide to the board a description and a sketch or map of the premises and facilities.

   a. The sketch or map must include, at a minimum, the proposed exterior boundary, location of the holding and handling facilities, the quarantine area, and the proposed location of all gates at the time of application for a nontraditional livestock license. The board may require additional information.

   b. An owner may not acquire or possess category 2 or category 3 nontraditional livestock on such owner's premises and facilities until the board has inspected and approved the facility and issued the license.

3. Upon initial application, inspection of premises and facilities to meet board guidelines will be conducted by an individual approved by the board. Subsequent inspections will be conducted as deemed necessary by the board.

4. An owner of nontraditional livestock shall allow inspection of inventory and health records, holding facilities, and licensed nontraditional livestock by the board during the term of the license and during normal working hours. The licensee or the licensee's agent shall accompany the person conducting the inspection.

5. Category 2 and category 3 species may not be maintained, released, imported, transported, sold, bartered, or traded within the state except as authorized.

6. Licenses expire on January thirty-first of each year and failure to renew a nontraditional livestock license within ninety days requires the owner to dispose of livestock as ordered by the board.

7. Inventory reports are due on January thirty-first of each year. When an annual inventory report is received, the board may evaluate the existing holding facility to determine if it is adequate to contain the number and type of nontraditional livestock for which applied and the purpose for which they will be held.

   a. Annual inventory reports must be recorded on the forms provided by the board and must be filled out completely and accurately.

   b. Total purchases, sales, deaths, releases or other animal transfers, and births must be reported on the annual inventory reports.

   c. Any livestock transferred, bought, or sold must include an itemized bill of sale, a certificate of veterinary inspection, or a manifest at transfer of ownership that must include individual identification, if applicable, species, age, sex, number of animals, buyer and seller and their respective addresses, date of sale, and available nontraditional livestock license numbers. All manifests and bills of sale must be submitted to the board within two weeks of the occurrence.

   d. Prior to sale of nontraditional livestock, the seller shall notify the buyer if a North Dakota nontraditional license is required.

8. No owner of category 2 or category 3 nontraditional livestock, without prior written approval from the board, may release or abandon livestock. Game bird releases must be stipulated in the license application.

9. Upon expiration or revocation of a license, all formerly licensed nontraditional livestock in possession must be disposed of by the licensee as ordered by the board.

   a. No formerly licensed nontraditional livestock may be abandoned, released, or removed from the holding facility without prior written approval of the board.

   b. All formerly licensed nontraditional livestock remaining at the holding facility, upon a reasonable period after expiration or revocation of the license, may be disposed of by the board.

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

11. Any animal determined by the board to pose a significant threat to the state's wildlife resources, domestic animals, or human health must be held in quarantine at the owner's expense until disposition is determined by the board or the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.1, 36-01-12

48.1-09-01-04. Holding and handling facilities.

1. A license or permit may not be granted by the board until it is satisfied that the provisions for housing and caring for such nontraditional livestock and for protecting the public are proper and adequate and in accordance with the standards prescribed by the board.

2. The board may examine all lands and buildings licensed as game bird and animal farms, deer farms, or fur farms to determine whether all nontraditional livestock held on licensed farms are treated in a humane manner and confined under sanitary conditions with proper and adequate housing, care, and food.

3. Category 2 or category 3 nontraditional livestock operators must have holding and handling facilities that enable handling, marketing, and individual identification of all nontraditional livestock on the premises. A permanent or portable handling facility must be accessible to the nontraditional livestock farm at all times. If the handling facility is adjacent to the perimeter, additional fencing may be required.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-09-01-05. Quarantine facility.

1. Category 2 and category 3 nontraditional livestock premises must have an approved quarantine facility within its exterior boundary or submit an action plan to the board that guarantees access to an approved quarantine facility within the state.

2. If the state veterinarian imposes a quarantine, the nontraditional livestock owner shall provide an onsite quarantine facility or make arrangements at the owner's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

3. The quarantine facility must meet standards prescribed by the state veterinarian concerning isolation, separate feed and water, escape security, and the humane holding and care of any quarantined nontraditional livestock for extended periods of time.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-09-01-06. Fencing requirements.

1. Owners of all categories of nontraditional livestock shall comply with fencing or enclosure standards that will assure containment.

2. Unless otherwise specified, perimeter fences for cervids, nondomestic sheep and goats, and nondomestic hybrid sheep and goats must follow the height requirements in this section. The bottom of the fence must be at or below ground level. The fence must be a mesh of a size to prevent escape and not spaced more than six inches apart.

   a. Electric fencing materials may be used on perimeter fences, only as a supplement to conventional fencing materials.

   b. All gates in the perimeter fence must be locked and there must not be more than six inches below or between gates.

   c. Posts must be of sufficient strength to keep nontraditional livestock securely contained. The posts must extend to the upper limits of the height requirement and be spaced no more than twenty-four feet apart.

   d. Each fawning or lambing pen may not exceed one hundred sixty acres.

   e. The minimum standards for perimeter fences are as follows:

      (1) A four-foot fence for small cervid species, including muntjac.

      (2) A four-foot fence made of twelve-gauge or heavier woven wire, or other material of similar strength for black Hawaiian, Corsican, painted desert, multi-horned hair, Texas dall, New Mexico dall, and desert sand sheep.

      (3) A six-foot fence for fallow deer.

      (4) An eight-foot fence for white-tailed deer, mule deer, red deer, category 3 nondomestic sheep, and category 3 nondomestic goats.

3. Animals may be subject to additional fencing requirements at the discretion of the state veterinarian.

History: Effective July 1, 216.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-09-01-07. Identification.

1. Category 2 and category 3 nontraditional livestock maintained within North Dakota or transferred to any nontraditional livestock premises within the state of North Dakota must be identified as prescribed by the board.

2. Category 2 or category 3 hoofed nontraditional livestock not distinguishable from wild species must be identified individually with a visual tag approved by the board and must be marked within twelve months of birth, and before removal of the animal from the nontraditional livestock premises.

3. An owner of category 2 or category 3 nontraditional livestock shall record the number and other information as specified and approved by the board.

4. Change of animal identification must be reported on the annual inventory report.

5. Identification assigned to an individual nontraditional livestock animal may not be transferred to any other animal.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.2, 36-01-12

48.1-09-01-08. Escaped nontraditional livestock.

1. Category 2 or category 3 nontraditional livestock escapes must be reported to the board within one working day of discovery.

2. An owner of category 2 or category 3 nontraditional livestock shall notify the board within one working day of the capture or death of an escaped category 2 or category 3 animal.

3. An owner of category 2 or category 3 nontraditional livestock shall recapture or destroy the escaped category 2 or category 3 animal within four days, except where public safety or the health of the domestic or wild population is at risk, in which case the animal may be disposed of immediately. An extension may be granted at the discretion of the state veterinarian.

4. The board may authorize an agent to seize, capture, or destroy category 2 or category 3 nontraditional livestock that have escaped and are outside the control of the producer.

   a. A reasonable fee will be assessed to the owner to seize, capture, or destroy the animal.

   b. The owner must reimburse costs, not to exceed fifty dollars per animal, to the responding agent.

5. The board may inspect any recaptured animal before it is commingled with other animals.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-01-12.2

48.1-09-01-09. Zoos.

Licensed zoos, research facilities, education facilities, and class B brokers, as defined by the United States department of agriculture, dealing with a licensed zoo, shall comply with requirements established for nontraditional livestock. Zoos accredited by the American zoo and aquarium association importing exotic animals shall coordinate directly with the state veterinarian's office.

1. Exemptions to specific testing may be allowed by the state veterinarian for endangered or highly valuable animals in instances where risk of harm or death due to drug immobilization or physical restraint outweighs the likelihood that the animal harbors the disease in question.

2. The state veterinarian shall determine any testing needed. Zoos must conduct testing that is deemed appropriate by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

CHAPTER 48.1-09-02
IMPORTATION REQUIREMENTS

Section
48.1-09-02-01 Importation Requirements

48.1-09-02-01. Importation requirements.

Nontraditional livestock may be imported into North Dakota only after the owner of the nontraditional livestock:

1. Obtains a certificate of veterinary inspection. The certificate of veterinary inspection must include specific disease test results, vaccinations, and health statements required by this chapter.

2. Obtains an importation permit number from the office of the state veterinarian. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that an animal:

   a. Has not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   e. May be a threat to the health and well-being of the human or animal population of the state, or both.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-01-34, 36-14-11

CHAPTER 48.1-09-03
IMPORTATION DISEASE TESTING REQUIREMENTS FOR NONTRADITIONAL LIVESTOCK CATEGORY 2 SPECIES

48.1-09-03-01. Importation disease testing requirements for nontraditional livestock category 2 species.

1. Brucellosis.

   a. Reindeer (rangifer):

      (1) For certified brucellosis-free cervid herds, no movement testing is required.

      (2) For brucellosis-monitored cervid herds, all sexually intact animals six months of age or older must test negative for brucellosis by four different official tests as specified by the state veterinarian within ninety days prior to importation.

   b. All other cervidae:

      (1) For certified brucellosis-free cervid herds, no movement testing is required.

      (2) For brucellosis-monitored cervid herds, all sexually intact animals six months of age or older must test negative for brucellosis by two different official tests within ninety days prior to importation.

      (3) For herds with unknown status, all sexually intact animals six months of age or older must test negative for brucellosis by two different official brucellosis tests within thirty days prior to importation.

   c. Category 2 nondomestic sheep must:

      (1) Test negative for Brucella ovis by an official test approved by the state veterinarian within thirty days prior to importation.

      (2) Test negative for Brucella abortus by two different official tests approved by the state veterinarian within thirty days prior to importation.

   d. For all other species, testing requirements will be determined on a species-by-species basis by the state veterinarian.

2. Chronic wasting disease requirements for white-tailed deer, mule deer, moose, red deer, and other species determined to be susceptible to chronic wasting disease:

   a. Animals must pass a satisfactory risk assessment for chronic wasting disease, conducted by the state veterinarian's office. The state veterinarian's office shall notify an applicant submitting a chronic wasting disease risk assessment form of the decision within ten days of the form submission. Persons seeking an importation permit for these species shall ship the animals within thirty days of state veterinarian office approval. After thirty days, a new risk assessment form application must be submitted and approved prior to shipment.

   b. The following statement must be verified on the certificate of veterinary inspection by the herd veterinarian:

"These animals and the herd from which the animals originate have no history of emaciation, depression, excessive salivation or thirst, or neurological disease. In the event of these symptoms, appropriate diagnostic measures were taken to rule out a transmissible spongiform encephalopathy. These animals have not been exposed to an elk or deer diagnosed positive for a transmissible spongiform encephalopathy."

c. No animals may be imported from a herd in which chronic wasting disease has been diagnosed or a herd that has had chronic wasting disease traced to it unless that herd has undergone sixty months of surveillance after the last case of chronic wasting disease. The surveillance must meet the standards set by the state veterinarian.

d. The office of the state veterinarian may waive the requirement for a risk assessment if the herd of origin has been under surveillance for chronic wasting disease for at least sixty months. The surveillance must meet the standards prescribed by the state veterinarian.

3. Equine infectious anemia. Equidae must have a negative serologic test for equine infectious anemia approved by the state veterinarian within twelve months prior to importation into North Dakota.

4. Johne's disease. For all ruminants, the following statement must be included on the certificate of veterinary inspection, signed by a licensed, accredited veterinarian in the state or province of origin:

"To the best of my knowledge, animals listed herein are not infected with paratuberculosis (Johne's disease) and have not been exposed to animals infected with paratuberculosis."

5. Rabies. With respect to captive-bred animals of the order carnivora, vaccination is required for species for which there is an United States department of agriculture-approved vaccine. For species for which there is no United States department of agriculture-approved vaccination, the following statement must be included on the certificate of veterinary inspection:

"The animals on the premises of origin have been free from symptoms of rabies for the past 12 months."

Carnivores taken from the wild in other states may not enter the state if rabies has been diagnosed in the past twelve months in the same species in the state of origin. The animals may not come from an area that is quarantined for rabies, unless approved by the North Dakota state veterinarian.

6. Scrapie. Nondomestic sheep must be free of any signs of scrapie as determined by an accredited veterinarian. The certificate of veterinary inspection for sheep must contain a written statement signed by the consignor stating that:

"To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, or exposed flock in the past sixth months."

7. Tuberculosis.

a. Tuberculosis requirements for states with tuberculosis-modified accredited cervid status:

(1) Cervids that are moved directly to slaughter at an approved slaughtering establishment do not require tuberculosis testing.

(2) Cervids from a herd with a current accredited-free cervid status for tuberculosis may be moved to any licensed nontraditional livestock facility provided the cervids meet the following requirements:

(a) The cervids are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within thirty-six months prior to the movement.

(b) Cervids, except animals nursing negative-tested dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official test for bovine tuberculosis within ninety days of movement or consignment.

(3) Cervids from a cervid tuberculosis-qualified herd may be moved to any licensed nontraditional livestock facility provided the cervids meet the following requirements:

(a) The cervids are accompanied by a certificate stating that all animals in the movement, except animals nursing negative-tested dams, were negative to an official test for bovine tuberculosis conducted within six months prior to the movement.

(b) Cervids, except animals nursing negative-tested dams, originating in a state or zone lacking bovine accredited-free status must test negative to an official test for bovine tuberculosis within ninety days of movement or consignment.

(4) Cervids from a cervid tuberculosis-monitored herd may be moved to any licensed nontraditional livestock facility provided the cervids are accompanied by a certificate stating that all animals in the movement, except animals nursing negative-tested dams, were negative to an official test for bovine tuberculosis conducted within ninety days prior to the movement.

(5) Cervids from herds of unknown cervid tuberculosis status may be moved to any licensed nontraditional livestock facility provided the cervids meet the following requirements:

(a) The cervids are accompanied by a certificate stating that all animals in the movement, except animals nursing negative-tested dams, were negative to two official tests for bovine tuberculosis. The required tests must be conducted not less than ninety days apart, with the second test conducted within ninety days of the movement.

(b) Cervids, except animals nursing negative-tested dams, in a consignment that is being moved from a herd located in a state or zone lacking accredited-free status for bovine tuberculosis must be from a herd that has had a negative official test for bovine tuberculosis within twelve months prior to the movement. All farmed cervids in the movement, except animals nursing negative-tested dams, must be negative to a second official test for bovine tuberculosis conducted within ninety days prior to the movement unless the herd of origin herd test was conducted within ninety days prior to the movement.

b. Tuberculosis requirements for states without tuberculosis-modified accredited cervid status may be subject to additional importation requirements at the discretion of the state veterinarian.

c. Category 2 nondomestic sheep must test negative for tuberculosis within thirty days prior to importation.

d. Tuberculosis requirements for all other species will be determined on a species-by-species basis by the state veterinarian.

8. Diseases of birds:

a. Pullorum and fowl typhoid (galliformes):

(1) Galliformes, including prairie chicken, quail, pheasant, chukar, gray (Hungarian) partridge, and wild turkey over five months of age, imported for breeding purposes, must test negative for pullorum-typhoid disease within thirty days prior to entry or originate from qualified flocks, unless originating from a disease-free area as determined by the state veterinarian.

(2) Poultry under five months of age and hatching eggs imported or offered for sale in the state must originate from qualified flocks.

(3) In lieu of pullorum and fowl typhoid testing of other galliformes, the following statement, signed by the veterinarian and the owner or owner's agent, may be included on the certificate of veterinary inspection:

"To my knowledge, birds listed herein are not infected with pullorum or fowl typhoid and have not been exposed to birds infected with pullorum or fowl typhoid during the past twelve months."

b. Exotic Newcastle disease (viscerotropic, velogenic viruses) psittacosis (Psittacines). The following statement, which applies to all psittacine birds entering the state, must be included on the certificate of veterinary inspection and be signed by the veterinarian and the owner or owner's agent:

"To my knowledge, birds listed herein are not infected with exotic Newcastle disease or psittacosis and have not been exposed to birds known to be infected with exotic Newcastle disease or psittacosis within the past thirty days."

c. Mycoplasmosis. Wild turkeys, including eggs and hatchlings of the species meleagris gallopavo, unless going directly to slaughter, must:

(1) Originate from a producer who is participating in the mycoplasmosis control phase of the national poultry improvement plan; or

(2) The birds must have been tested serologically negative for mycoplasma gallisepticum and M. synoviae within the past thirty days.

d. Avian influenza. The following statement, which applies to birds entering the state, must be included on the certificate of veterinary inspection and be signed by the veterinarian and the owner or owner's agent:

"To my knowledge, birds listed herein are not infected with avian influenza and have not been exposed to birds known to be infected with avian influenza."

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

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

CHAPTER 48.1-09-04
MOVEMENT REQUIREMENTS

48.1-09-04-01. Intrastate movement requirements.

1. Red deer and red deer hybrids may not be imported into or allowed in zone 1 or zone 2.

2. Board approval must be obtained to possess nondomestic sheep and hybrids or nondomestic goats and hybrids south and west of the Missouri River.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

CHAPTER 48.1-09-05
DISEASE CONTROL

48.1-09-05-01. Disease control.

1. Anthrax.

    a. Nontraditional livestock susceptible to anthrax located on farms where anthrax has been diagnosed must be vaccinated. Nontraditional livestock must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

    b. Sale of hides removed from nontraditional livestock infected with anthrax is prohibited.

2. Brucellosis.

    a. The recommended brucellosis eradication uniform methods and rules as they appear in publication of the USDA-APHIS-VS are hereby adopted and constitute a rule of the board, unless otherwise ordered by the board.

    b. Condemnation of infected animals.

        (1) The state veterinarian shall determine when an animal is infected with brucellosis, and if infected, shall condemn the animal.

        (2) Nontraditional livestock that are condemned due to brucellosis must be marked in accordance with a method prescribed by the state veterinarian.

        (3) Animals must be slaughtered within thirty days following condemnation.

    c. Sale of nontraditional livestock out of brucellosis-infected herds. Herds of animals infected with brucellosis must be quarantined, with the quarantine prohibiting sale of all intact bulls and females, except to licensed, monitored feedlots or for slaughter, under written permit. Such animals must be held separate and apart. The state veterinarian may grant an exception by official permit as provided in this section.

3. Chronic wasting disease.

    a. If any white-tailed deer, mule deer, moose, or other susceptible species twelve months of age and older die for any reason, the owner shall submit the appropriate sample to an approved laboratory for chronic wasting disease surveillance as soon as practicable. Official identification must accompany the sample to the laboratory.

    b. A chronic wasting disease diagnosis will be based on postmortem sample testing confirmed by the national veterinary services laboratory.

    c. Other species may be subject to this requirement as determined by the state veterinarian.

    d. The state veterinarian may grant exemptions to this surveillance.

    e. Herd disposition upon diagnosis with chronic wasting disease.

(1) A herd containing animals diagnosed with chronic wasting disease, or which has had chronic wasting disease traced back to the herd, must be quarantined until the herd is depopulated or until a herd plan is established.

(2) If depopulation is not practicable, the owner and the state veterinarian shall develop a herd plan according to the following:

(a) If the herd displays no evidence of disease transmission within the herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd inventory with annual verification;

[3] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure);

[4] Separation of high-risk animals (high-risk animals are pen mates of an affected animal for twelve months prior to the death of the affected animal and all animals related to the affected animal); and

[5] High-risk animals must be quarantined for sixty months from the last case or exposure or euthanized and tested for chronic wasting disease.

(b) If the herd displays evidence of disease transmission within the herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure);

[3] Separation of high-risk animals;

[4] High-risk animals must be quarantined for sixty months from the last case or exposure; and

[5] The entire herd must be quarantined for sixty months from the last case or exposure.

(c) If the herd is a trace herd as determined by an epidemiological investigation by the state veterinarian or a validated test, the herd plan must include provisions for:

[1] Herd inspection by board agents;

[2] Herd inventory with annual verification;

[3] Herd surveillance (mandatory death reporting and chronic wasting disease testing for sixty months from the last case or exposure); and

[4] Separation of high-risk animals and quarantine for sixty months from the last exposure or death of high-risk animals and testing for chronic wasting disease.

4. Tuberculosis.

a. Uniform methods and rules - Tuberculosis. The current uniform methods and rules on cervid tuberculosis eradication as they appear in publication of USDA-APHIS-VS are hereby adopted and constitute a rule of the board unless otherwise ordered by the board.

b. Condemnation of infected animals.

(1) The state veterinarian shall determine when an animal is infected with tuberculosis, and if infected, shall condemn the animal.

(2) Animals that are determined to be infected with tuberculosis must be marked in accordance with a method prescribed by the state veterinarian.

(3) Animals must be slaughtered within thirty days following condemnation.

c. Reactors to tuberculosis must be accompanied by the proper official permit and are to be slaughtered in slaughter establishments under the supervision of the federal government or in another facility approved by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-09-05-02. Removal or damaging of official identification tags or markings.

Official identification or reactor tags or markings may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-09-06
CATEGORY 3 SPECIES

48.1-09-06-01. Housing, handling, health, and importation requirements.

1. Suidae including wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

    a. Importation requirements for wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

        (1) Certificate of veterinary inspection and importation permit number from the board.

        (2) Negative pseudorabies serologic test approved by the state veterinarian within thirty days prior to entry into the state.

        (3) Negative brucellosis test within thirty days of importation.

    b. Housing requirements (perimeter fence aboveground) an confinement or holding area:

        (1) Perimeter fence at least six feet tall must be present.

        (2) Twelve-gauge or stronger mesh is required and must be no greater than three inches by four inches.

        (3) Four-inch diameter treated posts or two-inch steel pipes must be no more than eight feet apart. Posts must be set three feet deep.

        (4) Fence must be attached on the inside.

        (5) Two electric wires must be six inches inside the fence.

            (a) The first wire must be six to eight inches above the ground.

            (b) The second wire must be eight to twelve inches above the first wire.

            (c) Generator backup is required.

            (d) Snow that could affect the integrity of the fence must be removed before animals are allowed into the enclosure.

            (e) Electric fence must be maintained in working order and be kept clear of foliage and debris.

        (6) If a wooden structure is used, posts must be no more than eight feet apart with a gap no more than four inches between planks, except if young pigs are present, the fencing gaps must be no more than two inches.

        (7) In the confinement area, an underground fence must be constructed with concrete or imperviable surface comparable to concrete that meets the following requirements:

            (a) Same strength as perimeter fence.

            (b) Buried two feet below ground.

(c) Three feet angled forty-five degrees toward interior of enclosure.

(d) Four to six inches aboveground overlapped and attached to aboveground fence to monitor and ensure proper connection.

c. Gates in confinement area must meet the following requirements:

(1) A gate at least six feet tall must be present.

(2) Any gaps must be less than four inches between the gate and ground, except if young pigs are present, the fencing gaps must be no more than two inches.

(3) An electric wire must span across the gate. The electric fence must be constructed of twelve-gauge wire and consist of a minimum of a two-joules charge.

(4) An underground fence must span the gate opening and must anchor the gating to the ground with a two-inch steel pipe or equivalent.

2. Large felids and felid hybrids, including mountain lions, jaguars, leopards, lions, tigers, and cheetahs:

a. Large felids that are in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Importation for large felids requires a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for large felids:

(1) Maintained in enclosures utilizing thick laminated safety glass, bars, or sturdy wire or in large outdoor exhibits employing barriers to separate animals and the public.

(2) A cage for a single animal must measure at least twenty feet wide by fifteen feet deep.

(3) Cages must be fifty percent larger per additional animal.

(4) Enclosures must have smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must measure at least eight feet by eight feet.

(5) Enclosures must be made of steel chain link fencing of at least twelve-gauge strength, or material of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, an underfencing must extend at least forty-two inches into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(6) A guard rail or natural barrier must be in place which is at least three feet in height, providing a minimum of a four-foot distance between the enclosure and people in areas where people, other than the owner or handler, have access to the enclosure.

(7) A perimeter fence at least eight feet high and at least four feet from the primary enclosure must be in place to keep animals and persons out of the enclosure and to act as a secondary security measure should an animal escape.

d. Additional housing requirements for very large pantherids (lions and tigers):

(1) Outdoor cages must have vertical walls at least sixteen feet high, or thirteen feet high with a minimum three-foot overhang, or be provided with tops at least ten feet high.

(2) Raised shelves or ledges for sleeping and resting and large logs for claw sharpening.

e. Additional housing requirements for cheetahs. Cages must have vertical walls at least eight feet high.

f. Additional housing requirements for other large felids (leopards, jaguars, and mountain lions (pumas or cougars)):

(1) Elevated ledges or perches for sleeping and resting.

(2) Wood logs or other such materials for claw sharpening.

(3) Enclosures housing leopards and jaguars, whether indoors or outdoors must have secure tops.

(4) An outdoor cage housing mountain lions must be at least eight feet high with an additional overhang of fencing angling into the pen at least three feet or six feet high with a ceiling.

3. Bears.

a. Bears, which are in the presence of persons other than the owner, handler, or immediate family, must be under the direct control and supervision of the owner or handler at all times.

b. Importation requirements for all bears are a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for bears:

(1) Outdoor enclosures employing barriers, thick laminated safety glass, or bars. When used, dry moats must be at least twelve feet wide and twelve feet deep.

(2) A dry resting and social area, pool, and den.

(3) The use of electric wires or other means to discourage fence climbing.

(4) In addition to the primary enclosure:

(a) Den space for a single bear must measure at least six feet in width and depth and be at least five feet in height.

(b) Visual barriers, such as logs or boulders, added to enclosures housing more than one animal.

(c) Adequate shade provided to simultaneously accommodate all individuals housed within the enclosure.

(d) Smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must be at least eight feet by eight feet.

(5) Fences for all species must be fastened to a cement floor, or if a dirt floor is used, underfencing with a strength equal to the primary fencing must extend at least forty-two inches into the pen.

(6) The underfencing must be covered with a minimum of two feet of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

d. Additional housing requirements for polar bears, brown bears, and grizzly bears:

(1) If vertical walls are used as a primary barrier, they must be at least twelve feet high.

(2) Adjoining facilities to permit safe cleaning and additional separation.

(3) The dry resting and social area for one or two adult bears must measure at least four hundred square feet with an additional forty square feet provided for each additional bear.

(4) Fencing must be a minimum of four-gauge steel chain link or equivalent.

e. Additional housing requirements for American black bears, Asiatic black bears, sloth bears, spectacled bears, and sun bears:

(1) Three hundred square feet of dry resting and social area must be provided for one or two animals and be increased by fifty percent for each additional animal.

(2) Fencing must be minimum of nine-gauge steel chain link or equivalent.

(3) Fencing height must be a minimum of ten feet with a top or twelve feet with an additional three-foot overhang.

4. Wolves and wolf hybrids.

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

b. Importation requirements for wolves:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) A statement on the certificate of veterinary inspection that the animal has not been exposed to rabies.

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

c. Outdoor housing or holding facility requirements for wolves:

(1) Minimum floor space per animal must be two hundred square feet and floor space must be increased by one hundred square feet for each additional animal. The enclosure must be at least eight feet high with an additional overhang of fencing angling into the pen or six feet high with a ceiling.

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

(3) Gates must have locks to prevent unauthorized entry of individuals.

(4) Shade and shelter from elements and inclement weather must be provided.

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

5. Venomous reptiles and nonvenomous injurious reptiles.

a. A license to possess a venomous reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile. An educational purpose includes research and displays at schools, institutions of higher education, wildlife preserves, zoos, and other bona fide educational displays approved by the state veterinarian.

b. A license to possess a nonvenomous injurious reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile.

c. The permittee shall provide documentation to the state veterinarian of the permittee's experience with these types of animals and the permittee's ability to safely maintain and control the animals.

d. Importation for venomous reptiles or nonvenomous injurious reptiles requires a certificate of veterinary inspection and importation permit from the board.

e. Premises where venomous reptiles are kept on display to the public must be posted with a notice clearly and conspicuously posted to provide the location of the nearest, most readily available source of appropriate antivenin and a written plan of action in the event of a venomous reptile bite.

(1) This plan of action must receive the written approval of a local medical facility, and a copy of the plan of action and the approval of the medical facility must be provided to the board.

(2) The person possessing the venomous reptile shall arrange for appropriate antivenin to be readily available through a local hospital, the name, address, and telephone number of which must be affixed to the enclosure.

f. Written animal escape emergency procedures must be clearly and conspicuously posted in the building housing venomous reptiles or nonvenomous injurious reptiles and must be supplied to the board at the time the permit application is initially submitted.

g. Written notice of the presence on the premises of venomous or nonvenomous injurious reptiles must be provided to the local police, firefighters, and emergency medical personnel, including an identification of the animals possessed and the location of the animals within the premises.

h. If a venomous or nonvenomous injurious reptile is transported or removed from its primary enclosure for feeding or in order to clean the enclosure, the reptile must be kept in a fully enclosed container with a secure and locked lid which has air holes or other means of ventilation.

i. Snake hooks must be present for caring for venomous snakes.

j. The permittee shall telephonically notify the board of any reptile bite on humans or escapes of any reptiles within twenty-four hours and provide a written report of the incident to the board within seven days.

k. Housing requirements for venomous reptiles:

(1) An enclosure or container containing venomous reptiles must be clearly labeled as "Venomous" and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Venomous reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All enclosures and access to them must be locked.

l. Housing requirements for nonvenomous injurious reptiles:

(1) An enclosure or container containing nonvenomous injurious reptiles must be clearly labeled with safety concerns and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Nonvenomous injurious reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape. All enclosures and access to them must be locked.

6. Primates:

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

b. Importation for primates requires a certificate of veterinary inspection and an importation permit number issued by the board containing the following:

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

(2) Negative hepatitis A test.

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

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

c. Requirements for maintaining a primate after importation:

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

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

d. General housing requirements for primates:

(1) Primate housing must comply with title 9, Code of Federal Regulations, section 3.75.

(2) Primates must have a dedicated primary enclosure area, such as a room or cage-type enclosure, separate from other living areas of human occupants.

e. Space requirements for primates:

(1) Indoor primate enclosures must be at least two square feet per pound of adult body weight per animal. This figure must be increased by fifty percent for each additional

animal. The height of the primate primary enclosure area must be at least four times taller than the animal's body length.

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

7. Nondomestic sheep and hybrids and nondomestic goats:

a. Import requirements for category 3 nondomestic sheep and nondomestic goats in addition to those listed in section 48.1-09-02-01:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) Official identification approved by the state veterinarian.

(3) Negative tuberculosis test within thirty days.

(4) Negative test for Brucella ovis by an official test approved by the state veterinarian within thirty days prior to importation.

(5) Negative test for Brucella abortus by two different official tests approved by the state veterinarian within thirty days prior to importation.

(6) Animals must be free of any signs of scrapie as determined by an accredited veterinarian. The certificate of veterinary inspection must contain a written statement, signed by the consignor, stating that:

"To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, or exposed flock in the past sixty months."

(7) Special permission must be obtained from the board to possess nondomestic sheep and hybrids and nondomestic goats and hybrids south and west of the Missouri River.

b. Fencing requirements for category 3 nondomestic sheep and nondomestic goats:

(1) Fencing must be at least eight feet high and made of twelve-gauge or heavier woven wire, or other material of similar strength.

(2) The bottom of the fence must be at or below ground level.

(3) Gates in the perimeter fence must be locked and there must not be more than six inches below or between gates.

(4) A handling and holding facility, adequate to handle nondomestic sheep or goats, or both, must be in place.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-01-31

ARTICLE 48.1-10
POULTRY

CHAPTER 48.1-10-01
POULTRY

48.1-10-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Poultry imported into the state, must be accompanied by an official certificate of veterinary inspection except:

   a. Poultry consigned to a state or federally inspected slaughtering establishment.

   b. Poultry granted an exception by the board, if in the determination of the state veterinarian the animals are free of contagious or infectious diseases.

   c. Poultry leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days.

   d. Other poultry as otherwise provided for by these rules.

2. Certificate of veterinary inspection for poultry must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that poultry:

   a. Has not met the disease testing, vaccination, and identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

   b. Has not met any pre-entry quarantine conditions imposed by law;

   c. Has been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

   d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

   e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Shipping containers of poultry must contain the official form or certificate.

5. In lieu of testing, the following statements, which apply to all poultry entering the state, must be included on the certificate of veterinary inspection and be signed by the accredited veterinarian and the owner or the owner's representative:

a. Pullorum and fowl typhoid (galliformes):

"To my knowledge, birds listed herein are not infected with pullorum or fowl typhoid and have not been exposed to birds infected with pullorum or fowl typhoid during the past twelve months."

b. Exotic Newcastle disease (viscerotropic, velogenic viruses):

"To my knowledge, birds listed herein are not infected with exotic Newcastle disease or psittacosis and have not been exposed to birds known to be infected with exotic Newcastle disease or psittacosis within the past thirty days."

c. Avian influenza:

"To my knowledge, birds listed herein are not infected with avian influenza and have not been exposed to birds known to be infected with avian influenza."

6. No avian species or avian products originating from areas under quarantine for exotic Newcastle disease or avian influenza may be imported, unless approved by the state veterinarian based upon epidemiological evaluation and risk assessment.

7. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

8. Poultry that is infected, or recently exposed to any contagious or infectious disease, may not be imported into the state.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-10-01-02. Poultry exhibition.

1. Entries in live domestic bird or wild fowl exhibitions must be accompanied by a declaration or certification from the exhibitor containing the name and address of the owner or exhibitor, and the breed, species, and identification band number of the bird.

2. Diseased birds must be properly segregated and disposed of in a manner prescribed by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-10-01-03. Importation disease testing requirements.

Pullorum-typhoid disease.

1. Poultry over five months of age, imported for breeding purposes, must test negative for pullorum-typhoid disease within thirty days prior to entry into the state or originate from qualified flocks, unless originating from a disease-free area as determined by the state veterinarian.

2. Poultry under five months of age and hatching eggs imported or offered for sale in the state must originate from qualified flocks.

3. Pullorum-typhoid testing must be a method prescribed by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-10-01-04. Removal or damaging of official identification or bands.

Official identification or bands may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-11
SHEEP

CHAPTER 48.1-11-01
SHEEP

48.1-11-01-01. Definitions.

Definitions contained in title 9, Code of Federal Regulations, part 79.1 are adopted by the board and apply to this chapter, unless otherwise defined or ordered by the board.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 9 CFR 79.1, 9 CFR 161

48.1-11-01-02. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Sheep imported into the state must be accompanied by an official certificate of veterinary inspection and an importation permit number except:

   a. Sheep originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board.

   b. Sheep consigned to a state or federally inspected slaughtering establishment.

   c. Sheep granted an exception by the board, if in the opinion of the state veterinarian the animals are free of contagious or infectious diseases.

   d. Sheep leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days.

   e. Other sheep as otherwise provided for by these rules.

2. Certificate of veterinary inspection for sheep must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that sheep:

   a. Have not met the disease testing, vaccination, and identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

b. Have not met any pre-entry quarantine conditions imposed by law;

c. Have been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

d. Are from or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Sheep entering the state must be officially identified by an official scrapie tag or by another method approved by the state veterinarian.

5. Sheep from foreign countries must be permanently officially identified with a method prescribed by the state veterinarian and an electronic identification compatible with the federal animal identification plan.

6. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe that other health risks are present.

7. Sheep infected, or recently exposed to any contagious or infectious disease, may not be imported into the state.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-11-01-03. Importation disease testing requirements.

1. Brucella ovis.

a. Breeding rams six months of age or older imported into the state must have tested negative for brucella ovis within thirty days prior to entry;

b. The flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older;

c. The state veterinarian may authorize the importation of registered breeding sheep and exempt them from the initial import requirements of this subsection. Registered breeding sheep imported by this authorization must be held under quarantine and isolated from other sheep until they have met the requirements of this subsection;

d. Animals testing positive on a post-entry test must be euthanized and no indemnity is paid to the owner or the animals may be immediately returned to the state of origin; or

e. All tests for brucella ovis administered pursuant to this section must be tests officially recognized or otherwise approved by the state veterinarian.

2. Scrapie.

a. Sheep imported into the state must be determined to not be genetically susceptible as verified by two blood tests drawn under the supervision of an accredited veterinarian; or

b. The certificate of veterinary inspection must contain a written statement, signed by the owner of the sheep, stating that:

"To the best of my knowledge, the sheep listed on this certificate originate from a flock that has not been diagnosed as a scrapie-infected, source, or exposed flock in the past sixty months."

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-11-01-04. Disease control.

1. Anthrax.

a. Sheep susceptible to anthrax located on farms where anthrax has been diagnosed shall be vaccinated. Animals must be quarantined for thirty days after the death of the last animal or thirty days following vaccination, whichever occurs last.

b. Sale of hides removed from animals infected with anthrax is prohibited.

2. Brucella ovis.

a. Flocks may be tested to obtain brucella ovis negative flock status.

b. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older.

3. Scrapie.

a. Identification.

(1) The owner of a flock or the owner's agent officially shall identify all animals upon change of ownership to the flock of birth or the flock of origin, if the flock of birth cannot be determined. Sheep are required to be officially identified except:

(a) Slaughter sheep (sheep in slaughter channels) less than eighteen months of age. If a sexually intact sheep is sold at an unrestricted sale (any sale that is not a slaughter or feeding for slaughter sale), it must be identified.

(b) Wether sheep less than eighteen months of age.

(c) Animals shipped directly to an approved slaughter facility or an approved auction market, when all the animals in a section of a truck are from the same premises of origin and are accompanied by an owner's statement.

(d) Animals moved for grazing or similar management reasons whenever the animals are moved from a premises owned or leased by the owner of the animals to another premises owned or leased by the owner of the animals.

(2) An animal that is required to be individually identified or that originates from any area where, in the determination of the board, scrapie may exist may not be sold, transported, received for transportation, or offered for sale or transportation in intrastate commerce unless each animal is identified in accordance with this section.

(3) A person may not remove or tamper with any means of identification required to be on animals pursuant to this section while the animals are in intrastate commerce, and, at the time of slaughter, animal identification must be maintained throughout postmortem inspection.

(4) Sheep that are scrapie-suspect, scrapie-positive, scrapie-exposed, and high-risk animals, including all low-risk exposed animals, genetically susceptible exposed animals, genetically less susceptible exposed animals, and genetically resistant exposed sheep must be identified as prescribed by the state veterinarian in consultation with USDA-APHIS-VS.

(a) Tag application on these classes of sheep must be by, or under the supervision of, a USDA-APHIS-VS or the board or an accredited veterinarian.

(b) All forms of identification on these classes of goats, must be recorded on an official USDA-APHIS-VS form or equivalent and forwarded to the designated scrapie epidemiologist, the state veterinarian, and USDA-APHIS-VS.

b. Reporting and investigation.

(1) Upon request by the board, the owner of a flock or the owner's agent shall have an accredited veterinarian collect and submit tissues from animals reported in accordance with section 48.1-11-01-04 to a laboratory designated by an USDA-APHIS-VS or the board.

(2) Investigation. The board, an accredited veterinarian approved to conduct scrapie program activities, or an authorized USDA-APHIS-VS representative shall:

(a) Investigate animals reported as scrapie-suspect animals within seven days of notification.

(b) Designate a flock's status, within fifteen days of notification that the flock contains a scrapie-positive animal, based on an investigation by state or federal animal health authorities.

(c) Restrict the movement of newly designated scrapie-infected and source flocks within seven days after they are designated.

(d) Modify infected and source flock movement restrictions only after completion of a flock plan, and after agreement by the owner to comply with a sixty-month post-exposure management and monitoring plan.

(e) Conduct an epidemiological investigation of source and infected flocks, that includes the designation of high-risk and exposed animals, and that identifies animals to be traced.

(f) Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-state traces to the appropriate state within forty-five days of receipt of notification of a scrapie-positive animal.

(g) Conduct tracebacks based on slaughter sampling within fifteen days of receipt of notification of a scrapie-positive animal at slaughter.

c. Disposition of flocks.

(1) Infected flock. In the event a flock is determined to be a scrapie-infected flock, the flock must be quarantined. The owner has the option of:

(a) Depopulating the flock; or

(b) Signing an agreement with the state-federal scrapie program administrators and agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the flock is no longer an infected flock.

(2) Source flock. If a flock is determined to be a scrapie-source flock, the flock must be quarantined. The owner has the option of:

(a) Depopulating the flock;

(b) Signing an agreement with the state-federal scrapie program administrators agreeing to comply with the requirements of title 9, Code of Federal Regulations, part 79.2, until the flock is no longer a source flock; or

(c) Implementing a flock plan that meets board approval.

(3) Exposed flock. Upon designation by the board as an exposed flock, the flock must be quarantined until the owner implements a flock plan that meets the state veterinarian's approval. In the event a flock is determined to be a scrapie-exposed flock, the owner has the option of:

(a) Depopulating the flock; or

(b) Signing an agreement with the state-federal scrapie program administrators agreeing to comply with requirements of title 9, Code of Federal Regulations, part 79.2, until the time the flock is no longer an exposed flock.

d. Owner reporting requirements. The owner of a flock or the owner's agent shall immediately report to the board, USDA-APHIS-VS representative, or an accredited veterinarian any suspect animal. Such animal must not be removed from the flock without written permission by the state veterinarian.

e. Flock records disclosure.

(1) The owner of a flock or the owner's agent shall allow breed associations and registries, auction markets, and packers to disclose records to the board, to be used in an epidemiological investigation of source flocks, infected flocks, and exposed animals.

(2) The owner of a flock enrolled in the voluntary scrapie flock certification program described in title 9, Code of Federal Regulations, part 54, or the owner's agent, selling or otherwise disposing of breeding stock shall make animals in the flock and records required to be kept under paragraph (a)(2)(iv) of title 9, Code of Federal Regulations, part 79.2, available for inspection by USDA-APHIS-VS representatives or the board, given reasonable prior notice.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-12; 9 CFR 54, 9 CFR 79.2

48.1-11-01-05. Removal or damaging of official identification or marks.

Official identification or marks may not be removed or tampered with without approval by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

ARTICLE 48.1-12
SWINE

CHAPTER 48.1-12-01
SWINE

48.1-12-01-01. Definitions.

The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 36-01. Additionally:

1. "Breeding swine" means any swine that are maintained for breeding purposes, including sows that are parturient or which have given birth to one or more litters of pigs and boars which are uncastrated and which have reached a stage of maturity rendering the animal capable of being used as a breeding animal, including those boars that through age or infirmity are no longer suitable for such use.

2. "Feeder swine" means swine being fed or intended to be fed for weight-gaining purposes and eventual slaughter.

3. "Slaughter swine" means swine that are consigned to a slaughter market or consigned directly to slaughter regardless of age, breed, or sex.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

48.1-12-01-02. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Swine imported into the state, must be accompanied by a certificate of veterinary inspection except:

   a. Swine originating directly from a producer's premises, not diverted en route, and consigned to an auction market approved by the board.

   b. Swine consigned to a state or federally inspected slaughtering establishment.

   c. Swine granted an exception by the board, if in the determination of the state veterinarian the animals are free of contagious or infectious diseases.

   d. Swine leaving the state for exhibition or competition with a valid certificate of veterinary inspection may return to the state with the same certificate of veterinary inspection if the animal has not been out of the state for more than thirty days.

e. Other swine as otherwise provided for by these rules.

2. Certificate of veterinary inspection must include an importation permit number issued by the state veterinarian before entering the state.

3. The state veterinarian may deny a request for an importation permit number if the state veterinarian has information that swine:

a. Have not met the disease testing, vaccination, or identification requirements set forth in North Dakota Century Code title 36 or this title, or as otherwise required by the state veterinarian;

b. Have not met any pre-entry quarantine conditions imposed by law;

c. Have been exposed to, may have been exposed to, is infected with, or may be infected with any contagious or infectious disease;

d. Is or may originate from an area or premises under quarantine or other form of official or regulatory action relating to contagious or infectious disease; or

e. May be a threat to the health and well-being of the human or animal population of the state, or both.

4. Swine imported into the state must be identified and marked in a manner prescribed by the state veterinarian.

5. The state veterinarian may require additional disease testing, treatment, vaccination, or identification if the state veterinarian has reason to believe other health risks are present.

6. Swine that is infected, or recently exposed to any contagious or infectious disease, may not be imported.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-12-01-03. Importation disease testing requirements.

1. Brucellosis. Breeding swine over six months of age must have had a negative brucellosis test within thirty days prior to entry into the state unless they are imported from a validated herd or a validated state.

2. Pseudorabies. Imported swine must test negative for pseudorabies within thirty days prior to entry into the state or comply with one of the following:

a. Be from a stage V or stage IV state or area, as designated by the USDA-APHIS-VS;

b. Be from a qualified pseudorabies negative herd; or

c. Be from a feeder swine pseudorabies monitored herd as designated by USDA-APHIS-VS.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-12-01-04. Disease control.

Pseudorabies.

1. USDA-APHIS-VS establishes criteria for recognizing pseudorabies low-state area or prevalence areas.

2. A pseudorabies vaccination for all swine is prohibited unless approved in writing by the state veterinarian.

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

4. A pseudorabies infected swine herd, as determined by a test approved by the board, must be quarantined and isolated from other susceptible animals on the farm, or other premises where the infected herd is located.

5. Reactor animals must be slaughtered. Then, the infected herd must be retested and receive two negative tests, the tests at least thirty days apart, with the first test occurring not sooner than thirty days after the last reactor animal is removed from the herd. Nursing piglets are not required to be tested.

6. As an alternative to a retest, the entire infected herd may be sent directly to slaughter.

7. The quarantine will be lifted only after the retests required pursuant to this subsection have occurred, or the entire infected herd has been shipped directly to slaughter. Before the quarantine is lifted, the premises of the infected herd must be cleaned and disinfected in a manner prescribed by the state veterinarian, or other agent of the board.

8. Slaughter sows and boars must receive pseudorabies testing at the first point of sale in the state, if necessary under a mandatory pseudorabies testing program instituted by the board.

9. Disposal of carcasses of swine infected with or testing positive for pseudorabies must be by a method prescribed by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-12-01-05. Removal or damaging of official identification or marks.

Official identification or marks may not be removed or tampered with without authorization by the state veterinarian.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-13
OTHER ANIMALS

CHAPTER 48.1-13-01
DOGS, CATS, AND FERRETS

48.1-13-01-01. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Any dog, cat, or ferret imported into the state for a period of over thirty days must be accompanied by a certificate of veterinary inspection.

2. Any dog, cat, or ferret over three months of age imported into the state must have a certification of a current rabies vaccination;

   a. When any dog, cat, or ferret over three months of age is imported from an area that is quarantined for rabies, a certifying statement is required from an accredited veterinarian that the dog, cat, or ferret has not been exposed to rabies.

   b. A person may not import any dog, cat, or ferret less than three months of age from an area under quarantine for rabies.

3. It is not a violation of this section to bring a dog, cat, or ferret from a bordering state into the state for the purpose of obtaining any vaccination or other health care from a licensed veterinarian or to an animal shelter for veterinary care.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

CHAPTER 48.1-13-02
OTHER ANIMALS

48.1-13-02-01. Other animals.

1. Importers of animals not included in the preceding sections, including domesticated wild animals, game animals, game birds and eggs of game birds, imported into the state may require a certificate of veterinary inspection and obtain an importation permit number from the state veterinarian.

2. The state veterinarian may require disease detection tests or inspections upon any such animals and birds and eggs prior to importation into the state and may deny importation if the results of such tests or inspections are other than negative.

History: Effective July 1, 2016.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

TITLE 72

SECRETARY OF STATE

JULY 2016

ARTICLE 72-02.2
~~ATHLETIC COMMISSIONER~~COMMISSIONER OF COMBATIVE SPORTS

Chapter

CHAPTER 72-02.2-01.1
~~ATHLETIC COMMISSIONER~~COMMISSIONER OF COMBATIVE SPORTS AND ~~ATHLETIC ADVISORY BOARD~~COMMISSION OF COMBATIVE SPORTS - BOXING

Section

72-02.2-01.1-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Board member" means the North Dakota state ~~athletic advisory board~~commission of combative sports, or an agent of the board acting on its behalf.
2. "Boxing" means a contest or match in which the act of attack and defense is practiced with fists by two contestants.
3. "Commissioner" means the North Dakota secretary of state acting as the ~~state athletic commissioner~~commissioner of combative sports.
4. "Contestant" or "boxer" means a participant in a match who receives remuneration directly or indirectly as consideration for the participant's performance.
5. "Exhibition" means boxing or sparring where a decision is not rendered.
6. "Gong" means the bell, horn, or buzzer that has a clear tone loud enough for the contestants and referee to hear.
7. "Match" means any bout, contest, or sparring, in which participants intend to and actually inflict punches, blows, or employ other techniques to temporarily incapacitate an opponent in a match, regardless of whether the object of the participants is to win or display their skills without striving to win.
8. "Matchmaker" means any person who brings together a professional boxer or arranges professional boxing matches.
9. "Promoter" means any person, club, corporation, or association, and in the case of a corporate promoter, includes any officer, director, employee, or stockholder thereof, who produces, arranges, or stages any professional boxing or kickboxing matches.
10. "Registry" means any entity certified by the association of boxing commissions for the purposes of maintaining records and identification of boxers.
11. "Sparring" means boxing for either practice or as an exhibition.
12. "Stalling or faking" means that a boxer is pulling punches or holding an opponent or deliberately maintaining a clinch.

History: Effective February 1, 1997; amended effective July 1, 1997; July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-02. ~~Athletic advisory board~~Commission of combative sports.

The North Dakota ~~state athletic advisory board~~commission of combative sports consists of nine members who must be appointed to either one-year, two-year, or three-year terms. Any vacancy in the membership of the board, caused other than by expiration of terms, must be filled only for the balance of the term of the member in whose position the vacancy occurs.

History: Effective February 1, 1997; amended effective July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-04. Licensing.

An application for a license must be made in writing on a form supplied by the board and be verified under oath by the applicant. The applicable fee must be submitted with the application. A license is valid for one calendar year and expires on December thirty-first of each year. The licenses available and license fees are as follows:

1. Boxer or kickboxer - ~~ten~~twenty-five dollars.
2. ~~Cornerperson/second/trainer~~Cornerperson or second or trainer - ~~ten~~twenty-five dollars.
3. Judge - twenty-five dollars.
4. Knockdown counter - ~~ten~~twenty-five dollars.
5. Manager - ~~twenty-five~~fifty dollars.
6. Matchmaker - fifty dollars.
7. Physician - no fee.
8. Promoter - ~~one hundred~~two hundred fifty dollars.
9. Referee - twenty-five dollars.
10. Timekeeper - ~~ten~~twenty-five dollars.

History: Effective February 1, 1997; amended effective February 26, 1997; July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-14. Gross revenue fee.

There is hereby imposed a fee upon each promoter, or other principal, operating in this state who conducts any professional boxing matches held within this state for each such event. The fee must be equal to the product of the gross revenues of each such boxing or sparring match multiplied by ~~one~~three percent but in no event may the fee be less than five hundred dollars. For purposes of this section, gross revenues means any and all revenues, from whatever source derived, received by any promoter, or other principal, on account of any particular match, including any revenues received from any advance ticket sales, gate receipts, promotional or advertising consideration, and from any cable television and pay-per-view telecasts of such match, exclusive of any federal tax thereon.

Each promoter, or other principal, liable for such gross revenue fee shall provide an accounting to the commissioner on a form provided by the commissioner not later than ten days from the date of the particular match, prepared by the promoter or by a certified public accountant, on behalf of the promoter, using generally accepted accounting principles, which details the source and amount of each component of gross revenues and contains a calculation showing the fee owed to the commissioner. Any source documents or records used by the promoter, or the certified public accountant, in preparing the accounting must be made immediately available to the commissioner, upon request, for verification.

The gross revenue fee due thereon must be remitted to the commissioner by no later than ten days from the date of the match. Any promoter or other principals involved in the receipt of moneys, or staging of the exhibition or match, are jointly and severally liable for the gross revenue fee provided for by this section. Any promoter who fails to calculate or remit the fee, as required, is subject to an immediate suspension of the promoter's license until the delinquent accounting or fee is submitted to the commissioner or until a hearing requested by such promoter is conducted and concluded by or on behalf of the commissioner.

History: Effective February 1, 1997; amended effective July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

72-02.2-01.1-23. Boxing knockdowns and knockouts requirements.

The following definitions and provisions are applicable with regard to knockdowns, knockouts, and low blows:

1. Knockdown: A boxer is "down" when any part of the boxer's body, except the boxer's feet, touches the floor of the ring, or when the boxer hangs helplessly on the ring ropes or when the boxer is rising from a down position, as a result of a legal blow, according to the judgment of the referee, who is the only person authorized to determine when a boxer has suffered a knockdown. A contestant who is knocked down shall take a mandatory count of eight seconds. If either a knockdown or mandatory eight count or a combination of either occurs three times in one round, the contest must be stopped and a technical knockout must be awarded to the opponent.

2. Eight count: A boxer who is down must be required to take a count of eight whether or not the boxer has regained the boxer's feet before the count of eight has been reached.

3. ~~Standing eight count: If a boxer appears to be in or entering a state of unconsciousness, notwithstanding that such boxer has not been knocked down, the referee shall order such boxer's opponent to a neutral corner and commence a count of eight. Upon completion of said eight count, the referee shall determine whether such boxer is able to continue the contest or exhibition. If in the opinion of the referee such boxer is unable to continue, the referee shall declare such boxer's opponent the winner by a technical knockout. If, in the opinion of the referee, such boxer is able to continue, the referee shall order the boxers to continue and said "standing eight count" shall be deemed to be a knockdown for purposes of scoring the round and these rules. Should a boxer slip or fall down, or be pushed, the boxer must be ordered to the boxer's feet immediately. Failure to rise may subject such boxer to disqualification.~~

~~4.~~ Counting: When a boxer is down, the knockdown counter shall at once commence calling off the seconds, indicating the count with an arm motion. The referee shall immediately order the other boxer to a neutral corner and shall thereafter pick up the count from the knockdown counter and indicate it with an arm motion. If a boxer is unable to continue at the count of eight, the referee shall declare the other boxer the winner.

~~5.~~4. Save the boxer: The bell can save the boxer only in the last round.

~~6.~~5. Low blow: The referee may give a boxer not more than a five-minute break if the referee believes a foul has been committed. Each boxer must be instructed to return to the boxer's respective corner by the referee until the round is ready to resume.

History: Effective February 1, 1997; amended effective July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-07

CHAPTER 72-02.2-02
COMMISSIONER OF COMBATIVE SPORTS AND COMMISSION OF COMBATIVE SPORTS - MIXED FIGHTING STYLE

Section

72-02.2-02-04. Licensing - Terms and conditions.

An application for a license must be made in writing on a form supplied by the board and be verified under oath by the applicant.

The applicable fee must be submitted with the application. Applicants performing multiple duties must be licensed for each duty, but are not responsible for payment of more than one license fee. The license fee required of those holding more than one license is the highest of the applicable license fees.

1. A license is valid from the date of issuance until December thirty-first of that year. The licenses available and fees are as follows:

   a. Judge - twenty-five dollars.

   b. Manager - ~~twenty-five~~fifty dollars.

   c. Matchmaker - fifty dollars.

   d. Participants - ~~ten~~twenty-five dollars.

   e. Physician - no fee.

   f. Promoter - ~~one hundred~~two hundred fifty dollars.

   g. Referee - twenty-five dollars.

h. ~~Second/trainer~~Second or trainer - ~~ten~~twenty-five dollars.

i. Timekeeper - ~~ten~~twenty-five dollars.

2. Terms and conditions. The following terms and conditions apply to licensed participants:

a. Every license, excluding those for mixed fighting style participants, is subject to the following:

(1) The applicant must be at least eighteen years of age;

(2) The applicant must submit verifications, from qualified persons, of the licensee's proficiency, if requested by the commissioner;

(3) The applicant must agree that training requirements may be established by the commissioner;

(4) Financial responsibility, experience, character, and general fitness of an applicant, including in the case of corporations, its officers and stockholders, are such that the participation of such applicant will be consistent with the public interest, convenience, or necessity and the safety of participants and with the best interests of mixed fighting styles generally; and

(5) For the first infraction of any of the provisions of this subsection, the commissioner may issue a verbal warning. Following a second infraction, a written warning may be issued. Following a third infraction, the license may be suspended up to a six-month period. However, the commissioner may suspend a license for any serious violation without warning.

b. Every license issued to a mixed fighting style participant is subject to the following:

(1) The applicant must be at least eighteen years of age;

(2) The applicant must provide the applicant's legal and professional name, street address, city, state, country, zip code, telephone number, social security number, date of birth, height, weight, color of eyes, and any distinguishing marks;

(3) The applicant must provide the names and addresses of the applicant's trainers and managers, if applicable;

(4) The applicant must provide the applicant's complete record;

(5) The applicant must disclose whether the applicant is, or has been, under suspension during the preceding twelve months. If so, the state and the reason for the suspension must be disclosed;

(6) The applicant must provide acceptable photo identification;

(7) The applicant must present documented evidence that the applicant has been administered a test by a laboratory in the United States that possesses a certificate under the Clinical Laboratory Improvement Act [42 U.S.C. 263a], to detect the presence of bloodborne pathogens as identified by the commissioner, within the last six months prior to the application and that the results are negative;

(8) The applicant must disclose the date of the most recent complete physical examination, any serious bodily injuries, any serious head injuries, any surgeries, and whether the applicant is taking any medications.

(a) If the commissioner determines that a question exists as to the medical condition of a participant, a complete physical may be required. A list of approved physicians who are qualified to perform the physical will be provided and the participant must choose one to conduct the physical. Upon completion of the physical the physician chosen shall submit a report of the results directly to the commissioner. The participant shall also receive a report. The report must affirmatively state the physician's opinion as to the advisability of the participant fighting.

(b) The physical performed must address the question raised about the participant's health and include such testing as a prudent physician would perform to determine the health and fitness of an individual to engage in the sport of mixed fighting style. The results of all required examinations must be made a part of the participant's permanent medical record as maintained by the commissioner. The costs of all examinations required by this section shall not be paid by the commissioner;

(9) Participants, under any circumstances, may not compete or appear in a contest or exhibition for up to ninety days after not being able to defend themselves;

(10) No participant may compete or appear in a contest or exhibition in less than seven days after the completion of that participant's last contest;

(11) Upon the request of the commissioner, the applicant must provide satisfactory evidence of the applicant's ability to compete. The commissioner may hold an informal hearing to determine whether the license should be granted or revoked at the request of the participant or upon the commissioner's own motion. The commissioner may also hold an informal hearing to determine whether to review or revoke a suspension of a license issued by the state. The participant shall be notified of the time and place of the informal hearing and the substance of the matter to be determined. The commissioner shall permit the participant the opportunity to present evidence on the participant's behalf;

(12) The commissioner will honor and give faith and credit to actions of regulatory agencies in other jurisdictions;

(13) If, in the judgment of the commissioner, the participant has been guilty of an act detrimental to the best interests of mixed fighting style generally, or to the public interest, convenience or necessity, such act is grounds for the denial or suspension of a license;

(14) For the first infraction under this subsection, the commissioner may issue a verbal warning. Following a second infraction a written warning may be issued. Following a third infraction the license may be suspended up to a six-month period. However, the commissioner may suspend a license for any serious violation without warning; and

(15) A participant may request in writing an informal hearing before the commissioner to review or revoke a suspension imposed for a recent knockout, injury, or other medical reason upon the participant furnishing further proof of a sufficiently improved physical condition. A participant may also request an informal hearing before the commissioner to review or revoke a suspension imposed for failure of a drug test or for the use of a false alias, or for falsifying, or attempting to falsify, an official identification card or document, upon the participant's furnishing proof that the suspension was not, or is no longer merited by the facts.

History: Effective October 1, 2006; amended effective July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-01.1, 53-01-02

72-02.2-02-13. Gross revenue fee.

There is hereby imposed a fee upon each promoter, or other principal, operating in this state who conducts any professional mixed fighting style contest or exhibition held within this state for each such event. The fee must be equal to the product of the gross revenues of each such mixed fighting style event multiplied by ~~one~~three percent ~~or such other amount as may be allowed by law~~, but in no event may the fee be less than five hundred dollars. For purposes of this section, gross revenues means any and all revenues, from whatever source derived, received by any promoter, or other principal, on account of any particular contest or exhibition, including any revenues received from any advance ticket sales, gate receipts, promotional or advertising consideration, and from any cable television and pay-per-view telecasts of such contest or exhibition, exclusive of any federal tax thereon. All cable television and pay-per-view telecasts are subject to a fee of the gross revenue received from such cable television and pay-per-view telecasts multiplied by one percent or such other amount as may be allowed by law exclusive of any federal tax thereon.

Each promoter, or other principal, liable for such gross revenue fee shall provide an accounting to the commissioner on a form provided by the commissioner not later than ten days from the date of the contest or exhibition, prepared by the promoter or by a certified public accountant, on behalf of the promoter, using generally accepted accounting principles, which details the source and amount of each component of gross revenues and contains a calculation showing the fee owed to the commissioner. Any source documents or records used by the promoter, or the certified public accountant, in preparing the accounting must be made immediately available to the commissioner, upon request, for verification. The gross revenue fee due thereon must be remitted to the commissioner by no later than ten days from the date of the contest ~~of~~or exhibition. Any promoter or other principals involved in the receipt of moneys, or staging of the contest or exhibition, are jointly and severally liable for the gross revenue fee provided for by this section.

Any promoter who fails to calculate or remit the fee, as required, is subject to an immediate suspension of the promoter's license until the delinquent accounting or fee is submitted to the commissioner or until a hearing requested by such promoter is conducted and concluded by or on behalf of the commissioner.

History: Effective October 1, 2006; amended effective July 1, 2016.
General Authority: NDCC 53-01-07
Law Implemented: NDCC 53-01-01.1, 53-01-02

TITLE 75

DEPARTMENT OF HUMAN SERVICES

JULY 2016

CHAPTER 75-02-02.1
ELIGIBILITY FOR MEDICAID

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75-02-02.1-28 Excluded Assets
75-02-02.1-28.1 Excluded Assets for Medicare Savings Programs, Qualified Disabled and Working Individuals, and Spousal Impoverishment Prevention
75-02-02.1-29 Forms of Asset Ownership
75-02-02.1-30 Contractual Rights to Receive Money Payments
75-02-02.1-30.1 Annuities [Repealed]
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75-02-02.1-31.1 Trusts Established by Applicants, Recipients, or Their Spouses After August 10, 1993
75-02-02.1-32 Valuation of Assets
75-02-02.1-33 Disqualifying Transfers Made on or Before August 10, 1993 [Repealed]
75-02-02.1-33.1 Disqualifying Transfers Made Before February 8, 2006
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75-02-02.1-34 Income Considerations
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75-02-02.1-34.3 Reasonable Compatibility of Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-35 Budgeting [Repealed]
75-02-02.1-36 Disregarded Income [Repealed]
75-02-02.1-37 Unearned Income
75-02-02.1-37.1 Unearned Income for Individuals Subject to a MAGI-Based Methodology
75-02-02.1-38 Earned Income
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75-02-02.1-42 Eligibility Under 1972 State Plan
75-02-02.1-43 Payment for Services by Attorney-in-Fact

75-02-02.1-13. Social security numbers.

A social security number must be furnished as a condition of eligibility, for each individual for whom medicaid benefits are sought, except for:

1. A newborn child who is eligible during the birth month, for sixty days after the date of birth beginning on the date of birth and for the remaining days of the month in which the sixtieth day falls or, if the newborn is continuously eligible, for the remaining days of the newborn's first eligibility period;

2. Coverage of emergency services provided to illegal aliens; and

3. Individuals who have applied for, but not yet received, social security numbers.

History: Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-01

75-02-02.1-19. Inmates of public institutions.

1. An inmate of a public institution is not eligible for medicaid unless the individual is ~~over~~;

   a. Over age sixty-five and a patient in an institution for mental diseases ~~or is under~~;

   b. Under age twenty-one, is a patient in an institution for mental diseases, and is receiving inpatient psychiatric services consistent with the requirements of 42 CFR 440.160 and 42 CFR part 441, subpart D, or, with respect to a patient who is eligible for medicaid and is receiving services in the institution when the patient reaches age twenty-one, inpatient psychiatric services under 42 CFR 440.160 may continue until age twenty-two~~, and is a patient in an institution for mental diseases, and receiving inpatient psychiatric services consistent with the requirements of 42 CFR 440.160 and 42 CFR part 441, subpart D~~; or

   c. Receiving care as an inpatient in one of the following facilities:

      (1) A hospital as defined in 42 CFR 440.140;

      (2) A nursing facility as defined in 42 CFR 440.140 and 42 U.S.C. 1396r(a);

      (3) A psychiatric residential treatment facility as defined in 42 CFR 440.160; or

      (4) An intermediate care facility for the intellectually disabled as defined in 42 CFR 440.140 and 440.150.

~~1.~~2. The period of ineligibility under this section begins the day after the day of entry and ends the day before the day of discharge of the individual from such an institution.

~~2.~~3. An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in that institution. However, such an individual who is under age twenty-two and has been receiving inpatient psychiatric services under 42 CFR 440.160 is considered to be a patient in the institution until unconditionally released or, if earlier, the last day of the month in which the patient reaches age twenty-two.

~~3.~~4. For purposes of this section:

   a. "Individual on conditional release" means an individual who is away from the institution, for trial placement in another setting or for other approved leave, but who is not discharged. An individual on "definite leave" from the state hospital is an individual on conditional release.

   b. "Inmate of a public institution" means a person who has been sentenced, placed, committed, admitted, or otherwise required or allowed to live in the institution, and who has not subsequently been unconditionally released or discharged from the institution. An individual is not considered an inmate if:

      (1) The individual is in a public educational or vocational training institution for purposes of securing education or vocational training;

      (2) The individual is in a public institution for a temporary period pending other arrangements appropriate to the individual's needs;

      (3) The individual has been unconditionally released from the institution; or

      (4) The individual is receiving long-term care services in a public institution.

c. "Institution" means an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor.

d. "Institution for mental diseases" means an institution that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for individuals with intellectual disabilities is not an institution for mental diseases.

e. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control. The term "public institution" does not include:

(1) A medical institution as defined in 42 CFR ~~435.1009~~435.1010;

(2) ~~A nursing facility as defined in 42 U.S.C. 1396r(a)~~An intermediate care facility as defined in 42 CFR 440.140 and 440.150; ~~or~~

(3) A publicly operated community residence that serves no more than sixteen residents, as defined in 20 CFR 416.231(b)(6)(i); or

(4) A child care institution as defined in 42 CFR 435.1010 with respect to:

(a) Children for whom foster care maintenance payments are made under title IV-E of the Act; and

(b) Children receiving aid to families with dependent children - foster care under title IV-A of the Act.

f. "Unconditionally released" means released, discharged, or otherwise allowed or required to leave the institution under circumstances such that a return to the institution cannot be required by the operator of the institution.

History: Effective December 1, 1991; amended effective July 1, 2003; July 1, 2012; July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-02, 50-24.1-06; 42 CFR 435.1008; 42 CFR 435.1009

75-02-02.1-24.4. Hospital presumptive eligibility.

1. For purposes of this section, "qualified hospital" means a hospital or hospital-owned physician practice or clinic that:

a. Is a medicaid provider;

b. Notifies the department of its election to make presumptive eligibility determinations; and

c. Has been approved by the department to make presumptive eligibility determinations under this section.

2. The department may provide medicaid benefits during a period of presumptive eligibility, prior to a determination of medicaid eligibility, to the following individuals:

a. Children through the month they turn nineteen years of age;

b. Former foster care children through the month they turn twenty-six years of age, who were enrolled in medicaid and were in foster care in this state when they turned eighteen years old;

c. Parents and caretaker relatives of children through the month the children turn nineteen years of age;

d. Pregnant women; and

e. Medicaid expansion group ages nineteen through sixty-four, from the month following the month they turn nineteen years of age through the month prior to the month they turn sixty-five years of age.

3. An applicant shall apply for presumptive eligibility coverage at a qualified hospital. Applicants do not need to be hospitalized. Presumptive eligibility determinations may be made only by qualified hospital employees who are trained and certified to determine presumptive eligibility.

4. The application for presumptive eligibility must be signed by the applicant, an authorized representative, or if the applicant is incompetent or incapacitated and has not designated an authorized representative, someone acting responsibly for the applicant.

5. The presumptive eligibility determination is based on the information reported by the applicant and verification is not required. The applicant shall provide all information the qualified hospital needs to determine presumptive eligibility.

6. Applicants shall attest to each of the following for each household member requesting presumptive eligibility:

a. United States citizen, United States national, or eligible immigrant status;

b. North Dakota residency;

c. Gross income amount;

d. Whether or not the applicant is currently enrolled in medicaid; and

e. That the applicant does not have any other health insurance coverage that meets minimum essential coverage, as defined in section 5000A(f) of subtitle D of the Internal Revenue Code, as added by section 1401 of the Affordable Care Act, and implementing regulations.

7. MAGI-based methodology must be used to determine presumptive eligibility.

8. The presumptive eligibility period begins on the day the presumptive eligibility determination is made and ends the earlier of:

a. If a medicaid application has been submitted, the day on which a decision is made on that application; or

b. If a medicaid application has not been submitted, the last day of the month following the month the presumptive eligibility determination was made.

9. Individuals, excluding pregnant women, are eligible for one period of presumptive eligibility per calendar year. Pregnant women are eligible for presumptive eligibility coverage once per pregnancy.

10. Presumptive eligibility coverage does not include the three-month prior period.

11. An individual may not appeal presumptive eligibility determinations.

12. Qualified hospitals shall:

a. Make presumptive eligibility determinations for applicants without medicaid or other health care coverage;

b. Assure timely access to care while the presumptive eligibility determination is being made;

c. Ensure all employees assisting in and completing presumptive eligibility determinations follow department regulations and policies for presumptive eligibility determinations;

d. Provide the applicant with notice of the presumptive eligibility determination;

e. Inform applicants at the time of the presumptive eligibility determination that applicants must submit an application for medicaid to obtain medicaid coverage beyond the presumptive eligibility period;

f. Assist applicants in completing and submitting an application for medicaid and children's health insurance program or subsidized insurance through the federally facilitated marketplace;

g. Meet the performance standards as set forth in subsection 13;

h. Ensure all employees assisting in and completing presumptive eligibility applications and determinations attend all presumptive eligibility policy training provided by the department and stay current with changes, including the following:

(1) Participate in all inperson, telephone conference, webinar, and computer-based presumptive eligibility training sessions; and

(2) Read all information provided regarding updates and changes to presumptive eligibility policies and regulations; and

i. Provide verification to the department upon request that all employees assisting in and completing presumptive eligibility applications and determinations have completed the training set forth in subdivision h.

13. Qualified hospitals shall meet the following performance standards:

a. Ninety-five percent of applicants are not enrolled in medicaid at the time the presumptive eligibility determination is made;

b. Ninety percent of applicants determined presumptively eligible by the qualified hospital submit a medicaid application during the presumptive eligibility period; and

c. Eighty-five percent of applicants that are determined presumptively eligible and submit a medicaid application during the presumptive eligibility period are determined eligible for medicaid.

14. Qualified hospitals that do not meet the performance standards set forth in subsection 13 for three consecutive months are required to participate in additional training or other reasonable corrective action measures, or both, provided by the department. If the qualified hospital continues to fail to meet the performance standards for an additional two consecutive months after the training or other corrective action measures, the department will disqualify the qualified hospital.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 U.S.C. 1396a(e)

75-02-02.1-34.2. Income conversion for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "biweekly" means every two weeks.

2. Income received either weekly or biweekly must be converted to monthly income in determining the household's countable income under MAGI-based methodology. Income must be received each week for those paid weekly, or every other week for those paid biweekly, for income to be converted.

3. Income conversion is not done for the three month prior period. Actual income received in those months is counted in determining eligibility.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 U.S.C. 1396a(e)

75-02-02.1-34.3. Reasonable compatibility of income for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "reasonable compatibility" refers to an allowable difference or discrepancy between the income reported by an applicant or recipient and the income reported by an electronic data source.

2. The department may request additional information or documentation from an applicant or recipient only if verification cannot be obtained from an electronic data source or information obtained from the electronic data source is not reasonably compatible with information provided by the applicant or recipient.

3. The most recent verification of income from an electronic data source is reasonably compatible if it results in the same eligibility outcome as information reported by the applicant or recipient.

4. Any income verification information requested and received by the department as a result of the application or review of other economic assistance programs must be used to determine eligibility for medicaid and children's health insurance program and reasonable compatibility does not need to be determined.

5. If an applicant or recipient has multiple types of income and income from different sources, each type of income and each source of income must be compared for reasonable compatibility, and the highest amount from each type and source must be used to determine eligibility.

6. When income verification is received quarterly, the income must be converted to a monthly amount to determine reasonable compatibility.

7. For purposes of determining reasonable compatibility for earned income, other than self-employment, and unearned income:

   a. When both the electronic data source and the applicant or recipient report total countable income that is below the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested. The higher of the two amounts will be used to determine eligibility.

b. When both the electronic data source and the applicant or recipient report total countable income that is above the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested.

c. When verification from the electronic data source is above the budget unit income level, but the information reported by the applicant or recipient is less than the budget unit income level, or when verification from the electronic data source is below the budget unit income level but the information reported by the applicant or recipient is higher than the budget unit income level, the two data sources are not reasonably compatible and further verification is required to determine eligibility.

d. When the electronic data source does not provide verification of income from the same source and type as the applicant or recipient reported, the two data sources are not reasonably compatible and further verification is required in order to determine eligibility.

8. Reasonable compatibility is not determined for self-employment income.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.1-04
Law Implemented: NDCC 50-24.1-37; 42 U.S.C. 1396a(e)

CHAPTER 75-02-02.2
CHILDREN'S HEALTH INSURANCE PROGRAM

75-02-02.2-02. Application, redetermination, and eligibility periods.

1. **Application.**

   a. Any individual who wishes to make application on behalf of a child for coverage must have the opportunity to do so without delay.

   b. An application is a written request for plan coverage to a county agency, the department, a disproportionate share hospital, as defined in section 1923(a)(1)(A) of the Social Security Act [42 U.S.C. 1396r-4(a)(1)(A)], or a federally qualified health center, as described in section 1905(l)(2)(B) of the Social Security Act [42 U.S.C. 1396d(l)(2)(B)].

   c. A prescribed application form must be signed by the applicant or appropriate individual on behalf of the child applying for plan coverage.

   d. Information concerning eligibility requirements, available services, and the rights and responsibilities of applicants and recipients must be furnished to all who request it.

   e. The date of the application is the date a signed application is received by the department, a county agency, a disproportionate share hospital, or a federally qualified health center. The department, county agency, disproportionate share hospital, or federally qualified health center must document the data an application is received.

2. **Redetermination.**

   a. The department or county agency must redetermine a recipient's eligibility at least annually.

b. A recipient or anyone acting on a recipient's behalf has the same responsibility to furnish information during a redetermination of eligibility for coverage as an applicant has during the initial application.

c. Plan coverage terminates on the last day of the last month of the annual period if a recipient fails to provide sufficient information to redetermine eligibility.

3. **Eligibility periods.**

a. Eligibility for the children's health insurance program begins on the first day of the month following the month in which the eligibility determination is made.

b. The coverage period ends at the earliest of:

(1) The end of the twelve-month eligibility period;

(2) The end of the month in which the recipient turns age nineteen;

(3) The end of the month prior to the first full month for which the recipient has obtained other creditable health insurance coverage;

(4) The end of the month in which the recipient leaves the household;

(5) The end of the month in which the recipient loses residency in the state; ~~or~~

(6) When the recipient's whereabouts are unknown and mail directed to the recipient is returned by the post office indicating no known forwarding address; or

(7) The end of the month in which the child is determined eligible for medicaid other than medically needy coverage.

History: Effective October 1, 1999; amended effective August 1, 2005; January 1, 2010; July 1, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-02; 42 USC 1397aa et seq.

75-02-02.2-10. Eligibility criteria.

1. Children ages birth through eighteen years of age are eligible for plan coverage provided all other eligibility criteria are met. Coverage for children who are eighteen years of age will continue through the last day of the month in which the child turns nineteen years of age.

2. A child who has current creditable health insurance coverage or has coverage which is available at no cost, as defined in section 2701(c) of the Public Health Service Act [42 U.S.C. 300gg(c)] is not eligible for plan coverage.

3. A child is not eligible for plan coverage if a family member voluntarily terminated either employer-sponsored or individual health insurance coverage of the child within ninety days of the date of application unless:

a. The health insurance coverage was terminated due to the involuntary loss of employment;

b. The health insurance coverage was terminated through no fault of the family member who had secured the coverage;

c. The health insurance coverage was terminated by a household member who is actively engaged in farming in a county which is declared a federal disaster area;

d. The child's parent is determined eligible for advance payment of the premium tax credit for enrollment in a qualified health plan because the employer-sponsored insurance in which the family was enrolled is determined unaffordable;

e. The premium paid by the family for coverage of the child under the group health plan exceeded five percent of gross household income;

f. The cost of family coverage that includes the child exceeds nine and one-half percent of the gross household income;

g. The employer stopped offering coverage, including coverage of dependents, under an employer-sponsored health insurance plan;

h. The child has special health care needs; or

i. The health insurance coverage was terminated due to the death or divorce of a parent or parents.

4. Except as provided in subsection 6, the public institution provisions of section 75-02-02.1-19 apply to healthy steps applicants and recipients.

5. A child who meets current medicaid eligibility criteria in the month for which plan coverage is determined is not eligible for plan coverage unless the child would otherwise be eligible for the medically needy medicaid program with a recipient liability. Such child may be enrolled in either the healthy steps program or the medically needy medicaid program.

6. A child who resides in an institution for mental disease at the time an eligibility determination is made is not eligible for plan coverage. A child who enters an institution for mental disease while receiving plan coverage may remain eligible for coverage.

7. If the department estimates that available funds are insufficient to allow plan coverage for additional applicants, the department may take any action appropriate to avoid commitment of funds in excess of available funds including denying applications and establishing waiting lists not forbidden by title XXI of the Social Security Act [42 U.S.C. section 1397aa et seq.] or regulations adopted thereunder. If federal children's health insurance program funding decreases, the department may decrease the income eligibility limit to accommodate the decrease in federal funding.

8. A social security number must be furnished as a condition of eligibility for each child for whom benefits are sought except for:

a. A newborn child who is eligible during the birth month, beginning on the date of birth and for the remaining days of the current eligibility period; and

b. Children who have applied for, but not yet received, social security numbers.

History: Effective October 1, 1999; amended effective April 1, 2002; August 1, 2005; January 1, 2010; January 1, 2014; July 1, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-24.1-37, 50-29; 42 USC 1397aa et seq.

75-02-02.2-13.3. Reasonable compatibility of income for individuals subject to a MAGI-based methodology.

1. For purposes of this section, "reasonable compatibility" refers to an allowable difference or discrepancy between the income reported by an applicant or recipient and the income reported by an electronic data source.

2. The department may request additional information or documentation from an applicant or recipient only if verification cannot be obtained from an electronic data source or information obtained from the electronic data source is not reasonably compatible with information provided by the applicant or recipient.

3. The most recent verification of income from an electronic data source is reasonably compatible if it results in the same eligibility outcome as information reported by the applicant or recipient.

4. Any income verification information requested and received by the department as a result of the application or review of other economic assistance programs must be used to determine eligibility for medicaid and children's health insurance program and reasonable compatibility does not need to be determined.

5. If an applicant or recipient has multiple types of income and income from different sources, each type of income and each source of income must be compared for reasonable compatibility, and the highest amount from each type and source must be used to determine eligibility.

6. When income verification is received quarterly, the income must be converted to a monthly amount to determine reasonable compatibility.

7. For purposes of determining reasonable compatibility for earned income, other than self-employment, and unearned income:

   a. When both the electronic data source and the applicant or recipient report total countable income that is below the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested. The higher of the two amounts will be used to determine eligibility.

   b. When both the electronic data source and the applicant or recipient report total countable income that is above the budget unit income level, the two data sources are considered to be reasonably compatible and further verification may not be requested.

   c. When verification from the electronic data source is above the budget unit income level, but the information reported by the applicant or recipient is less than the budget unit income level, or when verification from the electronic data source is below the budget unit income level but the information reported by the applicant or recipient is higher than the budget unit income level, the two data sources are not reasonably compatible and further verification is required to determine eligibility.

   d. When the electronic data source does not provide verification of income from the same source and type as the applicant or recipient reported, the two data sources are not reasonably compatible and further verification is required in order to determine eligibility.

8. Reasonable compatibility is not determined for self-employment income.

History: Effective July 1, 2016.
General Authority: NDCC 50-29
Law Implemented: NDCC 50-29-01; 42 U.S.C. 1396a(e), 42 U.S.C. 1397aa et seq.

CHAPTER 75-02-06
RATESETTING FOR NURSING HOME CARE

75-02-06-01. Definitions.

In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.

2. "Actual rate" means the facility rate for each cost category calculated using allowable historical operating costs and adjustment factors.

3. "Adjustment factor" means the inflation rate for nursing home services used to develop the legislative appropriation for the department for the applicable rate year.

4. "Admission" means any time a resident is admitted to the facility from an outside location, including readmission resulting from a discharge.

5. "Allowable cost" means the facility's actual cost after appropriate adjustments as required by medical assistance regulations.

6. "Bona fide sale" means the purchase of a facility's capital assets with cash or debt in an arm's-length transaction. It does not include:

   a. A purchase of shares in a corporation that owns, operates, or controls a facility except as provided under subsection 3 of section 75-02-06-07;

   b. A sale and leaseback to the same licensee;

   c. A transfer of an interest to a trust;

   d. Gifts or other transfers for nominal or no consideration;

   e. A merger of two or more related organizations;

   f. A change in the legal form of doing business;

   g. The addition or deletion of a partner, owner, or shareholder; or

   h. A sale, merger, reorganization, or any other transfer of interest between related organizations.

7. "Building" means the physical plant, including building components and building services equipment, licensed as a facility, and used directly for resident care, and auxiliary buildings including sheds, garages, and storage buildings located on the site used directly for resident care.

8. "Capital asset" means a facility's buildings, land improvements, fixed equipment, movable equipment, leasehold improvements, and all additions to or replacements of those assets used directly for resident care.

9. "Certified nurse aide" means:

   a. An individual who has satisfactorily completed a nurse aide training and competency evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154 and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or who has been deemed or determined competent as provided in 42 CFR 483.151(a) and (b) and is registered on a state-established registry of nurse aides as required by 42 CFR 483.156; or

   b. An individual who has worked less than four months as a nurse aide and is enrolled in a training and evaluation program approved by the state as meeting the requirements of 42 CFR 483.151 through 483.154.

10. "Chain organization" means a group of two or more health care facilities owned, leased, or, through any other device, controlled by one business entity. This includes not only proprietary chains, but also chains operated by various religious and other charitable organizations. A chain organization may also include business organizations engaged in other activities not directly related to health care.

11. "Close relative" means an individual whose relationship by blood, marriage, or adoption to an individual who is directly or indirectly affiliated with, controls, or is controlled by a facility is within the third degree of kinship.

12. "Community contribution" means a contribution to a civic organization or sponsorship of community activities. It does not include a donation to a charity.

13. "Cost category" means the classification or grouping of similar or related costs for purposes of reporting, the determination of cost limitations, and determination of rates.

14. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a facility are divided for purposes of cost assignment and allocations.

15. "Cost report" means the department approved form for reporting costs, statistical data, and other relevant information of the facility.

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

17. "Depreciable asset" means a capital asset for which the cost must be capitalized for ratesetting purposes.

18. "Depreciation" means an allocation of the cost of an asset over its estimated useful life.

19. "Depreciation guidelines" means the American hospital association's guidelines as published by American hospital publishing, inc., in "Estimated Useful Lives of Depreciable Hospital Assets", revised 2013 edition.

20. "Desk audit rate" means the rate established by the department based upon a review of the cost report submission prior to an audit of the cost report.

21. "Direct care costs" means the cost category for allowable nursing and therapy costs.

22. "Direct costing" means identification of actual costs directly to a facility or cost category without use of any means of allocation.

23. "Discharge" means the voluntary or involuntary release of a bed by a resident when the resident vacates the nursing facility premises.

24. "Employment benefits" means fringe benefits, other employee benefits including vision insurance, disability insurance, long-term care insurance, employee assistance programs, employee child care benefits, and payroll taxes.

25. "Established rate" means the rate paid for services.

26. "Facility" means a nursing facility not owned or administered by state government or a nursing facility, owned or administered by state government, which agrees to accept a rate established under this chapter. It does not mean an intermediate care facility for individuals with intellectual disabilities.

27. "Fair market value" means value at which an asset could be sold in the open market in a transaction between informed, unrelated parties.

28. "Final decision rate" means the amount, if any, determined on a per day basis, by which a rate otherwise set under this chapter is increased as a result of a request for reconsideration, a request for an administrative appeal, or a request for judicial appeal taken from a decision on an administrative appeal.

29. "Final rate" means the rate established after any adjustments by the department, including adjustments resulting from cost report reviews and audits.

30. "Fixed equipment" means equipment used directly for resident care affixed to a building, not easily movable, and identified as such in the depreciation guidelines.

31. "Freestanding facility" means a nursing facility which does not share basic services with a hospital-based provider.

32. "Fringe benefits" means workers' compensation insurance, group health or dental insurance, group life insurance, retirement benefits or plans, uniform allowances, and medical services furnished at nursing facility expense.

33. "Highest market-driven compensation" means the highest compensation given to an employee of a freestanding facility who is not an owner of the facility or is not a member of the governing board of the facility.

34. "Historical operating costs" means the allowable operating costs incurred by the facility during the report year immediately preceding the rate year for which the established rate becomes effective.

35. "Hospice general inpatient care" means short-term inpatient care necessary for pain control or acute or chronic symptom management that cannot feasibly be provided in other settings. It does not mean care provided to an individual residing in a nursing facility.

36. "Hospice inpatient respite care" means short-term inpatient care provided to an individual when necessary to relieve family members or other persons caring for the individual at home. Care may be provided for no more than five consecutive days. For purposes of the definition, home does not include nursing facility.

37. "Hospital leave day" means any day that a resident is not in the facility, but is in an acute care setting as an inpatient or has been identified in a resident assessment instrument as "discharged anticipated to return".

38. "Indirect care costs" means the cost category for allowable administration, plant, housekeeping, medical records, chaplain, pharmacy, and dietary, exclusive of food costs.

39. "In-house resident day" for nursing facilities means a day that a resident was actually residing in the facility and was not on therapeutic leave or in the hospital. "In-house resident day" for hospitals means an inpatient day.

40. "Institutional leave day" means any day that a resident is not in the facility, but is in another nursing facility, swing-bed facility, transitional care unit, subacute care unit, or intermediate care facility for individuals with intellectual disabilities~~, or basic care facility~~.

41. "Land improvements" means any improvement to the land surrounding the facility used directly for resident care and identified as such in the depreciation guidelines.

42. "Limit rate" means the rate established as the maximum allowable rate for a cost category.

43. "Lobbyist" means any person who in any manner, directly or indirectly, attempts to secure the passage, amendment, defeat, approval, or veto of any legislation, attempts to influence decisions made by the legislative council, and is required to register as a lobbyist.

44. "Managed care organization" means a medicaid managed care organization as that term is defined in section 1903(m) of the Social Security Act [42 U.S.C. 1396b(m)].

45. "Medical assistance program" means the program which pays the cost of health care provided to eligible recipients pursuant to North Dakota Century Code chapter 50-24.1.

46. "Medical records costs" means costs associated with the determination that medical record standards are met and with the maintenance of records for individuals who have been discharged from the facility. It does not include maintenance of medical records for in-house residents.

47. "Movable equipment" means movable care and support services equipment generally used in a facility, including equipment identified as major movable equipment in the depreciation guidelines.

48. "Noncovered day" means a resident day that is not payable by medical assistance but is counted as a resident day.

49. "Other direct care costs" means the cost category for allowable activities, social services, laundry, and food costs.

50. "Payroll taxes" means the employer's share of Federal Insurance Contributions Act (FICA) taxes, governmentally required retirement contributions, and state and federal unemployment compensation taxes.

51. "Pending decision rate" means the amount, determined on a per day basis, by which a rate otherwise set under this chapter would increase if a facility prevails on a request for reconsideration, on a request for an administrative appeal, or on a request for a judicial appeal taken from a decision on an administrative appeal; however, the amount may not cause any component of the rate to exceed rate limits established under this chapter.

52. "Private-pay resident" means a nursing facility resident on whose behalf the facility is not receiving medical assistance payments and whose payment rate is not established by any governmental entity with ratesetting authority, including veterans' administration or medicare, or whose payment rate is not negotiated by any managed care organization contracting with a facility to provide services to the resident.

53. "Private room" means a room equipped for use by only one resident.

54. "Property costs" means the cost category for allowable real property costs and other costs which are passed through.

55. "Provider" means the organization or individual who has executed a provider agreement with the department.

56. "Rate year" means the calendar year from January first through December thirty-first.

57. "Reasonable resident-related cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards. Reasonable resident-related cost takes into account that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost-conscious buyer pays for a given item or services.

58. "Related organization" means a close relative or person or an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the policies of an organization or provider.

59. "Report year" means the fiscal year from July first through June thirtieth of the year immediately preceding the rate year.

60. "Resident" means a person who has been admitted to the facility, but not discharged.

61. "Resident day" in a nursing facility means all days for which service is provided or for which payment is ordinarily sought, including hospital leave days and therapeutic leave days. The day of admission and the day of death are resident days. The day of discharge is not a resident day. "Resident day" in a hospital means all inpatient days for which payment is ordinarily sought.

62. "Respite care" means short-term care provided to an individual when necessary to relieve family members or other persons caring for the individual at home.

63. "Routine hair care" means hair hygiene which includes grooming, shampooing, cutting, and setting.

64. "Significant capacity increase" means an increase of fifty percent or more in the number of licensed beds or an increase of twenty beds, whichever is greater; but does not mean an increase by a facility which reduces the number of its licensed beds and thereafter relicenses those beds, and does not mean an increase in a nursing facility's licensed capacity resulting from converting beds formerly licensed as basic care beds.

65. "Standardized resident day" means a resident day times the classification weight for the resident.

66. "Therapeutic leave day" means any day that a resident is not in the facility, another nursing facility, swing-bed facility, transitional care unit, subacute unit, an intermediate care facility for individuals with intellectual disabilities, ~~a basic care facility,~~ or an acute care setting, or, if not in an institutional setting, is not receiving home- and community-based waivered services.

67. "Top management personnel" means owners, board members, corporate officers, general, regional, and district managers, administrators, and any other person performing functions ordinarily performed by such personnel.

68. "Working capital debt" means debt incurred to finance nursing facility operating costs, but does not include debt incurred to acquire or refinance a capital asset or to refund or refinance debt associated with acquiring a capital asset.

History: Effective September 1, 1980; amended effective December 1, 1983; June 1, 1985; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; July 2, 2002; July 2, 2003; December 1, 2005; October 1, 2010; July 1, 2012; January 1, 2014; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-02.1. General cost principles.

1. For ratesetting purposes, a cost must:

   a. Be ordinary, necessary, and related to resident care;

   b. Be what a prudent and cost-conscious business person would pay for the specific good or service in the open market in an arm's-length transaction; and

   c. Be for goods or services actually provided in the facility.

2. The cost effects of transactions which circumvent this chapter are not allowable under the principle that the substance of the transaction prevails over form.

3. Costs incurred due to management inefficiency, unnecessary care, unnecessary facilities, agreements not to compete, or activities not commonly accepted in the nursing facility industry are not allowable.

4. Reasonable resident-related costs must be determined in accordance with the ratesetting procedures of this chapter, the ratesetting manual, instructions issued by the department, and ~~health care financing administration manual 15 (HCFA-15)~~principles of reimbursement for provider costs (Centers for Medicare and Medicaid Services Provider Reimbursement Manual). If conflicts occur between this chapter, the ratesetting manual, or instructions issued by the department and ~~HCFA-15~~Centers for Medicare and Medicaid Services Provider Reimbursement Manual, this chapter, the ratesetting manual, or instructions issued by the department must prevail.

History: Effective January 1, 1990; amended effective November 22, 1993; January 1, 1996; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-03. Depreciation.

1. Ratesetting principles require that payment for services includes depreciation on all capital assets used to provide necessary services.

   a. Capital assets that may have been fully or partially depreciated on the books of the provider, but are in use at the time the provider enters the program, may be depreciated. The useful lives of such assets are considered not to have ended and depreciation calculated on the revised extended useful life is allowable. To properly provide for costs or the valuation of such assets, an appraisal is required if the provider has no historical cost records or has incomplete records of the capital assets.

   b. A depreciation allowance is permitted on assets used in a normal standby or emergency capacity.

   c. If any depreciated personal property asset is sold or disposed of for an amount different than its undepreciated value, the difference represents an incorrect allocation of the cost of the asset to the facility and must be included as a gain or loss on the cost report. The facility shall use the sale price in computing the gain or loss on the disposition of assets.

2. Depreciation methods.

   a. The straight-line method of depreciation must be used. All accelerated methods of depreciation, including depreciation options made available for income tax purposes, such as those offered under the asset depreciation range system, may not be used. The method and procedure for computing depreciation must be applied on a basis consistent from year to year and detailed schedules of individual assets must be maintained. If the books of account reflect depreciation different than that submitted on the cost report, a reconciliation must be prepared by the facility.

   b. Except as provided in subdivision c, a provider shall apply the same methodology for determining the useful lives of all assets purchased after June 30, 1995. If a composite useful life methodology is chosen, the provider may not thereafter use the depreciation guidelines without the department's written approval. The provider shall use, at a minimum, the depreciation guidelines to determine the useful life of buildings and land improvements. The provider may use:

      (1) A composite useful life of ten years for all equipment except automobiles and five years for automobiles; or

(2) The useful lives for all equipment identified in the depreciation guidelines and a useful life of ten years for all equipment not identified in the depreciation guidelines.

c. A provider acquiring assets as an ongoing operation shall use as a basis for determining depreciation:

(1) The estimated remaining life, as determined by a qualified appraiser, for land improvements, buildings, and fixed equipment; and

(2) A composite remaining useful life for movable equipment, determined from the seller's records.

3. Acquisitions.

a. If a depreciable asset has, at the time of its acquisition, a historical cost of at least one thousand dollars, its cost must be capitalized and depreciated over the estimated useful life of the asset. Cost incurred during the construction of an asset, such as architectural, consulting and legal fees, and interest, must be capitalized as a part of the cost of the asset.

b. All repair or maintenance costs in excess of five thousand dollars per project on equipment or buildings must be capitalized and depreciated over the remaining useful life of the equipment or building repaired or maintained, or one-half of the original estimated useful life, whichever is greater.

4. Proper records must provide accountability for the fixed assets and provide adequate means by which depreciation can be computed and established as an allowable resident-related cost. Tagging of major equipment items is not mandatory, but alternate records must exist to satisfy audit verification of the existence and location of the assets.

5. Donated assets, excluding assets acquired as an ongoing operation, may be recorded and depreciated based on their fair market value. In the case where the provider's records do not contain the fair market value of the donated asset, as of the date of the donation, an appraisal may be made. The appraisal must be made by a recognized appraisal expert and may be accepted for depreciation purposes. The useful life of a donated asset must be determined in accordance with subsection 2. The facility may elect to forego depreciation on a donated asset thereby negating the need for a fair market value determination.

6. Basis for depreciation of assets acquired as an ongoing operation. Determination of the cost basis of a facility and its depreciable assets of an ongoing operation depends on whether or not the transaction is a bona fide sale. Should the issue arise, the purchaser has the burden of proving that the transaction was a bona fide sale. Purchases where the buyer and seller are related organizations are not bona fide.

a. The cost basis of a facility and its depreciable assets acquired in a bona fide sale after July 1, 1985, is limited to the lowest of:

(1) Purchase price paid by the purchaser;

(2) Fair market value at the time of the sale; or

(3) The seller's cost basis, increased by one-half of the increase in the consumer price index for all urban consumers, United States city average, all items, from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation recognized for cost reporting purposes.

b. In a sale not bona fide, the cost basis of an acquired facility and its depreciable assets is the seller's cost basis, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer.

c. The cost basis of a facility and its depreciable assets acquired by donation or for a nominal amount is the cost basis of the seller or donor, less accumulated depreciation recognized for cost reporting purposes as of the end of the report year immediately preceding the date of acquisition by the buyer or donee.

d. In order to calculate the increase over the seller's cost basis, an increase may be allowed, under subdivision a, only for assets with a historical cost basis established separately and distinctly in the seller's depreciable asset records.

e. An adjustment may not subsequently be allowed for any depreciable cost disallowed in rate periods prior to January 1, 2006.

f. For purposes of this subsection, "date of acquisition" means the date when ownership of the depreciable asset transfers from the transferor to the transferee such that both are bound by the transaction. For purposes of transfers of real property, the date of acquisition is the date of delivery of the instrument transferring ownership. For purposes of titled personal property, the date of acquisition is the date the transferee receives a title acceptable for registration. For purposes of all other capital assets, the date of acquisition is the date the transferee possesses both the asset and an instrument, describing the asset, which conveys the property to the transferee.

g. For rate years beginning on or after January 1, 2006, the limitations of paragraph 3 of subdivision a shall not apply to the valuation basis of assets acquired as an ongoing operation between July 1, 1985, and July 1, 2000.

7. A per bed cost limitation based on single and double occupancy must be used to determine the total allowable cost basis of buildings and fixed equipment for a facility with construction, renovation, or remodeling.

a. Effective July 1, ~~2013~~2015, the per bed limitation basis for double occupancy is ~~$122,846~~$156,783 and for a single occupancy is ~~$184,271~~$235,176.

b. The per bed limitation basis for single occupancy must be calculated using the limitation determined in subdivision a, multiplied by 1.5.

c. The double and single occupancy per bed limitation must be adjusted annually on July first, using the increase, if any, in the consumer price index for all urban consumers, United States city average, all items, for the twelve-month period ending the preceding May thirty-first.

d. The per bed limitation in effect at the time a construction, renovation, or remodeling project is put in service must be multiplied times the number of beds in double and single occupancy rooms to establish the maximum allowable cost basis of buildings and fixed equipment.

e. The cost basis of a facility's buildings and fixed equipment must be limited to the lower of the recorded cost of total facility buildings and fixed equipment or the per bed limitation.

f. The per bed limitation is not applicable to projects started or approved by the state health council before July 1, 1994.

g. For rate years beginning after December 31, 2007, the limitations of subdivision a do not apply to the valuation basis of assets acquired as a result of a natural disaster before December 31, 2006. The provisions of this subsection may not be applied retroactively to any rate year before January 1, 2008.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; July 2, 2003; September 7, 2007; July 1, 2009; January 1, 2014; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-10. Bad debts.

1. Bad debts for charges incurred on or after January 1, 1990, and fees paid for the collection of those bad debts, are allowable, provided all the requirements of this subsection are met.

   a. The bad debt must result from nonpayment of the payment rate or part of the payment rate.

   b. The facility shall document that reasonable collection efforts have been made, the debt was uncollectible, and there is no likelihood of future recovery. Reasonable collection efforts include pursuing all avenues of collection available to the facility, including liens and judgments. In instances where the bad debt is owed by a person determined to have made a disqualifying transfer or assignment of property for the purpose of securing eligibility for medical assistance benefits, the facility shall document that it has made all reasonable efforts to secure payment from the transferee, including the bringing of an action for a transfer in fraud of creditors.

   c. The collection fee may not exceed industry standards for collection agencies and the amount of the bad debt.

   d. The bad debt may not result from the facility's failure to comply with federal and state laws, state rules, and federal regulations.

   e. The bad debt may not result from nonpayment of a private room rate in excess of the established rate, charges for special services not included in the established rate, or charges for bed hold days not billable to the medical assistance program under subsections 3, 4, 5, and 6 of section 75-02-06-14.

   f. The facility shall have an aggressive policy of avoiding bad debt expense that limits potential bad debts. The facility shall document that the facility has taken action to limit bad debts for individuals who refuse to make payment.

2. Allowable bad debt expense may not exceed one hundred eighty days of resident care per rate year or an aggregate of three hundred sixty days of resident care for any one individual.

3. Finance charges on bad debts allowable under subsections 1 and 2 are allowable only if the finance charges have been offset as interest income.

History: Effective September 1, 1980; amended effective December 1, 1983; January 1, 1990; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2010; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12. Offsets to cost.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income in any form received by the facility must be offset up to the total of the appropriate actual allowable costs, with the ~~exception of an~~following exceptions:

   a. An established rate~~, income~~;

   b. Income from payments made under the Workforce Investment Act~~, bed~~;

   c. Bed reduction incentive payments~~, donations, the~~;

   d. Donations;

   e. The deferred portion of patronage dividends credited to the facility and not previously offset~~, charges~~;

   f. Charges for private rooms~~,~~ or special services~~, and noncovered~~;

   g. Noncovered bed hold days ~~must be offset up to the total of the appropriate actual allowable cost~~; or

   h. Sales tax revenue received from a political subdivision or local taxing authority for a facility located in a community with a population of less than twelve thousand five hundred people.

2. If actual costs are not identifiable, income must be offset up to the total of costs described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each cost category. Sources of income include:

   a. "Activities income". Income from the activities department and the gift shop must be offset to activity costs.

   b. "Dietary income". Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.

   c. "Drugs or supplies income". Amounts received from employees, doctors, or others not admitted as residents must be offset to nursing supplies. Medicare part B income for drugs and supplies must be offset to nursing supplies.

   d. "Insurance recoveries income". Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.

   e. "Interest or investment income". Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.

   f. "Laundry income". All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.

   g. "Private duty nurse income". Income received for the providing of a private duty nurse must be offset to nursing salaries.

   h. "Rentals of facility space income". Income received from outside sources for the use of facility space and equipment must be offset to property costs.

i. "~~Telegraph and telephone~~Telephone income". Income received from residents, guests, or employees must be offset to administration costs. Income from emergency answering services need not be offset.

j. "Therapy income". Except for income from medicare part A, income from therapy services, including medicare part B income, must be offset to therapy costs unless the provider has elected to make therapy costs nonallowable under subsection 40 of section 75-02-06-12.1.

k. "Vending income". Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.

l. "Bad debt recovery". Income for bad debts previously claimed must be offset to property costs in total in the year of recovery.

m. "Other cost-related income". Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, such as supplies or equipment, or the amount related to the default of a contractual agreement related to education expense assistance, must be offset, in total, to the cost category where the item was expensed or depreciated.

~~2.~~3. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.

~~3.~~4. When an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's costs for goods or services purchased from the vendor.

~~4.~~5. When the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to the costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

~~5.~~6. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

~~6.~~7. For purposes of this section, "medicare part B income" means the interim payment made by medicare during the report year plus any cost settlement payments made to the provider or due from the provider for previous periods which are made during the report year and which have not been reported to the department prior to June 30, 1997.

History: Effective September 1, 1980; amended effective December 1, 1983; October 1, 1984; September 1, 1987; June 1, 1988; January 1, 1990; January 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 2002; January 1, 2010; January 1, 2012; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02

Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-12.1. Nonallowable costs.

Costs not related to resident care are costs not appropriate or necessary and proper in developing and maintaining the operation of resident care facilities and activities. These costs are not allowed in computing the rates. Nonallowable costs include:

1. Political contributions;
2. Salaries or expenses of a lobbyist;
3. Advertising designed to encourage potential residents to select a particular facility;
4. Fines or penalties, including interest charges on the penalty, bank overdraft charges, and late payment charges;
5. Legal and related expenses for challenges to decisions made by governmental agencies except for successful challenges as provided for in section 75-02-06-02.5;
6. Costs incurred for activities directly related to influencing employees with respect to unionization;
7. Cost of memberships in sports, health, fraternal, or social clubs or organizations, such as elks, country clubs, knights of columbus;
8. Assessments made by or the portion of dues charged by associations or professional organizations for lobbying costs, contributions to political action committees or campaigns, or litigation, except for successful challenges to decisions made by governmental agencies (including all dues unless an allocation of dues to such costs is provided);
9. Community contributions, employer sponsorship of sports teams, and dues to civic and business organizations, i.e., lions, chamber of commerce, or kiwanis, in excess of one thousand five hundred dollars per cost reporting period;
10. Home office costs not otherwise allowable if incurred directly by the facility;
11. Stockholder servicing costs incurred primarily for the benefit of stockholders or other investors that include annual meetings, annual reports and newsletters, accounting and legal fees for consolidating statements for security exchange commission purposes, stock transfer agent fees, and stockholder and investment analysis;
12. Corporate costs not related to resident care, including reorganization costs; costs associated with acquisition of capital stock, except otherwise allowable interest and depreciation expenses associated with a transaction described in subsection 3 of section 75-02-06-07; and costs relating to the issuance and sale of capital stock or other securities;
13. The full cost of items or services such as telephone, radio, and television, including cable hookups or satellite dishes, located in resident accommodations, excluding common areas, furnished solely for the personal comfort of the residents;
14. Fundraising costs, including salaries, advertising, promotional, or publicity costs incurred for such a purpose;
15. The cost of any equipment, whether owned or leased, not exclusively used by the facility except to the extent that the facility demonstrates, to the satisfaction of the department, that any particular use of equipment was related to resident care;

16. Costs, including, by way of illustration and not by way of limitation, legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies, attributed to the negotiation or settlement of the sale or purchase of any capital assets, whether by sale or merger, when the cost of the asset has been previously reported and included in the rate paid to any hospital or facility;

17. Costs incurred by the provider's subcontractors, or by the lessor of property that the provider leases, that are an element in the subcontractor's or lessor's charge to the provider, if the costs would not have been allowable had the costs been incurred by a provider directly furnishing the subcontracted services, or owning the leased property except no facility shall have a particular item of cost disallowed under this subsection if that cost arises out of a transaction completed before July 18, 1984;

18. The cost, in excess of charges, of providing meals and lodging to facility personnel living on premises;

19. Depreciation expense for facility assets not related to resident care;

20. Nonnursing facility operations and associated administration costs;

21. Direct costs or any amount claimed to medicare for medicare utilization review costs;

22. All costs for services paid directly by the department to an outside provider, such as prescription drugs;

23. Travel costs involving the use of vehicles not exclusively used by the facility except to the extent:

    a. The facility supports vehicle travel costs with sufficient documentation to establish that the purpose of the travel is related to resident care;

    b. Resident-care related vehicle travel costs do not exceed a standard mileage rate established by the internal revenue service; and

    c. The facility documents all costs associated with a vehicle not exclusively used by the facility;

24. Travel costs other than vehicle-related costs unless supported, reasonable, and related to resident care;

25. Additional compensation paid to an employee, who is a member of the board of directors, for service on the board;

26. Fees paid to a member of a board of directors for meetings attended to the extent that the fees exceed the compensation paid, per day, to a member of the legislative council, pursuant to North Dakota Century Code section 54-35-10;

27. Travel costs associated with a board of directors meeting to the extent the meeting is held in a location where the organization has no facility;

28. The costs of deferred compensation and pension plans that discriminate in favor of certain employees, excluding the portion of the cost which relates to costs that benefit all eligible employees;

29. Employment benefits associated with salary costs not includable in a rate set under this chapter;

30. Premiums for top management personnel life insurance policies, except that the premiums must be allowed if the policy is included within a group policy provided for all employees, or if the policy is required as a condition of mortgage or loan and the mortgagee or lending institution is listed as the sole beneficiary;

31. Personal expenses of owners and employees, including vacations, personal travel, and entertainment;

32. Costs not adequately documented through written documentation, date of purchase, vendor name, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any allocation of costs between accounts or facilities;

33. The following taxes:

    a. Federal income and excess profit taxes, including any interest or penalties paid thereon;

    b. State or local income and excess profit taxes;

    c. Taxes in connection with financing, refinancing, or refunding operation, such as taxes on the issuance of bonds, property transfers, or issuance or transfer of stocks, which are generally either amortized over the life of the securities or depreciated over the life of the asset, but not recognized as tax expense;

    d. Taxes, including real estate and sales tax, for which exemptions are available to the provider;

    e. Taxes on property not used in the provision of covered services;

    f. Taxes, including sales taxes, levied against the residents and collected and remitted by the provider; and

    g. Self-employment (FICA) taxes applicable to persons including individual proprietors, partners, members of a joint venture;

34. The unvested portion of a facility's accrual for sick or annual leave;

35. The cost, including depreciation, of equipment or items purchased with funds received from a local or state agency, exclusive of any federal funds, unless identified as an offset to cost exception in subdivision h of subsection 1 of section 75-02-06-12;

36. Hair care, other than routine hair care, furnished by the facility;

37. The cost of education unless:

    a. The facility is claiming an amount for repayment of an employee's student loans related to educational expenses incurred by the employee prior to the current cost report year provided:

        (1) The education was provided by an accredited academic or technical educational facility;

        (2) The allowable portion of a student loan relates to education expenses for materials, books, or tuition and does not include any interest expense;

        (3) The education expenses were incurred as a result of the employee being enrolled in a course of study that prepared the employee for a position at the facility, and the employee is in that position; and

(4) The facility claims the amount of student loan repayment assistance ~~at a rate that does not exceed two dollars and twenty-five cents per hour of~~for work performed by the employee in the position for which the employee received education, provided the amount claimed per employee may not exceed ~~the lesser of the allowable student loan or three thousand seven hundred fifty dollars per year, or~~ an aggregate of fifteen thousand dollars, and in any event may not exceed the cost of the employee's education.

b. The facility is claiming education expense for an individual who is currently enrolled in an accredited academic or technical educational facility provided:

(1) The education expense is for materials, books, or tuition;

(2) The facility claims the education expense ~~annually~~ in an amount not to exceed the ~~lesser of the~~ individual's education expense incurred ~~during the cost report year or three thousand seven hundred fifty dollars~~;

(3) The aggregate amount of education expense claimed for an individual over multiple cost report periods does not exceed fifteen thousand dollars; and

(4) The facility has a contract with the individual which stipulates a minimum commitment to work for the facility of ~~one~~six thousand six hundred ~~sixty-four~~fifty-six hours of employment after completion of the individual's education program ~~for each year education expense assistance was provided~~, as well as a repayment plan if the individual does not fulfill the contract obligations. The number of hours of employment required may be prorated for an individual who receives less than fifteen thousand dollars in assistance.

38. Repealed effective January 1, 1999.

39. Increased lease costs of a facility, unless:

a. The lessor incurs increased costs related to the ownership of the facility or a resident-related asset;

b. The increased costs related to the ownership are charged to the lessee; and

c. The increased costs related to the ownership would be allowable had the costs been incurred directly by the lessee;

40. At the election of the provider, the direct and indirect costs of providing therapy services to nonnursing facility residents or medicare part B therapy services, including purchase of service fees and operating or property costs related to providing therapy services;

41. Costs associated with or paid for the acquisition of licensed nursing facility capacity;

42. Goodwill;

43. Lease costs in excess of the amount allocable to the leased space as reported on the medicare cost report by a lessor who provides services to recipients of benefits under title XVIII or title XIX of the Social Security Act; and

44. Salaries accrued at a facility's fiscal yearend but not paid within seventy-five days of the cost report yearend.

45. Supplemental payments not offset to costs.

46. Alcohol and tobacco products.

History: Effective January 1, 1990; amended effective January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; July 1, 1996; January 1, 1998; January 1, 1999; January 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-16. Rate determinations.

1. For each cost category, the actual rate is calculated using allowable historical operating costs and adjustment factors provided for in subsection 4 divided by standardized resident days for the direct care cost category and resident days for other direct care, indirect care, and property cost categories. The actual rate as calculated is compared to the limit rate for each cost category to determine the lesser of the actual rate or the limit rate. The lesser rate is given the rate weight of one. The rate weight of one for direct care is then multiplied times the weight for each classification in subsection 5 of section 75-02-06-17 to establish the direct care rate for that classification. The lesser of the actual rate or the limit rate for other direct care, indirect care, and property costs, and the adjustments provided for in subsection 2 and 3 are then added to the direct care rate for each classification to arrive at the established rate for a given classification.

2. a. For a facility with an actual rate below the limit rate for indirect care costs, an incentive amount equal to seventy percent times the difference between the actual rate, exclusive of the adjustment factor, and the limit rate in effect at the end of the year immediately preceding the rate year, up to a maximum of two dollars and sixty cents or the difference between the actual rate, inclusive of the adjustment factor and the limit rate for indirect care costs, whichever is less, must be included as part of the indirect care cost rate.

   b. A facility shall receive an operating margin of three percent based on the lesser of the actual direct care and other direct care rates, exclusive of the adjustment factor, or the limit rate in effect at the end of the year immediately preceding the rate year. The three percent operating margin must be added to the rate for the direct care and other direct care cost categories.

3. Limitations.

   a. The department shall accumulate and analyze statistics on costs incurred by facilities. Statistics may be used to establish reasonable ceiling limitations and incentives for efficiency and economy based on reasonable determination of standards of operations necessary for efficient delivery of needed services. Limitations and incentives may be established on the basis of cost of comparable facilities and services and may be applied as ceilings on the overall costs of providing services or on specific areas of operations. The department may implement ceilings at any time based upon information available.

   b. The department shall review, on an ongoing basis, aggregate payments to facilities to determine that payments do not exceed an amount that can reasonably be estimated would have been paid for those services under medicare payment principles. If aggregate payments to facilities exceed estimated payments under medicare, the department may make adjustments to rates to establish the upper limitations so that aggregate payments do not exceed an amount that can be estimated would have been paid under medicare payment principles.

   c. All facilities except those nongeriatric facilities for individuals with physical disabilities or units within a nursing facility providing geropsychiatric services described in North Dakota Century Code section 50-24.4-13 must be used to establish a limit rate for the direct care, other direct care, and indirect care cost categories. The base year is the

report year ended June 30, 2010. Base year costs may not be adjusted in any manner or for any reason not provided for in this subsection.

d. The limit rate for each of the cost categories must be established as follows:

(1) Historical costs for the report year ended June 30, 2010, as adjusted, must be used to establish rates for all facilities in the direct care, other direct care, and indirect care cost categories. The rates as established must be ranked from low to high for each cost category.

(2) For the rate year beginning January 1, 2013, the limit rate for each cost category is:

(a) For the direct care cost category, one hundred fifty-one dollars and nineteen cents;

(b) For the other direct care cost category, twenty-five dollars and forty-six cents; and

(c) For the indirect care cost category, sixty-five dollars and thirteen cents.

e. A facility with an actual rate that exceeds the limit rate for a cost category shall receive the limit rate.

f. The actual rate for indirect care costs and property costs must be the lesser of the rate established using:

(1) Actual census for the report year; or

(2) Ninety percent of licensed bed capacity available for occupancy as of June thirtieth of the report year:

(a) Multiplied times three hundred sixty-five; and

(b) Reduced by the number of affected beds, for each day any bed is not in service during the report year, due to a remodeling, renovation, or construction project.

g. The department may waive or reduce the application of subdivision f if the facility demonstrates that occupancy below ninety percent of licensed capacity results from the use of alternative home and community services by individuals who would otherwise be eligible for admission to the facility and:

(1) The facility has reduced licensed capacity; or

(2) The facility's governing board has approved a capacity decrease to occur no later than the end of the rate year which would be affected by subdivision f.

h. The department may waive the application of paragraph 2 of subdivision f for nongeriatric facilities for individuals with disabilities or geropsychiatric facilities or units if occupancy below ninety percent is due to lack of department-approved referrals or admissions.

4. An adjustment factor shall be used for purposes of adjusting historical costs for direct care, other direct care, and indirect care under subsection 1 and for purposes of adjusting the limit rates for direct care costs, other direct care costs, and indirect care costs under subsection 3, but may not be used to adjust property costs under either subsection 1 or 3.

5. Rate adjustments.

a. Desk audit rate.

(1) The cost report must be reviewed taking into consideration the prior year's adjustments. The facility must be notified by facsimile transmission or electronic mail of any adjustments based on the desk review. Within seven working days after notification, the facility may submit information to explain why the desk adjustment should not be made. The department shall review the information and make appropriate adjustments.

(2) The desk audit rate must be effective January first of each rate year unless the department specifically identifies an alternative effective date and must continue in effect until a final rate is established.

(3) Until a final rate is effective, pursuant to paragraph 3 of subdivision b, private-pay rates may not exceed the desk audit rate except as provided for in section 75-02-06-22 or subdivision c.

(4) The facility may request a reconsideration of the desk rate for purposes of establishing a pending decision rate. The request for reconsideration must be filed with the department's medical services division within thirty days of the date of the rate notification and must contain the information required in subsection 1 of section 75-02-06-26. No decision on the request for reconsideration of the desk rate may be made by the department unless, after the facility has been notified that the desk rate is the final rate, the facility requests, in writing within thirty days of the rate notification, the department to issue a decision on that request for reconsideration.

(5) The desk rate may be adjusted for special rates or one-time adjustments provided for in this section.

(6) The desk rate may be adjusted to reflect errors, adjustments, or omissions for the report year that result in a change of at least ten cents per day for the rate weight of one.

b. Final rate.

(1) The cost report may be field audited to establish a final rate. If no field audit is performed, the desk audit rate must become the final rate upon notification from the department. The final rate is effective January first of each rate year unless the department specifically identifies an alternative effective date.

(2) The final rate must include any adjustments for nonallowable costs, errors, or omissions that result in a change from the desk audit rate of at least ten cents per day for the rate weight of one that are found during a field audit or are reported by the facility within twelve months of the rate yearend.

(3) The private-pay rate must be adjusted to the final rate no later than the first day of the second month following receipt of notification by the department of the final rate and is not retroactive except as provided for in subdivision c.

(4) The final rate may be revised at any time for special rates or one-time adjustments provided for in this section.

(5) If adjustments, errors, or omissions are found after a final rate has been established, the following procedures must be used:

(a) Adjustments, errors, or omissions found within twelve months of establishment of the final rate, not including subsequent revisions, resulting in a change of at

least ten cents per day for the rate weight of one must result in a change to the final rate. The change must be applied retroactively as provided for in this section.

(b) Adjustments, errors, or omissions found later than twelve months after the establishment of the final rate, not including subsequent revisions, that would have resulted in a change of at least ten cents per day for the rate weight of one had they been included, must be included as an adjustment in the report year that the adjustment, error, or omission was found.

(c) Adjustments resulting from an audit of home office costs, that result in a change of at least ten cents per day for the rate weight of one, must be included as an adjustment in the report year in which the costs were incurred.

(d) The two report years immediately preceding the report year to which the adjustments, errors, or omissions apply may also be reviewed for similar adjustments, errors, or omissions.

c. Pending decision rates for private-pay residents.

(1) If a facility has made a request for reconsideration, taken an administrative appeal, or taken a judicial appeal from a decision on an administrative appeal, and has provided information sufficient to allow the department to accurately calculate, on a per day basis, the effect of each of the disputed issues on the facility's rate, the department shall determine and issue a pending decision rate within thirty days of receipt of the request for reconsideration, administrative appeal, or judicial appeal. If the information furnished is insufficient to determine a pending decision rate, the department, within thirty days of receipt of the request for reconsideration, shall inform the facility of the insufficiency and may identify information that would correct the insufficiency.

(2) The department shall add the pending decision rate to the rate that would otherwise be set under this chapter, and, notwithstanding North Dakota Century Code section 50-24.4-19, the total must be the rate chargeable to private-pay residents until a final decision on the request for reconsideration or appeal is made and is no longer subject to further appeal. The pending decision rate is subject to any rate limitation that may apply.

(3) The facility shall establish and maintain records that reflect the amount of any pending decision rate paid by each private-pay resident from the date the facility charges a private-pay resident the pending decision rate.

(4) If the pending decision rate paid by a private-pay resident exceeds the final decision rate, the facility shall refund the difference, plus interest accrued at the legal rate from the date of notification of the pending decision rate, within sixty days after the final decision is no longer subject to appeal. If a facility fails to provide a timely refund to a living resident or former resident, the facility shall pay interest at three times the legal rate for the period after the refund is due. If a former resident is deceased, the facility shall pay the refund to a person lawfully administering the estate of the deceased former resident or lawfully acting as successor to the deceased former resident. If no person is lawfully administering the estate or lawfully acting as a successor, the facility may make any disposition of the refund permitted by law. Interest paid under this subsection is not an allowable cost.

d. The final rate as established must be retroactive to the effective date of the desk rate, except with respect to rates paid by private-pay residents. A rate paid by a private-pay

resident must be retroactively adjusted and the difference refunded to the resident, if the rate paid by the private-pay resident exceeds the final rate by at least twenty-five cents per day, except that a pending decision rate is not subject to adjustment or refund until a decision on the disputed amount is made.

6. Rate payments.

   a. The rate as established must be considered as payment for all accommodations and includes all items designated as routinely provided. No payments may be solicited or received from the resident or any other person to supplement the rate as established.

   b. The rate as established must be paid by the department only if the rate charged to private-pay residents for semiprivate accommodations equals the established rate. If at any time the facility discounts rates for private-pay residents, the discounted rate must be the maximum chargeable to the department for the same bed type, i.e., hospital or leave days.

   c. If the established rate exceeds the rate charged to a private-pay resident, on any given date, the facility shall immediately report that fact to the department and charge the department at the lower rate. If payments were received at the higher rate, the facility shall, within thirty days, refund the overpayment. The refund must be the difference between the established rate and the rate charged the private-pay resident times the number of medical assistance resident days paid during the period in which the established rate exceeded the rate charged to private-pay residents, plus interest calculated at two percent over the Bank of North Dakota prime rate on any amount not repaid within thirty days. The refund provision also applies to all duplicate billings involving the department. Interest charges on these refunds are not allowable costs.

   d. Peer groupings, limitations, or adjustments based upon data received from or relating to more than one facility are effective for a rate period. Any change in the data used to establish peer groupings, limitations, or adjustments may not be used to change such peer groupings, limitations, or adjustments during the rate period, except with respect to the specific facility or facilities to which the data change relates.

   e. The established rate is paid based on a prospective ratesetting procedure. No retroactive settlements for actual costs incurred during the rate year that exceed the established rate may be made unless specifically provided for in this section.

7. Partial year.

   a. Rates for a facility changing ownership during the rate period are set under this subdivision.

      (1) The rates established for direct care, other direct care, indirect care, operating margins, and incentives for the previous owner must be retained through the end of the rate period and the rates for the next rate period following the change in ownership must be established:

         (a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; ~~and~~

         (b) For a facility with less than four months of operation under the new ownership during the report year, by indexing the rates established for the previous owner forward using the adjustment factor in subsection 4; or ~~if~~

         (c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows

audit of a cost report, by establishing a rate based on the previous owner's cost report.

(2) Unless a facility elects to have a property rate established under paragraph 3, the rate established for property for the previous owner must be retained through the end of the rate period and the property rate for the next rate period following the change in ownership must be established:

(a) For a facility with four or more months of operation under the new ownership during the report year, through use of a cost report for the period; ~~and~~

(b) For a facility with less than four months of operation under the new ownership during the report year, by using the rate established for the previous owner for the previous rate year; or ~~if~~

(c) If the change of ownership occurred after the report year end, but prior to the beginning of the next rate year, and the previous owner submits and allows audit of a cost report, by establishing a rate based on the previous owner's cost report.

(3) A facility may choose to have a property rate established, during the remainder of the rate year and the subsequent rate year, based on interest and principal payments on the allowable portion of debt to be expended during the rate years. The property rate must go into effect on the first of the month following notification by the department. The difference between a property rate established based on the facility's election and a property rate established based on paragraph 2, multiplied by actual census for the period, must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using this paragraph, may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

b. For a new facility, the department shall establish an interim rate equal to the limit rates for direct care, other direct care, and indirect care in effect for the rate year in which the facility begins operation, plus the property rate. The property rate must be calculated using projected property costs and projected census. The interim rate must be in effect for no less than ten months and no more than eighteen months. Costs for the period in which the interim rate is effective must be used to establish a final rate. If the final rates for direct care, other direct care, and indirect care costs are less than the interim rates for those costs, a retroactive adjustment as provided for in subsection 5 must be made. A retroactive adjustment to the property rate must be made to adjust projected property costs to actual property costs. For the rate period following submission of any partial year cost report by a facility, census used to establish rates for property and indirect care costs must be the greater of actual census, projected census, or census imputed at ninety-five percent of licensed beds.

(1) If the effective date of the interim rate is on or after March first and on or before June thirtieth, the interim rate must be effective for the remainder of that rate year and must continue through June thirtieth of the subsequent rate year. The facility shall file by March first an interim cost report for the period ending December thirty-first of the year in which the facility first provides services. The interim cost report is used to establish the actual rate effective July first of the subsequent rate year. The partial year rate established based on the interim cost report must include applicable incentives, margins, phase-ins, and adjustment factors and may not be subject to any cost settle-up. The cost reports for the report year ending June thirtieth of the current and subsequent rate years must be used to determine the final rate for the periods that the interim rate was in effect.

(2) If the effective date of the interim rate is on or after July first and on or before December thirty-first, the interim rate must remain in effect through the end of the subsequent rate year. The facility shall file a cost report for the partial report year ending June thirtieth of the subsequent rate year. This cost report must be used to establish the rate for the next subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the subsequent rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the periods the interim rate was in effect.

(3) If the effective date of the interim rate is on or after January first and on or before February twenty-ninth, the interim rate must remain in effect through the end of the rate year in which the interim rate becomes effective. The facility shall file a cost report for the period ending June thirtieth of the current rate year. This cost report must be used to establish the rate for the subsequent rate year. The facility shall file by March first an interim cost report for the period July first through December thirty-first of the current rate year. The interim cost report is used, along with the report year cost report, to determine the final rate for the period that the interim rate was in effect.

(4) The final rate for direct care, other direct care, and indirect care costs established under this subdivision must be limited to the lesser of the limit rate for the current rate year or the actual rate.

c. For a facility with renovations or replacements in excess of one hundred thousand dollars, and without a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, plus a property rate calculated based on projected property costs and imputed census, must be applied to all licensed beds. The projected property rate must be effective on the first day of the month beginning after the date the project is completed and placed into service or the first day of the month beginning after the date the request for a projected property rate is received by the department, whichever is later. The property rate for the subsequent rate year must be based on projected property costs and imputed census, rather than on property costs actually incurred in the report year. Imputed census is based on the greater of actual census of all licensed beds existing before the renovation or ninety percent of the available licensed beds existing prior to renovation, plus ninety-five percent of the increase in licensed bed capacity and unavailable licensed beds existing prior to the renovation. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

d. For a facility with a significant capacity increase, the rate established for direct care, other direct care, indirect care, operating margins, and incentive based on the last report year, must be applied to all licensed beds. An interim property rate must be established based on projected property costs and projected census. The interim property rate must be effective from the first day of the month beginning after the date in which the increase in licensed beds is issued by the state department of health or the first day of the month beginning after the date when the request for a projected property rate is made to the department, whichever is later, through the end of the rate year. The facility shall file by March first an interim property cost report following the rate year. The interim cost report is used to determine the final rate for property and to establish the amount for a retroactive cost settle-up. The final rate for property is limited to the lesser of the interim property rate or a rate based upon actual property costs. The property rate for the subsequent rate year must be based on projected property costs and census imputed as ninety-five percent of licensed beds, rather than on property costs actually incurred

during the report year; and may not be subject to retroactive cost settle-up. Subsequent property rates must be adjusted using this methodology, except imputed census must be actual census if actual census exceeds ninety-five percent of total licensed capacity, until such time as twelve months of property costs are reflected in the report year.

e. For a facility with no significant capacity increase and no renovations or replacements in excess of one hundred thousand dollars, the established rate based on the report year must be applied throughout the rate year for all licensed beds.

f. For a facility terminating its participation in the medical assistance program, whether voluntarily or involuntarily, the department may authorize the facility to receive continued payment until medical assistance residents can be relocated to facilities participating in the medical assistance program.

g. At such time as twelve months of property costs are reflected in the report year, the difference between a projected property rate established using subdivision c or d and the property rate that would otherwise be established based on historical costs must be determined. The property rate paid in each of the twelve years, beginning with the first rate year following the use of a property rate established using subdivision c or d may not exceed the property rate otherwise allowable, reduced by one-twelfth of that difference.

8. One-time adjustments.

a. Adjustments to meet certification standards.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet certification standards. The survey conducted by the state department of health must clearly require that the facility take steps to correct deficiencies dealing with resident care. The plan of correction must identify the salary and other costs that must be increased to correct the deficiencies cited in the survey process.

(2) The facility shall submit a written request to the medical services division within thirty days of submitting the plan of correction to the state department of health. The request must:

(a) Include a statement that costs or staff numbers have not been reduced for the report year immediately preceding the state department of health's certification survey;

(b) Identify the number of new staff or additional staff hours and the associated costs required to meet the certification standards; and

(c) Provide a detailed list of any other costs necessary to meet survey standards.

(3) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted to an amount not to exceed the limit rate.

(4) Any additional funds provided must be used in accordance with the facility's written request to the department and are subject to audit. If the department determines the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

b. Adjustments for unforeseeable expenses.

(1) The department may provide for an increase in the established rate for additional costs incurred to meet major unforeseeable expenses. The expenses must be resident related and must be beyond the control of those responsible for the management of the facility.

(2) Within sixty days after first incurring the unforeseeable expense, the facility shall submit a written request to the medical services division containing the following information:

(a) An explanation as to why the facility believes the expense was unforeseeable;

(b) An explanation as to why the facility believes the expense was beyond the managerial control of the facility; and

(c) A detailed breakdown of the unforeseeable expenses by expense line item.

(3) The department shall base its decision on whether the request clearly demonstrates that the economic or other factors that caused the expense were unexpected and arose because of conditions that could not have been anticipated by management based on its background and knowledge of nursing care industry and business trends.

(4) The department shall review the submitted information and may request additional documentation or conduct onsite visits. If an increase in costs is approved, the established rate must be adjusted upward not to exceed the limit rate.

(5) Any additional funds provided must be used to meet the unforeseeable expenses outlined in the facility's request to the department and are subject to audit. If the department determines that the funds were not used for the intended purpose, an adjustment must be made in accordance with subsection 5.

c. Adjustment to historical operating costs.

(1) A facility may receive a one-time adjustment to historical operating costs when the facility has been found to be significantly below care-related minimum standards described in subparagraph a of paragraph 2 and when it has been determined the facility cannot meet the minimum standards through reallocation of costs and efficiency incentives.

(2) The following conditions must be met before a facility can receive the adjustment:

(a) The facility shall document, based on nursing hours and standardized resident days, the facility cannot provide a minimum of one and two-tenths nursing hours per standardized resident day;

(b) The facility shall document all available resources, including efficiency incentives, if used to increase nursing hours, are not sufficient to meet the minimum standards; and

(c) The facility shall submit a written plan describing how the facility will meet the minimum standard if the adjustment is received, including the number and type of staff to be added to the current staff and the projected cost for salary and fringe benefits for the additional staff.

(3) The adjustment must be calculated based on the costs necessary to increase nursing hours to the minimum standards less any operating margins and incentives included when calculating the established rate. The net increase must be divided by

standardized resident days and the amount calculated must be added to the rate. This rate is subject to any rate limitations that may apply.

(4) If the facility fails to implement the plan to increase nursing hours to one and two-tenths hours per standardized resident day, the amount included as the adjustment must be adjusted in accordance with the methodologies set forth in subsection 5.

(5) If the cost of implementing the plan exceeds the amount included as the adjustment, no retroactive settlement may be made.

d. Adjustments for disaster recovery costs when evacuation of residents occurs.

(1) A facility may incur certain costs when recovering from a disaster such as a flood, tornado, or fire. If evacuation of residents was necessary because of the disaster, actual recovery costs during the evacuation period, net of insurance recoveries, may be considered as deferred charges and allocated over a number of periods that benefit from the costs.

(2) When a facility has evacuated residents and capitalizes recovery costs as a deferred charge, the recovery costs must be recognized as allowable costs amortized over sixty consecutive months beginning with the sixth month after the first resident is readmitted to the facility.

(3) Recovery costs must be identified as startup costs and included as passthrough costs for report purposes. Recovery costs are not subject to any limitations except as provided in paragraph 4.

(4) If a facility evacuates residents, the ninety percent occupancy limitation may not be applied during the recovery period or for the first six months following the month the facility readmits the first resident.

(5) Insurance recoveries relating to the disaster recovery period must be reported as a reduction of recovery costs. Insurance recoveries received after the first month of the sixty-month amortization period must be included as a reduction of deferred charges not yet amortized, except that the reduction for insurance recoveries may occur only at the beginning of a rate year.

9. Under no circumstances, including an appeal or judicial decision to the effect a rate was erroneously established, may a rate adjustment be made to any rate established under this chapter, unless the cumulative impact of all adjustments not already included in the established rate equals or exceeds ten cents per day for the rate weight of one.

History: Effective September 1, 1980; amended effective July 1, 1981; December 1, 1983; July 1, 1984; September 1, 1987; January 1, 1990; April 1, 1991; January 1, 1992; November 1, 1992; November 22, 1993; January 1, 1996; January 1, 1998; January 1, 1999; January 1, 2000; January 1, 2002; July 2, 2003; December 1, 2005; January 1, 2010; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-06-26. Reconsiderations ~~and appeals~~.

1. ~~**Reconsiderations.**~~

~~a.~~ Any requests for reconsideration of the final rate must be filed with the department's medical services division within thirty days of the date of the rate notification.

~~b.~~2. A request for reconsideration must include:

~~(1)~~a. A statement of each disputed item and the reason or basis for the dispute;

~~(2)~~b. The dollar amount of each adjustment that is disputed; and

~~(3)~~c. The authority in statute or rule upon which the facility is relying for each disputed item.

~~c.~~3. The department may request additional documentation or information relating to a disputed item. If additional documentation is not provided within fourteen days of the department's request, the department shall make its determination based on the information and documentation available as of the fourteenth day following the date the department requested additional documentation.

~~d.~~4. The department's medical services division shall make a determination regarding the reconsideration within forty-five days of receiving the reconsideration filing and any requested documentation.

~~2. **Appeals.** A provider dissatisfied with the final rate established may appeal upon completion of the reconsideration process as provided for in subsection 1. An appeal may be perfected by mailing or delivering, on or before five p.m. on the thirty-first day after the date of mailing of the determination of the medical services division made with respect to a request for reconsideration, the information described in subdivisions a through e to the department, at the address the department designates. An appeal under this section is perfected only if accompanied by written documents including:~~

~~a. A copy of the letter received from the medical services division advising of that division's decision on the request for reconsideration;~~

~~b. A statement of each disputed item and the reason or basis for the dispute;~~

~~c. A computation and the dollar amount that reflects the appealing party's claim as to the correct computation and dollar amount for each disputed item;~~

~~d. The authority in statute or rule upon which the appealing party relies for each disputed item; and~~

~~e. The name, address, and telephone number of the person to whom all notices regarding the appeal may be sent.~~

History: Effective January 1, 1996; amended effective January 1, 1998; July 1, 2016.
General Authority: NDCC 50-24.1-04, 50-24.4-02
Law Implemented: NDCC 50-24.4; 42 USC 1396a(a)(13)

75-02-07.1-11. Offsets to costs.

1. Several items of income must be considered as offsets against various costs as recorded in the books of the facility. Income received by the facility in any form must be offset up to the total of the appropriate allowable costs, with the ~~exception of the~~following exceptions:

   a. The established rate~~, income~~;

   b. Income from payments made under the Job Training Partnership Act~~, and income~~;

   c. Income from charges for private rooms~~,~~ or special services~~, or~~;

   d. Noncovered bed hold~~, must be offset up to the total of the appropriate actual allowable costs~~ days; or

   e. The deferred portion of patronage dividends credited to the facility and not previously offset.

2. If actual costs are not identifiable, income must be offset up to the total of costs as described in this section. If costs relating to income are reported in more than one cost category, the income must be offset in the ratio of the costs in each of the cost categories. Sources of income and the related offset include:

   a. Activities income. Income from the activities department and the gift shop must be offset to activity costs.

   b. Bad debt recovery. Income for bad debts previously claimed must be offset to administration costs in total in the year of recovery.

   c. Dietary income. Amounts received from or on behalf of employees, guests, or other nonresidents for lunches, meals, or snacks must be offset to dietary and food costs.

   d. Drugs or supplies income. Amounts received from the sale of resident care supplies to employees, doctors, or others not admitted as residents must be offset to resident care supplies.

   e. Insurance recoveries income. Any amount received from insurance for a loss incurred must be offset against the appropriate cost category, regardless of when or if the cost is incurred, if the facility did not adjust the basis for depreciable assets.

   f. Interest or investment income. Interest received on investments, except amounts earned on funded depreciation or from earnings on gifts where the identity remains intact, must be offset to interest expense.

   g. Laundry income. All amounts received for laundry services rendered to or on behalf of employees, doctors, or others must be offset to laundry costs.

   h. Other cost-related income. Miscellaneous income, including amounts generated through the sale of a previously expensed or depreciated item, e.g., supplies or equipment, must be offset, in total, to the cost category where the item was expensed or depreciated.

   i. Rentals of facility space income. Revenues received from outside sources for the use of facility space and equipment must be offset to property costs.

j. Telephone income. Revenues received from residents, guests, or employees for use of a telephone must be offset to administration costs. Income from emergency answering services need not be offset.

k. Therapy income. Income from all therapy services must be offset to ~~resident~~licensed health care professional costs.

l. Vending income. Income from the sale of beverages, candy, or other items must be offset to the cost of the vending items or, if the cost is not identified, all vending income must be offset to the cost category where vending costs are recorded.

~~2.~~3. Purchase discounts, allowances, refunds, and rebates are reductions of the cost of whatever was purchased.

~~3.~~4. Payments to a provider by its vendor must ordinarily be treated as purchase discounts, allowances, refunds, or rebates, even though these payments may be treated as "contributions" or "unrestricted grants" by the provider and the vendor. Payments that represent a true donation or grant need not be treated as purchase discounts, allowances, refunds, or rebates. Examples of payments that represent a true donation or grant include contributions made by a vendor in response to building or other fundraising campaigns in which communitywide contributions are solicited or when the volume or value of purchases is so nominal that no relationship to the contribution can be inferred. The provider shall provide verification, satisfactory to the department, to support a claim that a payment represents a true donation.

~~4.~~5. Where an owner, agent, or employee of a provider directly receives from a vendor monetary payments or goods or services for the owner's, agent's, or employee's own personal use as a result of the provider's purchases from the vendor, the value of the payments, goods, or services constitutes a type of refund or rebate and must be applied as a reduction of the provider's cost for goods or services purchased from the vendor.

~~5.~~6. Where the purchasing function for a provider is performed by a central unit or organization, all discounts, allowances, refunds, and rebates must be credited to costs of the provider and may not be treated as income by the central unit or organization or used to reduce the administrative costs of the central unit or organization.

History: Effective July 1, 1996; amended effective July 1, 1998; July 1, 2016.
General Authority: NDCC 50-06-16, 50-24.5-02(3)
Law Implemented: NDCC 50-24.5-02(3)

ARTICLE 75-09.1
SUBSTANCE ABUSE TREATMENT PROGRAMS

CHAPTER 75-09.1-11
SUBSTANCE USE DISORDER TREATMENT VOUCHER SYSTEM

75-09.1-11-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "ASAM criteria" means the current edition of the criteria of the American society of addiction medicine.

2. "Certified recovery specialist" means a person who has been certified by a recognized training program to provide recovery support services to individuals who have a substance use disorder.

3. "Comprehensive biopsychosocial clinical assessment" means an assessment that integrates information regarding the biological, psychological, and social factors of an individual's life in determining the nature of the individual's substance use disorder and criteria for treatment.

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

5. "Individual" means an individual who meets the identified eligibility criteria for services under the substance use disorder treatment voucher system.

6. "Outcomes measures" means the events or conditions that indicate the effectiveness of the substance use disorder treatment services.

7. "Process measures" means the steps and actions taken to implement the substance use disorder treatment services.

8. "Program" means a human being, partnership, association, corporation, or limited liability company that establishes, conducts, or maintains a substance abuse treatment program license in compliance with chapter 75-09.1-01 for the care of individuals with a substance use disorder. "Program" does not include a DUI seminar, which is governed by chapter 75-09.1-09 or a substance abuse treatment program operated by a state agency.

9. "Voucher" means funding issued by the department to a private licensed substance abuse treatment program for the purpose of providing eligible individuals substance use disorder treatment and recovery services.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-02. Application for program participation in the substance use disorder treatment voucher system.

The department shall approve or deny a program's application within twenty working days of receipt of a complete application. The department may declare an application withdrawn if an applicant fails to submit all required documentation within sixty days of the department's notification to the applicant that the application is incomplete. A complete application includes:

1. A signed application in the form and manner prescribed by the department;

2. A signed agreement pursuant to section 75-09.1-11-05; and

3. Receipt of the program's policies:

   a. Ensuring compliance with chapters 75-09.1-01 and 75-09.1-11;

   b. Ensuring that a screening is completed to determine an individual's need for further assessment of a substance use disorder;

   c. Ensuring that a screening is completed to determine financial eligibility consistent with the individual eligibility criteria in subsection 6 of section 75-09.1-11-07;

   d. Defining specific ASAM level of care services provided through the substance use disorder treatment voucher system;

   e. Ensuring that only appropriately licensed or certified staff are providing the specific level of care service that is being reimbursed through the voucher system;

f. Identifying services based on best practice, including individualized, trauma-informed, recovery-oriented, and person-centered programming for reimbursement through the substance use disorder voucher system;

g. Defining specific procedures to ensure reporting of process measures and outcomes measures consistent with department requirements;

h. Defining and developing specific procedures to ensure timely and accurate billing for services qualifying for reimbursement through the voucher system;

i. Defining procedures allowing the department access to records;

j. Ensuring participation in training consistent with department requirements; and

k. Ensuring that an individual completes and the program submits a voucher application in the form and manner prescribed by the department.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-03. Program denials and revocations.

1. A program's application to participate in the voucher system may be denied if:

a. The program is not currently licensed under chapter 75-09.1-01;

b. The program is currently operating under a restricted license pursuant to subsection 2 of section 75-09.1-01-03; or

c. The program's policies submitted to the department in accordance with subsection 3 of section 75-09.1-11-02 fail to ensure compliance with chapters 75-09.1-01 and 75-09.1-11.

2. A program's participation in the voucher system may be revoked for failure to:

a. Comply with the terms and conditions of the signed agreement between the program and the department;

b. Comply with licensing standards set forth in chapter 75-09.1-01;

c. Comply with or enforce the program's policies submitted as required by subsection 3 of section 75-09.1-11-02;

d. Properly document and submit a request for a substance use disorder treatment voucher as required by section 75-09.1-11-08;

e. Provide a request for services covered by section 75-09.1-11-06; or

f. Comply with section 75-09.1-11-13.

3. Payment on a voucher may be denied if:

a. A revocation of the program's participation in the voucher system has occurred prior to the date the service identified on the voucher was provided;

b. The program fails to comply with the terms and conditions of the signed agreement between the program and the department;

c. The program fails to comply with licensing standards set forth in chapter 75-09.1-01;

d. The program fails to comply with or enforce the program's policies submitted as required by subsection 3 of section 75-09.1-11-02;

e. The program does not have a valid substance abuse treatment program license on the date the service identified on the voucher was provided;

f. The program fails to properly document and submit a request for substance use disorder treatment voucher in accordance with section 75-09.1-11-08;

g. The program submits a voucher for a service that is not identified as a service provided under section 75-09.1-11-06;

h. The program submits a voucher for a service that the program is not approved to provide; or

i. The program fails to comply with section 75-09.1-11-13.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-04. Program review.

1. A program whose application to participate in or payment through the substance use disorder treatment voucher system is denied or revoked may request a review of the decision by filing, within thirty days of the date of the department's notice of denial or revocation, a written notice with the department which includes a statement of each disputed item and the reason for the dispute.

2. A provider may not request review under this section if the denial or revocation is of a result of an exhaustion of appropriated funds for the substance use disorder treatment voucher system, provider no longer being licensed under article 75-09.1, submission of an invalid voucher, or the provider's application being considered withdrawn.

3. Within thirty days after requesting a review, a provider shall provide to the department all documents, written statements, exhibits, and other written information that supports the request for review.

4. The department shall assign a provider's request for review to someone other than an individual who was involved in the denial or revocation. A provider who has requested review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.

5. The department shall make and issue its final decision within seventy-five days of receipt of the notice of request for review. The department's final decision must conform to the requirements of North Dakota Century Code section 28-32-39. A provider may appeal the final decision of the department to the district court in the manner provided in North Dakota Century Code section 28-32-42, and the district court shall review the department's final decision in the manner provided in North Dakota Century Code section 28-32-46. The judgment of the district court in an appeal from a request for review may be reviewed in the supreme court on appeal by any party in the same manner as provided in North Dakota Century Code section 28-32-49.

6. Upon receipt of notice that the provider has appealed its final decision to the district court, the department shall make a record of all documents, written statements, exhibits, and other

written information submitted by the provider, affiliate, or the department in connection with the request for review and the department's final decision on review, which constitutes the entire record. Within thirty days after an appeal has been taken to district court as provided in this section, the department shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record, and that record must be treated as the record on appeal for purposes of North Dakota Century Code section 28-32-44.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-05. Agreement required.

The department shall enter an agreement with an eligible program in a form and manner prescribed by the department.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-06. Services qualifying for and reimbursed by the substance use disorder treatment voucher system.

The department shall issue a voucher, if approved under section 75-09.1-11-08, as intent of payment for a specific qualifying service for each of the following services:

1. Screening. A program may submit a request for payment for screening to determine the need for further assessment of a substance use disorder.

2. Assessment. A program may submit a request for payment for a comprehensive biopsychosocial clinical assessment that complies with section 75-09.1-01-14 when an appropriate screening process has been completed, documented, and supports the need. The program shall inform the individual of the option of a voucher. If the assessment does not result in a recommendation for services consistent with ASAM criteria no further vouchers will be issued.

3. Treatment. A program may submit a request for payment for treatment when there is a biopsychosocial clinical assessment that complies with assessment requirements in article 75-09.1, the assessment has been completed within the last six months, and the department has approved the recommendations. The program shall inform the individual of the option of a voucher.

4. Recovery support services. A program may submit a request for payment for recovery support services when the need for those services is documented in a comprehensive biopsychosocial clinical assessment or an updated treatment plan. A voucher for recovery support services may be issued as payment for recovery support services while the individual is awaiting clinical treatment, during clinical treatment, or during extended treatment.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-07. Individual eligibility for a substance use disorder treatment voucher.

1. The individual completes a voucher application in the form and manner prescribed by the department;

2. The individual resides in North Dakota;

3. The individual is eighteen years of age or older;

4. A licensed professional operating within their scope of practice has determined the individual is in need of one or more of the services identified in section 75-09.1-11-06;

5. The individual grants the department access to treatment and payment records consistent with the confidentiality requirements found under title 42, Code of Federal Regulations, part 2 and title 45, Code of Federal Regulations, part 164;

6. The individual does not have resources to cover any care for treatment and the:

   a. Individual's third-party payment resources will not cover all costs for treatment;

   b. Individual has a pending application for medical assistance which presents a barrier to timely access to treatment; or

   c. Individual does not qualify for medical assistance and has no alternative third-party payment resources.

7. The individual has an annual income no greater than two hundred percent of federal poverty guidelines.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-08. Approval of an individual's application and voucher.

1. A program shall submit the individual's voucher application and proper documentation to the department requesting a substance use disorder treatment voucher for screening, assessment, treatment, or recovery support services. A licensed professional operating within their scope of practice or a certified recovery specialist acting consistent with training and certification who is employed by a program approved to participate in the substance use disorder treatment voucher system can provide services under the voucher system. Documentation submitted by the program must be in the form and manner prescribed by the department and must be in compliance with established requirements for each voucher request.

2. An approved substance use disorder voucher must be activated for ninety days. If the service is not initiated within ninety days the voucher will no longer be valid and a new voucher will need to be requested. Vouchers will allow payment at the rate established by the department for the specific ASAM service indicated. A new voucher will have to be activated for each service identified under section 75-09.1-11-06.

3. Within five working days of receiving a request for a voucher, the department shall notify the program submitting the request and the individual completing the application of the application approval. The department shall notify the individual of the programs that provide the specific service covered by the voucher.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-09. Denial of substance use disorder treatment voucher.

1. The department shall notify the program submitting the voucher application and the individual requesting the voucher within five working days of receipt of a request for voucher that the voucher application is denied. The department shall notify the program that submitted the voucher within five working days of a voucher revocation. The department shall deny the individual's voucher application if:

   a. The individual is not eligible pursuant to section 75-09.1-11-07; or

   b. The program submits a voucher application for a service that is not identified as a service provided under section 75-09.1-11-06.

2. The department shall inform the individual requesting the voucher of the reason for the denial and that the individual may appeal the denial.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-10. Appeals of denials of eligibility for substance use disorder treatment voucher.

An individual who has requested a substance use disorder treatment voucher may appeal a decision to deny the voucher. An appeal under this section must be made in writing on a form developed and provided by the department within thirty days of the date of the notice issued under section 75-09.1-11-09. An individual shall submit the written request for an appeal and hearing under North Dakota Century Code chapter 28-32 to the appeals supervisor for the department. An individual may not appeal a denial resulting from an exhaustion of appropriated funds for the substance use disorder treatment voucher system or an invalid voucher.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-11. Exceptions to eligibility rules considered.

An individual or a program on behalf of an individual may request an exception to the eligibility criteria. Exceptions will be considered with regard to an individual meeting the eligibility criteria. Exception requests will be reviewed on a case-by-case basis. The department may deny an exception and may revoke an exception granted under this subsection. The decision to deny or revoke an exception is not an appealable decision.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-12. Process measures and outcomes measures reports required.

Programs receiving payments for services through the voucher system shall collect and report process measures and outcomes measures data to the department as determined by the department.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-13. Reimbursement process.

Voucher system payments will be issued for only those services meeting the ASAM criteria for levels of care and for the specific, unbundled services provided using a standardized rate schedule. The program shall submit requests for voucher system payments to the department and the department shall issue payment after the program submits the reports required in section 75-09.1-11-12.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

75-09.1-11-14. Training and technical assistance.

The department shall provide training and technical assistance to all programs that apply to participate in the substance use disorder voucher system. All approved programs shall participate in the following training:

1. The implementation of the substance use disorder voucher system;
2. Determining individual eligibility;
3. The process and documentation required to submit requests for substance use disorder voucher approval;
4. The process and documentation required to submit billing for services that may be paid through the substance use disorder voucher system;
5. Department-approved standards regarding best practices; and
6. Reporting requirements.

History: Effective July 1, 2016.
General Authority: NDCC 50-06-16
Law Implemented: S.L. 2015, ch. 139, § 4

TITLE 81

TAX COMMISSIONER

JULY 2016

CHAPTER 81-01-01

81-01-01-01. Definitions.

For the purposes of title 81, the terms "North Dakota tax department" and "tax department" ~~shall~~ mean the office of the tax commissioner or the tax commissioner of North Dakota as provided in North Dakota Century Code chapter 57-01 and section ~~12~~2 of article V of the Constitution of North Dakota.

History: Amended effective July 1, 2016.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-01; NDCon V, § 12

81-01-01-02. Organization and functions of the North Dakota tax department.

1. **History.** During the period from 1890 to 1912 the functions currently performed by the tax commissioner were performed by the state auditor. From January 1912 to August 1, 1919, a nonpartisan tax commission composed of three commissioners appointed by the governor, by and with the advice and consent of the senate, administered the tax laws on the state level. Beginning August 1, 1919, these duties were assumed by a governor-appointed tax commissioner who served a six-year term. The appointment was subject to approval by the senate. The present office of tax commissioner was created by an amendment of section 12 of article V of the Constitution of North Dakota which was approved by the voters at a statewide election held on June 25, 1940. ~~This amendment~~These provisions are now found in section 2 of article V of the Constitution of North Dakota. Section 4 of article V of the Constitution of North Dakota provides that the tax commissioner must be at least twenty-five years old and must have the qualifications of a state elector. Under ~~this amendment~~section 5 of article V of the Constitution of North Dakota the tax commissioner is elected for a four-year term. The first tax commissioner was elected at the fall election of 1940 and took office in January 1941.

2. **Divisions.** The tax department consists of the following six divisions:

   a. Commissioner's division. The commissioner's division ~~bears ultimate responsibility~~is responsible for the general administration of the tax department. This division also ~~coordinates the department's data processing needs and~~ serves as the tax department's primary research, communication, and public information center. ~~Included under the direct control of the commissioner's division is management,~~Management planning~~,~~ and ~~personnel which administers the department's management by objectives program, as well as the personnel function~~human resource administration are under direct control of the commissioner's division. The tax commissioner is assisted by the deputy commissioner, research and ~~data processing sections, internal audit~~communications

section staff, an ~~administrative officer~~executive assistant, a ~~secretary~~human resource officer, and ~~a receptionist~~other staff.

b. ~~Controller's~~Fiscal management division. The ~~controller's~~fiscal management division of the tax department ~~functions in three areas~~consists of two sections: accounting~~, staff services,~~ and ~~accounts receivable~~procurement. The accounting section maintains records of tax revenue and tax department expenditures, maintains inventory records of fixed assets and bonds, processes accounts receivable payments, prepares the tax department executive budget, and maintains an internal budget. The ~~staff services~~procurement section is responsible for the ~~initial processing of all tax returns and the operation of the mailroom, stenographic pool, and central records. The accounts receivable section is responsible for collecting delinquent taxes for all divisions of the tax department~~purchase of office supplies and equipment, secures contracts for services and maintenance of equipment, procures tax department printing goods and services, and secures leases for office space and equipment.

c. Legal division. The legal division of the tax department is comprised of attorneys who research and prepare opinions answering tax-related questions posed by the commissioner, legislators, tax department staff, other officials, and citizens; who draft proposals for changes in tax laws; who conduct all litigation for the tax department and the state board of equalization; and who help draft rules and regulations for the administration of the various state taxes. ~~Generally speaking, the~~The legal division ~~works~~serves in an advisory capacity to the commissioner so that the creation of new and changes in policy, procedures, and administration~~, and formulation of new ideas are in keeping~~ comply with ~~the~~state laws ~~that govern state taxes~~.

d. ~~Sales and special taxes~~Tax administration division. The ~~sales and special taxes~~tax administration division consists of ~~a sales and use tax section, an estate tax section, and a motor fuel and miscellaneous tax section~~eight sections: individual income and withholding taxes; corporate income taxes; sales and special taxes compliance; sales and special taxes audit; motor fuels, oil and gas, and estate taxes; registration; taxpayer services; and collections.

The individual income and withholding tax section is responsible for the administration of North Dakota Century Code chapters 57-38, 57-38.1, 57-38.3, 57-38.5, and 57-38.6, pertaining to individual income taxes and passthrough entities, the Uniform Division of Income Tax Act, setoff of income tax refunds, seed capital investment tax credit, and agricultural business investment tax credit.

The corporate income tax section is responsible for the administration of North Dakota Century Code chapters 57-38, 57-38.1, 57-38.4, 57-38.5, and 57-38.6, pertaining to corporate income taxes, the Uniform Division of Income Tax Act, water's edge election method, seed capital investment tax credit, and agricultural business investment tax credit. This section is also responsible for administration of North Dakota Century Code chapter 57-59, pertaining to the multistate tax compact.

Both the individual and corporate income tax sections review tax returns, perform audits and other compliance projects, and provide taxpayer assistance.

The sales and ~~use tax section is~~special taxes compliance and audit sections are responsible for the administration of the following chapters of the North Dakota Century Code, which are primarily related to retail sales: ~~the~~chapter 57-34, gross receipts tax on telecommunications carriers; chapter 57-39.2, retail sales tax ~~chapter 57-39.2,~~; chapter 57-39.4, streamlined sales and use tax agreement; chapter 57-39.5, farm machinery gross receipts tax; chapter 57-39.6, alcoholic beverage gross receipts tax; chapter 57-40.2, use tax ~~chapter 57-40.2,~~; chapter 57-40.3, motor vehicle excise tax ~~chapter~~

~~57-40.3,~~; chapter 57-40.4, motor vehicle excise tax refund ~~chapter 57-40.4, and~~; and chapter 57-40.5, aircraft excise tax ~~chapter 57-40.5~~. ~~This section issues salesand use tax permits, provides~~In addition, these sections administer wholesale taxes on alcoholic beverages imposed under North Dakota Century Code chapter 5-03, wholesale taxes on tobacco products imposed under chapter 57-36, and taxes levied under section 47-21-08 on selling and licensing performing rights of music or dramatico-musical composition. Both sales and special taxes sections provide taxpayer assistance, ~~conducts~~review refund requests, and conduct programs to ensure compliance with the law~~, and processes and audits sales and use tax returns. There is also a sales tax field audit staff which audits permitholders' records~~; however, the audit section's major focus is on the audit of sales and use tax accounts.

~~The estate tax section is responsible for the administration of North Dakota Century Code chapter 57-37.1. This section receives and reviews all state estate tax returns and assesses and collects estate taxes due.~~

The motor fuel, oil and gas, and ~~miscellaneous~~estate taxes section is responsible for the administration of the following chapters and sections of the North Dakota Century Code: chapter 57-37.1, estate taxes; chapter 57-43.1, motor vehicle fuels and importer for use taxes ~~chapter 57-43.1,~~; chapter 57-43.2, special fuels and importer for use taxes ~~chapter 57-43.2,~~; chapter 57-43.3, aviation fuel tax ~~chapter 57-43.3, tobacco products tax law chapter 57-36, and section 47-21-08 which deals with the tax levied on selling and licensing performing rights of music or dramatico-musical compositions~~; chapter 57-51, oil and gas gross production taxes; and chapter 57-51.1, oil extraction taxes. These taxes are collected, administered, and audited by the motor fuel, oil and gas, and ~~miscellaneous~~estate taxes section ~~which~~. This section also issues the motor fuel tax refund to those consumers using motor fuel for agricultural or industrial purposes.

~~e. Income and oil taxes division. This division is divided into three sections:corporate income taxes, individual income taxes, and oil and gas taxes.~~

~~The corporate income tax section is responsible for the administration of chapters 57-38 and 57-38.1 pertaining to corporate income taxes and the Uniform Division of Income Tax Act, and the administration of chapter 57-59 pertaining to multistate tax compact. This section is also responsible for the administration of chapter 57-35.3 pertaining to the taxation of financial institutions.~~

~~The individual income tax section is responsible for the administration of chapters 57-38, 57-38.1, 57-38.2, and 57-38.3 pertaining to individual income taxes, the Uniform Division of Income Tax Act, income averaging, and setoff of income tax refund. This section is also responsible for administration of chapter 57-59 pertaining to multistate tax compact.~~

~~The oil and gas division is responsible for the administration of chapters 57-51 and 57-51.1 pertaining to oil and gas gross production tax and oil extraction tax.~~

~~All sections review tax returns, perform audits, and provide taxpayer assistance.~~

The registration, taxpayer services, and collection sections are all function-based and involved with all taxes administered by the tax administration division. The registration section processes registration information for businesses new to North Dakota or that require an annual license renewal. The taxpayer services staff review returns during processing, and assist taxpayers with tax filing requirements and processes. The collections section is responsible for collecting delinquent taxes for all tax types administered by the tax commissioner's office.

~~f.~~e. Property ~~and utility~~ tax division. The property tax is a source of revenue for the financing of county, city, township, school district, and other local governments. While local government has the responsibility of assessing and taxing all classes of real property, this division provides assistance and helps to establish uniformity of procedures. It also develops rules and regulations for the taxation of mobile homes under North Dakota Century Code chapter 57-55, which tax is administered by the county directors of tax equalization and collected by the county treasurers of the various counties. This division also provides administrative services to the state board of equalization relating to new ~~industry~~and expanding business property tax incentive and primary sector business and tourism exemption applications made ~~pursuant to~~under the provisions of North Dakota Century Code chapter 40-57.1, and to assessment and sales ratio statistical analyses.

The ~~utility~~property tax ~~section~~division also makes annual tentative valuations of railroad and utility properties for use by the tax commissioner to make tentative assessments ~~to submit to~~. The tentative assessments are submitted to the state board of equalization which makes the final assessments. The ~~utility~~property tax ~~section~~division also administers the following North Dakota Century Code chapters: ~~57-33, for~~57-33.2, taxation of ~~rural~~ electric ~~cooperatives; 57-33.1, for taxation of cooperative-owned transmission lines of two hundred thirty kilovolts or larger;~~generation, distribution, and transmission companies; 57-34, ~~for~~ taxation of ~~mutual and cooperative telephone companies~~telecommunications carriers; 57-60, ~~for~~ privilege tax on coal conversion facilities; and 57-61, ~~for~~ coal severance tax.

f. Information management and technology division. This division has two functional areas: information technology and processing. The information technology section implements and supports both hardware and software components relating to the tax department's information technology infrastructure. The processing section manages all mail, imaging, printing, data entry, and records management processes for the tax department. This division also manages contracts entered into by the tax department with software vendors who support the integrated tax system, electronic filing of tax returns, disaster recovery tools, and other applications.

3. **Inquiries - Submissions - Requests.** The public may obtain information or make submissions of reports and other matters or make requests regarding any of the tax matters described in subdivisions d~~,~~ and e~~, and f~~ of subsection 2 by directing ~~such~~any inquiries, submissions, or requests to the North Dakota tax commissioner or to the division of the North Dakota tax department responsible for the administration of the tax involved. The mailing address for the North Dakota tax commissioner and for the North Dakota tax department is:

State Capitol, Department 127
Bismarck, North Dakota ~~58505~~58505-0599

4. **Tax department functions subject to North Dakota Century Code chapter 28-32.** For purposes of its administration of the various tax laws, the tax department is an "administrative agency" ~~that is~~ subject to North Dakota Century Code chapter 28-32. ~~See the 1981 amendment of subsection 1 of North Dakota Century Code section 28-32-01.~~

History: Amended effective December 31, 1981; June 1, 1984; January 1, 1998; July 1, 2016.
General Authority: NDCC ~~28-32-02.1~~28-32-02
Law Implemented: NDCC ~~28-32-02.1~~28-32-02

ARTICLE 81-02.1
PROPERTY TAXES

CHAPTER 81-02.1-02
CERTIFICATION OF ASSESSMENT OFFICIALS

[Repealed effective July 1, 2016]

~~Section~~
~~81-02.1-02-01 Definitions~~
~~81-02.1-02-02 Responsibility of State Supervisor of Assessments~~
~~81-02.1-02-03 Certification Requirements - Township Assessor~~
~~81-02.1-02-04 Certification Requirements - Class II City Assessor~~
~~81-02.1-02-05 Certification Requirements - Class I City Assessor~~
~~81-02.1-02-06 Certification Requirements - County Director of Tax Equalization~~
~~81-02.1-02-07 Certificates~~
~~81-02.1-02-08 Maintaining Certification~~
~~81-02.1-02-09 Failure to Maintain Certification~~
~~81-02.1-02-10 Valuation of Nonagricultural Property~~

ARTICLE 81-03
INCOME TAXES AND PRIVILEGE TAXES BASED ON INCOME

CHAPTER 81-03-01.1
GENERAL CONSIDERATIONS

81-03-01.1-06. Income tax exemption for new and expanding business.

1. When a taxpayer is granted an exemption from income tax pursuant to North Dakota Century Code chapter 40-57.1, the exemption must be prorated, when necessary, in the first and last years in order to exempt income for a period not to exceed sixty months.

2. The amount of the yearly income tax exemption for new and expanding business is limited to income earned from the new business or expansion in each tax year ~~reduced by the amount of federal tax assignable to the North Dakota exempt income which~~that was included in federal taxable income.

3. When the project operator is a ~~partnership, S corporation, or limited liability company~~passthrough entity, the income tax exemption flows through to the partners, shareholders, and members.

4. The conditions for reapplication set forth in North Dakota Century Code chapter 40-57.1 apply to the income tax exemption. A project operator must reapply for the income tax exemption if these conditions are met.

5. The office of the state tax commissioner ~~must~~shall be notified of any changes in ownership of a new industry which has been granted an income tax exemption. A change of ownership includes transfer of a partnership interest, a stock interest in a subchapter S corporation, or a membership in a limited liability company.

6. ~~The income tax exemption may not be claimed by an individual taxpayer on individual income tax form ND-1 or form 37-S.~~

~~7.~~ A taxpayer with both exempt and nonexempt activities shall prorate its income pursuant to the provisions of North Dakota Century Code chapter 57-38.1.

a. If the taxpayer has only North Dakota activity, exempt income must be determined by multiplying income from all activities, exempt and nonexempt, by a fraction, the numerator of which is the sum of its exempt property, sales, and payroll factors and the denominator of which is three.

EXAMPLE:

Facts:	Exempt Plant	Other North Dakota Activity	Total North Dakota Activity
Property	$5,000,000	$10,000,000	$15,000,000
Payroll	$750,000	$1,000,000	$1,750,000
Sales	$20,000,000	$35,000,000	$55,000,000
Apportionable income	$50,000,000		
~~Federal tax liability~~	~~$17,500,000~~		

Determine North Dakota exempt income:

(1) Compute apportionment factor of exempt activities.

Property factor =	$5,000,000/$15,000,000 =	.333333
Payroll factor =	$750,000/$1,750,000 =	.428571
Sales factor =	$20,000,000/$55,000,000 =	.363636
	1.125540/3 =	.375180

(2) Compute exempt income.

Apportionable income	$50,000,000
~~Federal tax liability~~	~~$17,500,000~~
~~North Dakota income after federal tax deduction~~	~~$32,500,000~~
Apportionment factor of exempt activities	.375180
Exempt income	~~$12,193,350~~$18,759,000

b. If the taxpayer has multistate business activity, North Dakota income must first be determined by including all exempt and nonexempt activity in apportionable income and in the apportionment factor. North Dakota exempt income is then determined as in subdivision a.

EXAMPLE:

Multistate corporation

Facts: Utilize the same facts in the prior example, and add:

Total activity within and without North Dakota

Property	$100,000,000
Payroll	$5,000,000
Sales	$200,000,000

Determine North Dakota exempt income:

(1) Compute the North Dakota apportionment factor, including tax-exempt activity.

Property factor =	$15,000,000/$100,000,000 =	.150000
Payroll factor =	$1,750,000/$5,000,000 =	.350000
Sales factor =	$55,000,000/$200,000,000 =	.275000
	.775000/3 =	.258333

(2) Compute the apportionment factor of the North Dakota exempt activities. For this example, the computation would be the same as that in paragraph 1 of subdivision a and would yield a factor of .375180.

(3) Compute exempt income.

Apportionable income	$50,000,000
North Dakota apportionment factor	.258333
Income apportioned to North Dakota ~~before federal tax deduction~~	$12,916,650
~~Federal tax liability~~	~~$17,500,000~~
~~North Dakota apportionment factor~~	~~.258333~~
~~Federal tax deduction~~	~~$4,520,827~~
~~North Dakota income after federal tax deduction~~	~~$8,395,823~~
Apportionment factor of exempt activities	.375180
Exempt income	~~$3,149,945~~$4,846,069

c. When a partial exemption on a project or plant has been granted, the percentage of the project's nonexempt property, payroll, and sales would be added to the other North Dakota taxable activity's factors. For instance, a twenty percent exemption would mean eighty percent of the project's property, payroll, and sales would be added to the other North Dakota factors creating a taxable activity.

d. When a company has only one operating facility which has been granted a partial exemption, North Dakota taxable income shall be computed based on total income of the operation, and a percentage of the income which is equal to the percentage of the exemption shall be deducted from the total.

e. For determining the apportionment factor of exempt activities in subdivision b, the weighting of the three factors must be the same weighting as used to determine the apportionment factor for the taxable year.

History: Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; April 1, 1995; July 1, 1998; June 1, 2002; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 40-57.1, 57-38.1

81-03-01.1-07. Venture capital corporation.

Repealed effective July 1, 2016.

~~An individual, estate, trust, or corporation that has purchased stock in a venture capital corporation may not sell any or all of the stock back to the venture capital corporation and then purchase new stock in the same venture capital corporation to qualify for the income tax deduction and the tax credits provided for in North Dakota Century Code chapter 10-30.1.~~

~~**History:** Effective March 1, 1990.~~
~~**General Authority:** NDCC 57-38-56~~
~~**Law Implemented:** NDCC 10-30.1~~

CHAPTER 81-03-02.1
INCOME TAX ON INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

Section

81-03-02.1-05. Reporting - Income earned by husband and wife.

Repealed effective July 1, 2016.

~~Requirements for a husband and wife who file a joint federal income tax return and who are required to file separate North Dakota income tax returns include:~~

~~1. Income from nonbusiness property owned by one spouse cannot be divided between husband and wife, but must be reported only by the spouse with the ownership interest.~~

~~2. Nonbusiness income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other nonbusiness income must be reported by each spouse on the separate tax return as if their federal adjusted gross income was determined separately. Reporting of this income depends on the nature of the ownership interest and is subject to the following:~~

~~a. A husband and wife owning property as joint tenants with a right of survivorship must each report one-half of the income from the property on their separate North Dakota income tax returns.~~

~~b. Income from property held by husband and wife as tenants in common must be reported in proportion to their legally enforceable interests in the property.~~

~~3. Salary and wages earned by each spouse must be reported by each spouse as if their federal adjusted gross income was determined separately. Reporting of wages and salary by each spouse depends upon the nature of the employment relationship and is subject to the following:~~

~~a. Wages or compensation for services or labor performed by one spouse with respect to a business or property owned by the other spouse may be reported on a separate North Dakota income tax return if the payment is reasonable for the labor or services actually performed. It is presumed that compensation or wages paid by one spouse to the other are unreasonable and disallowed for separate reporting unless a bona fide employer-employee relationship exists. Evidence of the relationship includes actual services performed, adherence to regular working hours and standards, and compliance with workers' compensation and unemployment compensation laws.~~

b. Wages or compensation for services or labor performed pursuant to an employment agreement with a nonspousal employer is income which may be reported only by the spouse earning the wages.

4. Business income derived from property owned by both spouses, as evidenced by recognized methods of establishing legal ownership, may be allocated between spouses and reported on separate North Dakota income tax returns. The interest of each spouse must be allocated according to the capital interest, the management and control exercised, and the services performed by each spouse according to the following rules:

a. Allocation of partnership income between spouses is valid only if current partnership information returns have been filed with this state and the federal government and there has been compliance with federal self-employment laws.

b. When a business is owned by a husband and wife but one spouse claims all of the income for federal self-employment tax purposes, it is assumed that the claim was made with the full consent of the other spouse. Therefore, all of the income must be claimed for North Dakota income tax purposes by the spouse claiming such income on the federal return. The presumption of consent may be overcome by presentation of evidence sufficient to negate the presumption.

c. In order to determine the amount of capital contribution by each spouse, only invested capital which is legally traceable to each spouse is considered. Capital existing under the right, domain, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions that do not effect any real change in ownership of capital between spouses are disregarded in determining capital contribution of the recipient spouse.

d. Contribution to management and control of the business must be substantial to be given weight in allocating income. Substantial participation involves legitimate consultation with respect to major business decisions, familiarity with the operations, problems, and policies of the business, and sufficient background and maturity to understand the various demands of the business. General statements as to family discussions are insufficient to demonstrate consultation.

e. Services which make a direct contribution to the business are given weight in determining the proper allocation of income between spouses. Services performed for the family are not considered rendered for the benefit of the business.

History: Effective July 1, 1985; amended effective June 1, 2002.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.2

CHAPTER 81-03-02.2
INCOME TAX ON NONRESIDENT INDIVIDUALS, ESTATES, TRUSTS, AND FIDUCIARIES

Section

81-03-02.2-03. Computation of North Dakota income tax liability by a nonresident individual, estate, or trust electing to file under North Dakota Century Code section 57-38-30.3.

Repealed effective July 1, 2016.

~~1. Subsection 10 of North Dakota Century Code section 57-38-30.3 provides for the recomputation of the federal income tax liability by nonresident individuals, estates, or trusts to prevent any income from becoming exempt from taxation because of the provisions of North Dakota Century Code section 57-38-30.3 if that income would otherwise have been subject to taxation under the provisions of North Dakota Century Code chapter 57-38. Therefore, a nonresident individual, estate, or trust that files under North Dakota Century Code section 57-38-30.3 and that has out-of-state losses that exceed out-of-state income must make a separate computation to determine a recomputed federal income tax liability.~~

~~This computation consists of adding out-of-state losses that exceed out-of-state income to federal adjusted gross income and then using this figure to determine a recomputed federal income tax liability. A schedule prescribed by the tax commissioner must be used to determine the recomputed federal income tax liability. The recomputed income tax liability is the amount that must be used to compute the North Dakota income tax liability.~~

~~2. This rule is effective for taxable years beginning before January 1, 2001.~~

~~**History:** Effective July 1, 1985; amended effective June 1, 2002.~~
~~**General Authority:** NDCC 57-38-56~~
~~**Law Implemented:** NDCC 57-38-30.3~~

CHAPTER 81-03-05.1

81-03-05.1-05. Subchapter S corporation tax credits.

1. ~~The following tax credits may not be claimed by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:~~

   ~~a. Credit for contributions to nonprofit private colleges.~~

   ~~b. Credit for contributions to nonprofit private high schools.~~

   ~~c. Geothermal, solar, or wind energy device credit.~~

   ~~d. Venture capital corporation credit.~~

   ~~e. Myron G. Nelson Fund, Incorporated credit.~~

   ~~f. Credit for employment of the developmentally disabled or chronically mentally ill.~~

   ~~g. Credit for purchase of memberships, payment of dues, or contributions to certified nonprofit development corporations.~~

~~2. These tax credits may only be claimed by an individual shareholder on individual income tax form ND-2 or form 37, or a fiduciary shareholder on fiduciary income tax return form 38.~~

~~3. The tax credit claimed by each shareholder must be computed by using the shareholder's distributive share ratio. The computed credit is subject to the limitations imposed by North Dakota Century Code chapters 10-30.1, 10-30.2, and 57-38.~~

~~4.~~ The following tax credits may be claimed only by a subchapter S corporation required to pay state income tax pursuant to subsection 1 of North Dakota Century Code section 57-38-01.4:

   a. Corporate tax credit for new industry.

   b. Corporate tax credit for research and experimental expenditures.

~~5.~~2. The shareholders may not claim tax credits claimed by the subchapter S corporation.

History: Effective March 1, 1988; amended effective March 1, 1990; June 1, 2002; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC ~~10-30.1-05, 10-30.2-11, 10-30.2-12,~~ 57-38-01.4, 57-38-01.7, ~~57-38-01.8,~~ 57-38-01.16, 57-38-01.17

81-03-05.1-06. Tax credit for research and experimental expenditures.

When calculating the tax credit provided for in North Dakota Century Code section 57-38-30.5, the ~~corporation~~taxpayer may include ~~only those~~in the base ~~period research expenses which~~amount only those amounts that were incurred in or attributable to North Dakota.

History: Effective June 1, 1992; amended effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-30.5

81-03-05.1-07. Net operating losses.

1. A North Dakota net operating loss must be computed after the allocation and apportionment of a taxpayer's income or loss to North Dakota.

2. A North Dakota net operating loss may be ~~carried back or~~ carried forward for the same number of years as a federal loss of like character, e.g., regular net operating loss, product liability loss, or foreign expropriation loss.

3. ~~Irrespective of a corporation's treatment of a federal net operating loss, to carry forward a North Dakota net operating loss a corporation must make an election to do so on an original return that is timely filed for the year in which the loss was incurred. If an election is not made, the loss must be carried back.~~

~~4.~~ If a corporation does not file a consolidated corporation income tax return pursuant to section 81-03-05.1-08, the corporation's North Dakota net operating loss may be ~~carried back or~~ carried forward even if:

   a. The ownership of the corporation in the loss year is not the same as the ownership in each of the years to which the loss is carried, e.g., the corporation is acquired by another corporation.

   b. The filing method used by the corporation in the loss year is not the same as the filing method used in each of the years to which the loss is carried, e.g., separate entity filing versus combined reporting.

~~5.~~4. If a corporation files a consolidated corporation income tax return pursuant to section 81-03-05.1-08, a North Dakota net operating loss must be computed for each corporation included in the consolidated return for the year in which the loss was incurred. ~~This net operating loss may be carried back or carried forward subject to the following conditions:~~

   ~~a. If an election is made by the corporation filing the consolidated return to carry forward North Dakota net operating losses, each corporation included in the consolidated return must carry forward its North Dakota net operating loss.~~

   ~~b.~~ Each corporation included in the consolidated return ~~may carry back or~~must carry forward its net operating loss to the extent that ~~the corporation~~it had North Dakota taxable income in the year to which the loss is carried.

~~6.~~5. The commissioner may audit a North Dakota net operating loss and the taxable income of the year to which the loss is carried.

~~7.~~6. A corporation may not carry forward its North Dakota net operating loss if the corporation has been dissolved as a separate corporate entity.

~~8. This section is effective for all tax years beginning after December 31, 1992.~~

History: Effective December 1, 1993; amended effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-01.3(2)(3)

81-03-05.1-08. Consolidated returns.

1. As used in this section:

   a. "Combined report" means a tax return on which the tax liability is computed using the method described in chapters 81-03-05.2 and 81-03-05.3.

   b. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.

   c. "Taxpayer" means a corporation liable to report income or loss to North Dakota.

2. Only taxpayers who compute their liability using the combined report method may file a consolidated return. The consolidated return must contain the following information:

   a. Identifies the name and federal identification number of the corporation that will file the consolidated return.

   b. Reports the tax liabilities of all taxpayers in the combined report.

3. All taxpayers in the combined group must continue to file a consolidated return until the commissioner is notified in writing of the combined group's intent to file individual returns.

4. This section is effective for all tax years beginning after December 31, 1992.

Example:	Corporation A	Corporation B	Corporation C	Combined Amounts
Facts:				
Federal taxable income	$500,000	$(80,000)	$40,000	$460,000
~~Federal tax accrued~~	~~144,815~~	~~0~~	~~11,585~~	~~156,400~~
State adjustments	10,000	1,000	5,000	16,000
North Dakota property	150,000	0	10,000	
Total property	150,000	100,000	10,000	260,000
North Dakota payroll	60,000	0	40,000	
Total payroll	60,000	100,000	40,000	200,000
North Dakota sales	1,000,000	0	200,000	
Total sales	1,500,000	300,000	200,000	2,000,000

Computation of ~~Apportionment Factor~~apportionment factor	Corporation A		Corporation C	
North Dakota property	$150,000		$10,000	
Combined property	260,000		260,000	
Property factor		.576923		.038462
North Dakota payroll	60,000		40,000	
Combined payroll	200,000		200,000	
Payroll factor		.300000		.200000
North Dakota sales	1,000,000		200,000	
Combined sales	2,000,000		2,000,000	
Sales factor		.500000		.100000
Sum of factors		1.376923		.338462
Apportionment factor		.458974		.112821

Computation of ~~Tax Liability~~tax liability	Corporation A	Corporation C	Total Tax Due

Federal taxable income	$460,000	$460,000	
~~Federal tax deduction~~	~~156,400~~	~~156,400~~	
State adjustments	16,000	16,000	
North Dakota apportionable income	~~303,600~~476,000	~~303,600~~476,000	
Apportionment factor	.458974	.112821	
North Dakota taxable income	~~139,345~~218,472	~~34,252~~53,703	
North Dakota tax due (~~1990~~2015 rates)	~~12,966~~8,501	~~2,168~~1,400	~~$15,134~~$9,901

History: Effective December 1, 1993; amended effective September 1, 1997; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-14

CHAPTER 81-03-05.3

81-03-05.3-03. Elements of worldwide combined report.

1. A taxpayer that is required to file using the worldwide method of reporting shall include the income and apportionment factors of the following unitary corporations in its combined report:

   a. A parent corporation.

   b. Any corporation incorporated in the United States.

   c. Any corporation incorporated in a possession of the United States as described in Internal Revenue Code sections 931 through 936.

   d. Any domestic international sales corporation as described in Internal Revenue Code sections 991 through 994.

   e. Any foreign sales corporation as described in Internal Revenue Code sections 921 through 927.

   f. Any export trade corporation as described in Internal Revenue Code sections 970 through 972.

   g. Any foreign corporation which derived gain or loss from disposing of a United States real property interest but only to the extent the gain or loss was recognized under Internal Revenue Code section 897.

   h. Any foreign corporation.

2. The factors used to apportion the income of the worldwide group must be determined pursuant to chapter 81-03-09 and North Dakota Century Code chapters 57-38.1 and 57-59, and the following subdivisions:

   a. Transactions between members of the worldwide group must be eliminated.

   b. Transactions between any member of the worldwide group and a corporation that has been excluded from the group must be included.

   c. The property, payroll, and sales of a corporation that has been excluded from the worldwide combined report must not be included in the apportionment factors of the group.

   d. When apportionable income includes income from a corporation's ownership interest in a general partnership, the corporate partner's share of the partnership's property, payroll, and sales must be included in the group's apportionment factors.

3. Income for the worldwide group must be computed using one of the following methods:

   a. Method one.

      (1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.

      (2) Add book income adjusted to conform to the provisions of the Internal Revenue Code of the corporations included in the combined report which are not required to file a federal income tax return.

      (3) Eliminate transactions between members of the worldwide group.

(4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. ~~However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.~~

(5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

b. Method two.

(1) Begin with federal taxable income of the corporations included in the combined report which are required to file a federal income tax return.

(2) Add book income of those corporations included in the combined report which are not required to file a federal income tax return.

(3) Eliminate transactions between members of the worldwide group.

(4) Add or subtract the adjustments provided for in North Dakota Century Code section 57-38-01.3. ~~However, the deduction provided for in subdivision c of subsection 1 of North Dakota Century Code section 57-38-01.3 should not be made if the taxpayer elects to compute its federal income tax deduction pursuant to chapter 81-03-05.4.~~

(5) Add or subtract nonbusiness income and nonbusiness losses net of related expenses, unless allocable to North Dakota.

History: Effective March 1, 1990; amended effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38, 57-38.1, 57-59

CHAPTER 81-03-09.2
SALES FACTOR WEIGHTING ELECTION

81-03-09.2-01. Definitions.

1. "Affiliated corporation" means a corporation whose voting stock is over fifty percent owned, directly or indirectly, by another corporation.

2. "Apportionment factor" means the resulting computation of the percentage of a taxpayer's business income that is assignable to this state.

3. "Consolidated return" means a single corporation income tax return that reports the tax liability of more than one corporation engaged in business in or having sources of income from North Dakota.

4. "Passthrough entity" has the same meaning as in North Dakota Century Code section 57-38-01.

5. "Sales factor" has the same meaning as in North Dakota Century Code section 57-38.1-15.

6. "Sales factor weighting election" means the election provided in North Dakota Century Code section 57-38.1-09 allowing a taxpayer to weight its sales factor fifty percent for tax years 2016 and 2017, seventy-five percent for tax year 2018, and one hundred percent for tax years 2019 and thereafter.

7. "Taxpayer" means a person other than a passthrough entity that is required to file a North Dakota income tax return.

8. "Unitary business" means a group of corporations engaged in a unitary business described in chapter 81-03-05.3.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-02. Sales factor weighting election.

1. A taxpayer that is a corporation makes a sales factor weighting election by checking the sales factor weighting election box on its original North Dakota income tax return for the first year to which the election applies.

2. A taxpayer that is a sole proprietor apportioning income under subsection 5 of North Dakota Century Code section 57-38-04 makes a sales factor weighting election by attaching a statement to the taxpayer's individual income tax return for the first year to which the election applies.

3. A taxpayer's return making a sales factor weighting election for the first year is considered timely if filed by the prescribed due date, including extensions.

4. A sales factor weighting election is binding for five consecutive tax years. An election made on a tax return for a sixth consecutive year constitutes a new five-year election.

5. For any tax year that is not included under a sales factor weighting five-year election period, income is apportioned using equal weighting of the three factors under subsection 1 of North Dakota Century Code section 57-38.1-09.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-03. Sales factor weighting election applicability.

1. If a taxpayer is a member of a unitary business, the sales factor weighting election applies to each taxpayer in the unitary business.

2. If a taxpayer files a consolidated return, the election made on that return applies to all corporations included in that return.

3. An affiliated corporation is considered to have consented to the sales factor weighting election if the corporation becomes a member of the unitary group after the group elects to use the sales factor weighting election.

4. If a taxpayer's apportionment factor includes its share of a passthrough entity's apportionment factors, the taxpayer's sales factor weighting election includes its share of factors from a passthrough entity.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-04. Rescission of a sales factor weighting election.

1. A sales factor weighting election of a taxpayer that has had more than fifty percent of its voting stock acquired by a nonaffiliated entity is rescinded.

2. A sales factor weighting election of a taxpayer formed due to reorganization or spinoff from an existing taxpayer is rescinded if, after the reorganization or spinoff, it is no longer an affiliated member of the unitary group.

3. The sales factor weighting election of a taxpayer that is completely liquidated is rescinded. The election does not carry over to the entity receiving the liquidated assets. This provision does not affect the sales factor weighting election made by any taxpayer that receives liquidated assets.

4. If a taxpayer's sales factor weighting election is rescinded under this section, it is not precluded from making a new sales factor weighting election in the first tax year following the rescission.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-05. Provisions of income tax laws applicable.

Administration of the sales factor weighting election is governed by the provisions in North Dakota Century Code chapters 57-38 and 57-38.1, not in conflict with this chapter.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

81-03-09.2-06. Taxable years.

This chapter applies to tax years beginning after December 31, 2015.

History: Effective July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38.1-09

CHAPTER 81-03-10

81-03-10-01. Designation of overpayment amount.

An individual income taxpayer with an available overpayment of tax of at least five dollars may designate a portion of the overpayment, as a voluntary contribution, a minimum of one dollar to either or both of the following:

1. The ~~nongame~~watchable wildlife fund.

2. The trees for North Dakota program trust fund.

History: Effective July 1, 1989; amended effective November 1, 1991; June 1, 2002; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-02. Available overpayment.

The procedure by which the taxpayer's return is originally processed by the tax department may result in adjustments to the available overpayment amount computed by the taxpayer for errors on the return; reduction for taxes, including interest and penalty, owed for prior years; or reduction for amounts owed ~~as child support~~ pursuant to North Dakota Century Code chapter 57-38.3.

When the overpayment amount computed by the taxpayer is reduced by the tax department, taxpayer designations will be reduced in the following order, each designated item to be reduced to zero before proceeding to reduce the next item:

1. The amount of the overpayment that the taxpayer has designated as voluntary contributions to the ~~nongame~~watchable wildlife fund and the trees for North Dakota program trust fund. If the tax department does not reduce the overpayment computed by the taxpayer by the total amount of the voluntary contributions, any remaining overpayment will be allocated between the funds in the same ratio as the designations bear to one another on the taxpayer's return.

2. The amount of the overpayment that the taxpayer has designated as a refund.

3. The amount of the overpayment that the taxpayer has designated as an estimated tax payment for a succeeding year.

History: Effective July 1, 1989; amended effective June 1, 2002; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1(3), 57-38-38(1), 57-38-62, 57-38.3

81-03-10-03. Designation for taxpayers owing tax.

Taxpayers who have a tax balance due, including penalty and interest, of at least five dollars on their income tax return may designate that an additional amount of at least one dollar be paid to the ~~nongame~~watchable wildlife fund or to the trees for North Dakota program trust fund by paying the entire balance that is due for both tax and the designations at the same time that the return is filed. Any designations to the ~~nongame~~watchable wildlife fund or to the trees for North Dakota program trust fund are not obligations enforceable by the tax department. If the amount that is paid with the return does not equal the total of the tax balance due and the amounts designated, the amount of the tax balance due must be paid first and the optional designations must be reduced to the amount paid with the return which is in excess of the tax balance due. The amount paid which is in excess of the tax balance due must be allocated between the funds in the same ratio as the taxpayer designations bear to one another on the taxpayer's return.

History: Effective July 1, 1989; amended effective June 1, 2002; July 1, 2016.

General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

81-03-10-04. Taxpayers with no overpayment or balance due.

A taxpayer with no overpayment of tax of at least five dollars or tax balance due of at least five dollars, may not use the state income tax return to make voluntary contributions. Taxpayers may make contributions directly to the North Dakota game and fish department for the ~~nongame~~watchable wildlife fund, or to the North Dakota state forester for the trees for North Dakota program trust fund.

History: Effective July 1, 1989; amended effective June 1, 2002; July 1, 2016.
General Authority: NDCC 57-38-56
Law Implemented: NDCC 57-38-34.3, 57-38-35.1

CHAPTER 81-04.1-01
GENERAL RULES

81-04.1-01-02. Confidential information.

Repealed effective July 1, 2016.

~~A return includes all the business records and information of a retailer which reflect or record sales or use tax data which are used to calculate sales or use tax obligations for purposes of North Dakota Century Code section 57-39.2-23.~~

~~The tax commissioner is authorized to release name and mailing address information on sales and use tax permitholders to any North Dakota state government agency for the limited purpose of distributing state government publications or information. Permitholder information that can be released is restricted to the business name and mailing address used to mail sales and use tax returns to permitholders. Other permitholder information, including filing schedule, starting date, payment history,~~

~~ownership status, and standard industrial classification, is confidential and may not be released by the tax commissioner.~~

~~The tax commissioner may not release any information regarding a sales and use tax permitholder to any agency, entity, or representative of the federal government, of any other state government, of any local government, or of any foreign government. Information regarding a North Dakota sales and use tax permitholder may not be released to a private entity for any purpose, including fundraising or other sales solicitation, except for name and mailing address information provided to a private entity to facilitate the publication and distribution of state government publications or information.~~

~~**History:** Effective June 1, 1984; amended effective November 1, 1991.~~
~~**General Authority:** NDCC 57-39.2-19~~
~~**Law Implemented:** NDCC 57-39.2-01, 57-39.2-23~~

81-04.1-01-08. Deduction for administrative expense.

Compensation for sales or use tax permitholders is applied as follows:

1. A sales and use tax permitholder ~~having taxable sales and purchases equal or exceeding three hundred thirty-three thousand three hundred thirty-three dollars for the preceding calendar year~~registered to report and remit sales, use, or gross receipts tax under North Dakota Century Code chapter 57-39.2, 57-39.5, 57-39.6, or 57-40.2 may deduct and retain one and one-half percent of the tax due, but this deduction may not exceed ~~eighty-five~~one hundred ten dollars per ~~month~~return.

2. A sales and use tax permitholder that is a remote seller, or a certified service provider assigned by the qualifying permitholder, is allowed to deduct and retain up to one and one-half percent of the tax due or such lower percentage as agreed in the compensation or monetary allowance agreement approved by the streamlined sales and use tax governing board. For purposes of this subsection, "remote seller" means a retailer that does not have adequate physical presence to establish nexus in this state for sales tax purposes.

Qualified sales or use tax permitholders, including permitholders and certified service providers who pay tax due under chapter 57-39.4, who fail to file the forms on time, or fail to pay the tax due on time, forfeit the one and one-half percent compensation for expenses.

~~The returns filed by qualified permitholders under section 57-39.2-12 or 57-40.2-07 will be reviewed by the office of the tax commissioner each calendar year to determine if new sales or use tax permitholders qualify to file monthly returns and to determine if sales or use tax permitholders who have filed monthly returns must revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews will occur on or after July first of the following year.~~

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC ~~57-39.2-12,~~ 57-39.2-12.1, ~~57-40.2-07,~~ 57-40.2-07.1

81-04.1-01-08.1. Monthly sales tax returns.

1. A sales and use tax permitholder having taxable sales and purchases equal to or exceeding three hundred thirty-three thousand dollars for the preceding calendar year shall file sales and use tax returns and pay the tax due monthly. All returns and tax payments are due on or before the last day of the month following the reporting period.

2. Returns required to be filed monthly under section 1 must be filed by an electronic method approved by the tax commissioner.

3. All returns filed under North Dakota Century Code chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2 will be reviewed by the tax commissioner each calendar year to determine if new sales or use tax permitholders meet the monthly filing requirement and to determine if sales or use tax permitholders who have filed monthly returns may revert to quarterly filing status. Changes in filing status as a result of the calendar year reviews are effective on or after July first of the following year.

History: Effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-12, 57-40.2-07

81-04.1-01-19. Sale of traded-in property.

When one article is traded in on another article, the sales tax applies only on the difference in value between the two articles. The secondhand article is subject to sales tax when resold.

Whenever property not subject to sales tax or to motor vehicle excise tax is taken as part consideration of the purchase price, the purchaser is required to pay sales tax on the full purchase price.

When a used ~~mobile home~~manufactured home is traded in for other tangible personal property, sales tax applies on the full purchase price with no deduction for the value of the trade-in.

When used farm machinery is traded in for new farm machinery or other tangible personal property, farm machinery gross receipts tax or sales tax applies on the net selling price after deduction for the value of the trade-in.

History: Effective June 1, 1984; amended effective April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.5-01.1

81-04.1-01-23.2. Agricultural commodity processing facility.

An agricultural commodity processing facility is a manufacturing facility that processes agricultural commodities into marketable products. A facility, such as a grain elevator, that only stores, cleans, dries, or transports agricultural commodities, is not an agricultural commodity processing facility.

Tangible personal property consumed during the construction of an agricultural commodity processing facility or incorporated into the structure of an agricultural processing facility is exempt from sales and use tax. ~~However, the~~A contractor consuming or installing the materials shall pay the applicable sales or use taxes and the owner of the agricultural processing facility shall apply in writing for a refund of the taxes paid by the contractor unless the tax commissioner has approved the project for exemption and the facility owner has authorized the contractor to utilize the exemption.

The purchase or rental of machinery and equipment used directly in the processing of agricultural commodities into marketable products is regarded as manufacturing machinery and equipment, as provided in section 81-04.1-01-23. Machinery and equipment not used directly in the processing of agricultural commodities are subject to sales and use tax. Machinery and equipment not used directly in the processing of agricultural commodities include repair parts and equipment used for repairing, cleaning, or maintaining facilities, machinery, or equipment; handtools; backup or standby power suppliers; computer hardware and software to maintain inventory, production, or scheduling records; waste disposal or treatment facilities; and safety and security equipment, such as fire sprinkler systems and burglar alarms. Items consumed or destroyed in the process and which do not become a part of the finished products do not represent qualifying machinery and equipment and are subject to sales and use tax.

Requests by the manufacturer to purchase or lease machinery or equipment without paying tax or for refunds of tax paid on machinery or equipment which qualify for exemption must be made in writing to the tax commissioner. Only the owner of the agricultural commodity processing facility may apply for a refund of the sales or use tax paid on exempt machinery or equipment. A request for refund must include documentation showing the amount of tax paid by the owner of the agricultural commodity processing facility or the contractor. The tax commissioner reserves the right to make an onsite inspection prior to granting permission to purchase qualifying machinery and equipment without paying tax or prior to approving a refund. An onsite inspection by the tax commissioner does not preclude an audit of the taxpayer's books and records.

The tax commissioner shall respond in writing to each exemption request stating whether or not the machinery or equipment qualifies for the exemption. The owner of the agricultural commodity processing facility may provide the approval letter to its equipment and machinery suppliers or construction contractors to avoid paying sales and use taxes on approved equipment, machinery, and qualifying construction materials. If an owner of the agricultural commodity processing facility or a contractor purchases equipment before ~~requesting a~~the tax commissioner approves the sales tax exemption, ~~it~~the owner or contractor shall pay all applicable sales and use taxes at the time of purchase ~~but~~. Only the facility owner may apply to the tax commissioner for a refund of the taxes paid.

To receive a refund of taxes paid by the contractor, the owner of the agricultural commodity processor must provide documentation showing that the contractor paid North Dakota sales or use taxes on the tangible personal property consumed during construction, or on the tangible personal property qualifying machinery and equipment installed into the manufacturing facility. The tax commissioner may request an onsite inspection of the manufacturing facility before approving the refund of taxes paid by the contractor.

The owner of the agricultural commodity processing facility may request that the refund amount be taken as a credit adjustment on its next sales or use tax return; however, the tax exemption must be approved in writing by the tax commissioner before the tax credit may be applied on a sales and use tax return. A letter from the tax commissioner stating the amount of the approved credit must be attached to the sales and use tax return on which the credit is applied.

History: Effective June 1, 2002; amended effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-04.3, 57-39.2-04.4, 57-39.2-25, 57-40.2-03, 57-40.2-04, 57-40.2-13

81-04.1-01-24. Manufacturer's and retailer's federal excise tax.

Repealed effective July 1, 2016.

~~When products subject to federal manufacturer's excise tax are sold at retail by other than the manufacturer, the tax becomes a part of the sales tax base.~~

~~When manufacturers sell directly to consumers, and the federal manufacturer's excise tax is billed separately, the excise tax is not included in the sales tax base.~~

~~**History:** Effective June 1, 1984.~~
~~**General Authority:** NDCC 57-39.2-19~~
~~**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2~~

CHAPTER 81-04.1-03
MISCELLANEOUS SALES

Section

81-04.1-03-01.1. State-tribal tax administration agreement - Effect on other rules.

If an agreement is in effect between the state and a Native American tribal government under the authority of North Dakota Century Code chapter 54-40.2 or 57-39.8, then the provisions of that agreement apply with respect to retail sales to enrolled Native Americans on an Indian reservation in lieu of section 81-04.1-03-01.

History: Effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.8

81-04.1-03-03. Food and food products for human consumption.

Food or food ingredients are exempt from sales tax. Food and food ingredients do not include alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, or tobacco, which remain subject to sales tax. For purposes of this section:

1. "Alcoholic beverage" for human consumption means beverages containing one-half of one percent or more of alcohol by volume.

2. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation as described herein, containing flour, or any item requiring refrigeration.

3. "Dietary supplement" means a product subject to tax if the product label contains a "supplemental facts" box. If the product label contains a "nutrition facts" box, the product is regarded as food, and is exempt from tax.

4. "Prepared food" is subject to sales tax and includes food sold in a heated state or heated by the seller, or food that is prepared by mixing or combining two or more food ingredients for sale as a single item, or food sold with eating utensils, such as plates, knives, forks, spoons, glasses, cups, napkins, or straws provided by the seller. Food sold in an unheated state by weight or volume as a single item is taxable only if sold with eating utensils. Food that ordinarily requires cooking, as opposed to just reheating, by the consumer prior to consumption is not prepared food. Generally businesses that sell prepared food include

restaurants, convenience stores, delicatessens, concession stands, coffee shops, and caterers.

5. "Soft drinks" subject to sales tax include nonalcoholic beverages that contain natural or artificial sweeteners, and that do not contain milk or milk products, soy, rice, or similar milk substitutes, or that contain greater than fifty percent vegetable or fruit juice by volume. Soft drinks generally include pop and fruit drinks or fruit punches that are less than fifty percent juice by volume.

6. "Tobacco" means any cigarettes, cigars, chewing or pipe tobacco, or any other items that contain tobacco.

The exemption for food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store does not apply to food given away by restaurants or other businesses which regularly and primarily sell prepared food and beverages.

History: Effective June 1, 1984; amended effective July 1, 1985; November 1, 1987; March 1, 1990; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04.1, 57-40.2-04.1

81-04.1-03-04. Sales in interstate commerce.

When tangible personal property is sold by a North Dakota retailer for use or consumption and delivered to the purchaser in another state and the goods are not to be returned to this state, the sale is not subject to sales tax. ~~The method of transporting the goods is irrelevant.~~ However, where the seller actually delivers possession of the goods to the buyer or the buyer's representative or agent within this state, the transaction is then terminated, and the tax applies. If a shipping company takes possession of goods on behalf of a purchaser, the purchaser has not taken possession of the goods.

Tangible personal property sold by a North Dakota retailer is not subject to sales tax if it is shipped from the source of supply in another state to the purchaser at a point outside this state or delivered to the purchaser at the source of supply outside the state. If the property is brought into this state, it is subject to use tax.

Sales of tangible personal property made within this state by salesmen, representatives, agents, persons, or firms residing outside this state and delivered in this state are subject to tax.

History: Effective June 1, 1984; amended effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-04, 57-39.2-10, 57-39.4-12, 57-40.2-01, 57-40.2-03.3

81-04.1-03-13. Sales to ~~residents of~~a person from Montana.

Sales of tangible personal property to a person from Montana ~~residents~~ are exempt from sales tax if the ~~Montana resident~~person is in North Dakota specifically to make a purchase ~~and not as a tourist~~ and signs a certificate of purchase or a certificate of exemption authorized by the streamlined sales tax agreement, the sale is in an amount of fifty dollars or more, and the goods are taken outside of North Dakota, for use entirely outside this state.

Sales of meals, onsale beverages, lodging accommodations, entertainment, and similar goods and services consumed in North Dakota ~~are not exempt when sold to residents of Montana~~do not qualify for the exemption.

Sales and installation of goods into personal property owned by ~~residents of~~a person from Montana are not taxable provided the goods are removed from North Dakota for use exclusively outside this

state. Use which is incidental to removing the goods from North Dakota does not subject the goods to North Dakota use tax.

For purposes of this exemption, "person" means natural persons, Montana corporations, and other business entities when the owners, partners, or members are individual Montana residents.

History: Effective March 1, 1990; amended effective April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-04(12)

CHAPTER 81-04.1-04
SPECIFIC OCCUPATIONS

81-04.1-04-01. Agriculture - Commercial chemicals and seeds for planting.

Sales of agrichemical tank cleaners and foam markers, agricultural chemicals, including adjuvants, seeds, roots, bulbs, and small plants for commercial vegetable gardens or agricultural purposes are not subject to the tax, but such sales for noncommercial purposes are taxable. A householder's garden is not a commercial vegetable garden.

The term "adjuvant" includes surfactants, phytobland oils, stickers, spreaders, spreader-stickers, thickening agents, and antifoam agents.

The term "small plants" includes potted plants, set plants, small young trees, shrubs, herbs, slips, cuttings, flower seeds, flower plants, and small saplings.

Small young trees, including fruit trees, and shrubs, when sold for the purpose of rural windbreaks, shelterbelts, soil erosion prevention, and other agricultural purposes, are exempt from sales tax.

History: Effective June 1, 1984; amended effective November 1, 1987; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-02. Agriculture - Farm machinery and irrigation equipment - Farm machinery and irrigation equipment repair parts.

Farm machinery and irrigation equipment used principally for producing agricultural crops or livestock, including leasing or renting of farm machinery and equipment, are subject to a special gross receipts tax in lieu of sales tax at a reduced rate, as provided by North Dakota Century Code chapter 57-39.5.

Machinery sold for nonagricultural purposes is subject to sales tax at the full rate. Motor vehicles required to be registered with the motor vehicle department, including vehicles such as trucks, pickups, cars, snowmobiles, all-terrain vehicles, and garden tractors, do not qualify as farm machinery. Irrigation equipment sold for nonagricultural purposes is subject to sales tax at the full rate. Tires, accessories, communication equipment, tools, shop equipment, grain bins, feed bunks, fencing material, and other farm supplies are subject to sales tax at the full rate.

Contractors installing barn cleaners, milking systems, automatic feeding systems, irrigation systems, and similar installations which become a part of real property are subject to use tax on the cost of the materials.

Parts, excluding tires, used to repair qualifying farm machinery or farm irrigation equipment, are exempt from the special gross receipts tax. These same parts are subject to the general North Dakota sales and use tax rate when sold to contractors or others who do not use the machinery exclusively for agricultural purposes.

Farm repair parts include any durable goods, except tires, used to repair qualifying farm machinery or farm irrigation equipment. Durable goods do not include fluids, gases, oils, greases, lubricants, paints, and waxes. Farm machinery and farm irrigation repair parts do not include items like tools, lumber, twine, fencing material, or storage tanks.

Sales of parts not clearly identified for use in farm machinery or farm irrigation equipment are subject to the reduced rate when used by the seller to repair farm machinery or farm irrigation equipment.

When parts are sold over the counter, the seller should use discretion but should generally accept in good faith the purchaser's word as to their intended use. When the purchaser intends to use the parts on a qualifying farm machine or qualifying farm irrigation equipment, the qualifying parts are exempt from sales tax. If the parts are for nonfarm ~~machinery~~ use, the general sales tax rate must be charged.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 1987; March 1, 1988; June 1, 2002; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19, 57-40.2-13
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-08.2, 57-39.5-01, 57-39.5-01.1, 57-39.5-02, 57-40.2-01, 57-40.2-02.1, 57-40.2-03.3, 57-40.2-05, 57-40.2-12

81-04.1-04-06. Amusement - Games of chance.

Receipts from games of chance operated by nonprofit organizations are exempt from sales tax. Instruments for gambling purchased by these organizations are subject to sales and use tax unless the organization is exempt from sales and use tax.

~~An organization furnishing bingo cards may choose to add tax to the selling price of the bingo cards or may include tax in the selling price of the bingo cards. If the tax is included in the selling price of the bingo cards, the organization shall post a notice advising purchasers that the selling price includes sales tax. The notice must contain the language "bingo card sales price includes applicable sales tax" and must indicate the net taxable sale, tax, and gross sales price.~~

~~EXAMPLE:~~	~~Net taxable sale~~	~~$19.04~~
	~~North Dakota sales tax~~	~~.96~~
	~~Gross sale~~	~~$20.00~~

~~When sales tax is included in the selling price of bingo cards, the tax must be deducted from the gross sales receipts to arrive at net taxable sales. Net taxable sales are calculated as follows: Gross receipts divided by 105% (1.05) equals net taxable sales.~~

History: Effective June 1, 1984; amended effective March 1, 1990; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.3, 57-39.2-04, 57-39.2-20, 57-40.2-02.1

81-04.1-04-07.1. Educational, religious, or charitable sales activities.

Repealed effective July 1, 2016.

~~Gross receipts from educational, religious, or charitable activities are subject to tax when these activities include regular retail sales made in direct competition with other retailers.~~

~~"Regular retail sales" includes all recurring, regularly scheduled, or ongoing retail sales made in the ordinary course of business other than those made on an isolated or occasional basis.~~

~~"Direct competition" means activity wholly or substantially similar to existing sales, taxable goods, or services competing for the same customer market.~~

~~A community music organization or a community theater organization may present live performances of musical or theatrical works in a publicly owned facility without charging sales tax on the admissions provided that the organization is exempt from federal income tax and provided that the net proceeds from all such activities are expended for religious, educational, or charitable purposes.~~

~~The gross receipts from all other sales or admissions made in a publicly owned facility by an organization exempt from federal income tax are subject to sales tax unless the gross receipts from the organization's educational, religious, or charitable activities are five thousand dollars or less.~~

~~**History:** Effective November 1, 1987; amended effective August 1, 1994; June 1, 2002.~~
~~**General Authority:** NDCC 57-39.2-19~~
~~**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04~~

81-04.1-04-10.1. Amusement - Coin-operated amusement devices.

Repealed effective July 1, 2016.

~~Sales tax is due on eighty percent of the gross receipts collected from coin-operated amusement devices. Sales tax is included in the gross receipts from coin-operated amusement devices and must be deducted before calculating gross receipts subject to sales tax (taxable sales).~~

~~Taxable sales from coin-operated amusement machines are calculated as follows:~~

~~1. 5% state sales tax only~~	~~Taxable sales = Gross Receipts x 76.92% (.7692)~~
~~2. 5% state sales tax and 1% city sales tax~~	~~Taxable sales = Gross Receipts x 76.34% (.7634)~~
~~3. 5% state sales tax and 1 3/4% local city sales tax~~	~~(State) Taxable sales = Gross Receipts x 76.20% (.7620)~~ ~~(City) Taxable sales = Gross Receipts x 53.34% (.5334)~~

~~In the absence of a written agreement stipulating division of gross receipts between the coin-operated amusement device owner and the location operator, the coin-operated amusement device owner is responsible for sales tax on eighty percent of the gross receipts.~~

~~The purchaser of a coin-operated amusement device is liable for sales tax on a coin-operated amusement device purchased in this state or for use tax on a coin-operated amusement device purchased outside of this state regardless of whether a license fee is paid to any governmental authority for operating the coin-operated amusement device.~~

~~**History:** Effective November 1, 1987; amended effective March 1, 1988; March 1, 1990; April 1, 2006.~~
~~**General Authority:** NDCC 57-39.2-19~~
~~**Law Implemented:** NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-03.2, 57-39.2-03.3, 57-40.2-02.1~~

81-04.1-04-17. Banks - Purchases and sales by national banks, state banks, trust companies, and savings and loan associations.

When financial institutions are engaged in the business of purchasing tangible personal property for ~~sale,~~ lease~~,~~ or rental at retail, they are required to collect and remit the tax from their customers on all ~~such sales, leasing,~~periodic lease or rental payments unless the financial institution paid sales or use tax on the purchase price of the property at the time of purchase.

To qualify for the exemption on periodic lease or rental payments, the financial institution leasing or renting the tangible personal property must disclose on an invoice, contract, or lease agreement, or other supporting sales document provided to the customer that the financial institution paid sales or use tax on its purchase price. Financial institutions are required to collect sales tax on a payment made to exercise a purchase option.

When financial institutions acquire tangible personal property to offer as an inducement to deposit funds, sales tax applies on the full purchase price. If the seller fails to collect the sales tax, the financial institution must report the purchase of such merchandise and pay use tax. If such merchandise is subsequently sold at a reduced price to depositors, no sales tax applies.

History: Effective June 1, 1984; amended effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-20, 57-40.3

81-04.1-04-29. Minerals - Coal.

Coal mined and sold in this state subject to the coal severance tax is exempt from sales tax. Coal mined outside this state is not subject to sales tax when sold in this state.

~~Coal, mined and sold for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, is subject to sales tax.~~

History: Effective June 1, 1984; amended effective June 1, 2002; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-61

81-04.1-04-30. Minerals - Coke and natural gas sold to industrial users.

All sales of natural gas are exempt from sales tax. Sales to industrial users of coke~~, natural gas,~~ and other fuels not subject to a special tax are sales at retail and subject to sales tax if they do not become an integral, ingredient, or component part of a manufactured product sold at retail.

History: Effective June 1, 1984; amended effective July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-31. ~~Mobile~~Manufactured homes.

~~Mobile~~Manufactured homes, not sold in conjunction with installation, are tangible personal property subject to sales tax at a reduced rate on the gross receipts. Installation of a manufactured home includes any method established under North Dakota Century Code section 54-21.3-08. A manufacturer or seller who permanently attaches ~~such~~manufactured homes to a foundation or provides installation by any method established under North Dakota Century Code section 54-21.3-08 is subject to tax in the same manner as a construction contractor and is liable for tax based on the cost of materials to the manufacturer or seller.

Trade-ins are not to be deducted from the gross sales price prior to application of the sales tax.

A manufactured home that is sold and will be installed in another state is not subject to tax.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-32. ~~Mobile~~Manufactured homes - Sales and rentals.

Leasing or renting ~~mobile~~manufactured homes for nonresidential purposes is subject to sales tax. A ~~mobile~~manufactured home dealer using a ~~mobile~~manufactured home as an office must pay sales or use tax based on the dealer's cost. Sales tax is applied on the lease or rental of a new ~~mobile~~manufactured home at a reduced rate. The lease or rental of a used ~~mobile~~manufactured home is not subject to sales or use tax.

History: Effective June 1, 1984; amended effective July 1, 1985; July 1, 2016.

General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04

81-04.1-04-40. Rentals and rental agencies.

The lease or rental of tangible personal property is subject to sales tax based on the periodic payments as they are made unless the retailer has paid sales or use tax on its purchase of the tangible personal property. Sales tax is applied based on where the lease or rental equipment will be located in the state.

Examples of lease or rental transaction include:

1. A customer picks up lease or rental equipment for the day from a rental business. State and local sales tax will apply to the lease or rental charge based upon the location of the rental business.

2. A customer has lease or rental equipment delivered to the customer's location for the day. State and local sales tax will apply to the lease or rental charge based upon the location of the customer.

3. A customer enters into a six-month lease of equipment with lease payments due monthly. The customer picks up the equipment at the lessor's business location in the state. Because the customer first takes possession of the equipment at the lessor's business location, the first lease payment is subject to sales and local sales tax based on the lessor's business location. Sales tax on subsequent lease payments will be due based on the location where the equipment is stored or used in this state. If stored or used outside this state, the subsequent lease payments applying to this period of time will not be taxable.

North Dakota sales tax law continues to provide an exemption from sales tax on lease or rental receipts for tangible personal property purchased for lease or rental when sales or use tax had been paid to North Dakota on the purchase price. To qualify for an exemption on periodic lease or rental payments, the retailer leasing or renting the tangible personal property shall disclose on an invoice, contract, lease agreement, or other supporting sales document provided to the customer that the retailer paid sales or use tax on the retailer's purchase price. Retailers that pay tax on the purchase price of lease or rental property are required to collect sales tax on a payment made to exercise a purchase option.

In a lease-purchase arrangement, sales tax must be charged on the rentals until the option is exercised. When the option is exercised, sales tax must be charged on any additional amount the purchaser must pay to complete the purchase.

An agent acting for an undisclosed principal and leasing tangible personal property to the public is the owner, and the rentals received are subject to sales tax. Tax applies to the full rental as long as the leased item is used within this state.

Persons engaged in the business of leasing or renting tangible personal property other than motor vehicles are retailers and subject to sales tax. Purchases by rental agencies of items to be leased or rented are purchases for resale and are not subject to sales tax. A certificate of resale must be presented to the seller for these purchases.

The term "sale" does not include sales or rentals of motor vehicles licensed by the director of the North Dakota department of transportation on which the motor vehicle excise tax has been paid to North Dakota.

When the sales tax rate changes during the term of an existing lease, the rate of tax to be charged on the remaining lease or rental payments will reflect the new rate of tax.

In a sale-leaseback arrangement, when a company purchases or owns tangible personal property on which applicable sales and use taxes were paid, and enters into a sale-leaseback arrangement with a financial business for the sale and leaseback of the same property, no sales tax shall apply to the transfer of title to the business or subsequent lease to the company. The subsequent sale of the property by the financial business at the conclusion of the lease is subject to sales tax. "Leaseback" means a transaction involving the sale of property and the seller's simultaneous lease of the property from the purchaser.

History: Effective June 1, 1984; amended effective October 1, 1986; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-20

81-04.1-04-41.1. Communication service.

1. The gross receipts from the sale of all communication services, including telecommunications services and ancillary services, provided in the state are subject to sales tax provided the communication service originates and terminates within the state's borders, regardless of where the billing for the service is made.

2. Taxable communication services include the following:

   a. Telecommunications services;

   b. Ancillary services; and

   c. Access charges, including internet access charges billed to retail customers, unless otherwise prohibited by federal law.

3. Mobile telecommunications services. A mobile telecommunications company that provides communication services, as defined in North Dakota Century Code chapter 57-34.1, to retail consumers shall use the location of the customer's place of primary use for the purpose of determining whether tax is due on services charged to the customer. "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and within the licensed service area of the home service provider.

4. Taxable communication services do not include:

   a. ~~One-way communication service;~~

   ~~b.~~ Purchase of communication service from one communication provider to another, for resale to a retail consumer, provided a certificate of resale is provided to the seller by the purchaser;

   ~~c.~~b. Charges for interstate communication service;

   ~~d.~~c. Communication services to exempt entities;

   ~~e.~~d. Communication services to Indian retail consumers enrolled and living on an Indian reservation within this state; and

   ~~f.~~e. 911 emergency telephone charges.

5. In the case of a bundled transaction that includes telecommunications service, ancillary service, or internet access:

a. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including nontax purposes.

b. The provisions of this rule shall apply unless otherwise prohibited by federal law.

6. Definitions. For the purposes of this section, the following definitions apply:

a. "Ancillary service" means services that are associated with or incidental to the provisions of "telecommunications services", including "detailed telecommunications billing", "directory assistance", "vertical service", and "voice mail services".

b. "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone that accepts direct deposits of money to operate.

c. "Conference bridging service" means an "ancillary service" that links two or more participants in an audioconference or videoconference call and may include the provision of a telephone number. Conference bridging service does not include the "telecommunications services" used to reach the conference bridge.

d. "Detailed telecommunications billing service" means an "ancillary service" of separately stated information pertaining to individual calls on a customer's billing statement.

e. "Directory assistance" means an "ancillary service" of providing telephone number information or address information, or both.

f. "Fixed wireless service" means a telecommunications service that ~~is transmitted, conveyed, or routed, regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider~~provides radio communication between fixed points.

g. "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia and United States territories or possessions.

h. "Interstate" means a telecommunications service that originates in one United States state, territory, or possession, and terminates in a different United States state, territory, or possession.

i. "Intrastate" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or United States territory or possession.

j. "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

k. "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages or sounds, or both.

l. "Pay telephone service" means a telecommunications service provided through any pay telephone.

m. "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid in advance, and that is sold in predetermined units of dollars of which the number declines with use in a known amount.

n. "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

o. "Residential telecommunications service" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

p. "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The phrase "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing, without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value-added. "Telecommunications service" does not include:

(1) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(2) Installation or maintenance of wiring or equipment on a customer's premises;

(3) Tangible personal property;

(4) Advertising, including directory advertising;

(5) Billing and collection services provided to third parties;

(6) Internet access service;

(7) Radio and television audio and video programming services, regardless of the medium, including the furnishing or transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include cable service, as defined in 47 U.S.C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(8) "Ancillary services" or digital products delivered electronically, including software, music, video, reading materials, or ring tones.

q. "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data, primarily for the purpose other than transmission, conveyance, or routing.

r. "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services", which offers advanced calling features that allow customers to identify callers and manage multiple calls and call connections, including "conference bridging services".

s. "Voice mail service" means an "ancillary service" that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

t. "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

u. "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

History: Effective April 1, 1995; amended effective June 1, 2002; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-39.2-19
Law Implemented: NDCC 57-39.2-01, 57-39.2-02.1, 57-39.2-04, 57-39.2-11, 57-39.2-19, 57-39.2-20

CHAPTER 81-09-03
OIL EXTRACTION TAX

81-09-03-02. Definitions.

As used in these sections and for the administration of North Dakota Century Code chapter 57-51.1, unless the context requires otherwise, the following definitions apply:

1. "Completion" or "completed" means an oil well will be considered completed when the first oil is produced through wellhead equipment after production casing has been run.

2. "Drilled" means the spudding of a well.

3. ~~"Horizontal reentry well" means a well that was initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. A horizontal reentry well includes a vertical well classified by the industrial commission as a dry hole which is reentered and recompleted as a horizontal well. As applied to the horizontal reentry of a vertical well, a reentry means the reentering of a well that has been plugged as determined by the industrial commission under section 43-02-09-01.~~

~~4.~~ "Incremental production" means the oil which has been classified as incremental by the industrial commission ~~pursuant to~~under subsections 5 and 6 of North Dakota Century Code section 57-51.1-03.

~~5.~~4. "New well" means a well initially drilled and originally completed after April 27, 1987, to a separate and distinct reservoir as recognized by the industrial commission.

~~6.~~5. "Nonincremental production" means the oil which has not been classified as incremental by the industrial commission.

~~7.~~6. "Reservoir" means a common source of supply as defined by the industrial commission.

~~8.~~7. "Test oil" means oil recovered during and after drilling but before normal completion of a well.

~~9.~~8. "Unit" means the total area of land that results from the combining of interests in all or parts of two or more leases or fee interests in order to operate the reservoir as a single production unit subject to a single operating interest. A unit may be formed by an agreement between the mineral interest owners (voluntary unitization) or by order of an agency of the state or federal government (compulsory unitization). A unit does not include "poolings" resulting from the

enforcement of spacing requirements. This definition is only effective for periods prior to April 27, 1987.

History: Effective August 1, 1986; amended effective October 1, 1987; March 1, 1990; June 1, 1992; April 1, 1996; April 1, 2006; July 1, 2016.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-01(3)(4)(5)(8), 57-51.1-03(3)

81-09-03-05.1. Tax incentives for qualifying secondary recovery projects.

1. The exemption for incremental production from a qualifying secondary recovery project starts with the first day of the first month in which incremental oil is produced from the project.

2. The nonincremental production from a qualifying secondary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 5 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

History: Effective June 1, 1992; amended effective June 1, 2002; July 1, 2016.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-01(5)(6)

81-09-03-05.2. Tax incentives for qualifying tertiary recovery projects.

1. The exemption for incremental production from a qualifying tertiary recovery project starts with the first day of the first month in which incremental oil is produced from the project.

2. The nonincremental production from a qualifying tertiary recovery project which is not otherwise exempt is subject to tax at a reduced extraction tax rate of four percent starting with the first day of the first month after the project achieves the production increase required pursuant to subsection 6 of North Dakota Century Code section 57-51.1-01. To be eligible for this rate reduction, a unit operator must have the industrial commission certify that the project has achieved the requisite increase in production and a copy of the industrial commission's certification must be submitted to the tax commissioner. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

3. The exemption and rate reduction may be eliminated as of the first day of the first month in which the unit ceased to be operated as a qualified project if the industrial commission determines that the unit operator is not continuing to operate the unit as a qualifying tertiary recovery project.

History: Effective June 1, 1992; amended effective June 1, 2002; July 1, 2016.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-01(5)(6)

81-09-03-06. New well exemption for vertical and horizontal wells.

Repealed effective July 1, 2016.

1. A new vertical well and a new horizontal well exemption starts with the date the well was completed.

2. The fifteen-month and twenty-four month exempt periods run consecutively from the date the well is completed even though all or a portion of the new well exemption may be rendered ineffective by the oil price trigger discussed below.

3. Only one new well exemption is allowed per well bore. The well bore of a horizontal well consists of both the vertical and horizontal segments.

4. To be eligible for the new well exemption, the commissioner must receive notification of the well's completion in a report from the industrial commission. The commissioner will verify the date the well was completed and issue an exemption letter to the operator. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The tax commissioner will accept the information subject to confirmation upon audit.

History: Effective October 1, 1987; amended effective March 1, 1990; June 1, 1992; April 1, 1996; June 1, 2002.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-03(3)

81-09-03-08. Work-over exemption.

Repealed effective July 1, 2016.

The twelve-month period runs consecutively from the first day of the third month after completion of the work-over project, even though all or a portion of the exemption may be rendered ineffective by the oil price trigger.

The commissioner must receive a work-over qualification letter signed by a representative of the industrial commission stating that the work-over project meets the requirements set forth in North Dakota Century Code section 57-51.1-03. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed. The letter must also provide the following information:

1. The name of the lease.

2. The location of the well.

3. The name of the party entitled to the tax exemption.

4. The average daily production of the well during the latest six calendar months of continuous production.

5. The cost of the work-over project.

6. The average daily production of the well during the first sixty days after completion of the work-over project, if the cost of the work-over project is sixty-five thousand dollars or less.

7. The dates on which the work-over project was performed.

The commissioner will accept the information provided in the qualification letter subject to confirmation upon audit.

History: Effective March 1, 1990; amended effective June 1, 1992; August 1, 1994; June 1, 2002; April 1, 2006.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-03

81-09-03-09. Trigger provision applicable to oil extraction tax rate.

Repealed effective July 1, 2016.

~~The trigger becomes effective starting with the first day of the first month following the five-month period in which the average price exceeded the trigger price. The oil extraction tax percentage will revert back to the reduced or exempt rate beginning on the first day of the first month following the five-month period in which the average price of crude oil was below the trigger price provided the wells still qualify for the reduced rate or exemption. The trigger provisions do not apply to stripper wells, wells drilled on Indian land, or incremental production from an enhanced recovery project.~~

~~**History:** Effective June 1, 1992; amended effective August 1, 1994; June 1, 2002; April 1, 2006.~~
~~**General Authority:** NDCC 57-51-21, 57-51.1-05~~
~~**Law Implemented:** NDCC 57-51.1-03~~

81-09-03-10. Horizontal reentry well exemption.

Repealed effective July 1, 2016.

~~1. The designation of a horizontal reentry well is given to a well initially drilled and completed as a vertical well which is reentered and recompleted as a horizontal well. This designation may also apply to the reentry and recompletion of a vertical well that is classified by the industrial commission as a dry hole.~~

~~2. The nine-month exempt period runs consecutively from the date the horizontal reentry well is recompleted even though all or a portion of the exemption may be rendered ineffective by the oil price trigger described in this section.~~

~~3. Test oil from a horizontal reentry well is exempt from the oil extraction tax. The well bore of a horizontal reentry well consists of both the vertical and horizontal segments.~~

~~4. After the nine-month exempt period expires, oil produced from a horizontal reentry well is subject to the same oil extraction tax rate that was applicable before the exempt period.~~

~~5. The commissioner must receive a qualification letter signed by a representative of the industrial commission stating the dates the well was initially spudded and completed as a vertical well, the dates the well was reentered and recompleted as a horizontal well, the total volume of test oil recovered prior to recompletion, and, if applicable, the date the well was initially plugged and abandoned as a dry hole. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.~~

~~**History:** Effective April 1, 1996; amended effective June 1, 2002.~~
~~**General Authority:** NDCC 57-51-21, 57-51.1-05~~
~~**Law Implemented:** NDCC 57-51.1-03(7)~~

81-09-03-11. Two-year inactive well exemption.

Repealed effective July 1, 2016.

~~1. A two-year inactive well exemption starts with the first day of the month in which the industrial commission's certification of well status is received by the tax commissioner.~~

~~2. A two-year inactive well is a well that has not produced oil in more than one month in any consecutive twenty-four-month period. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.~~

~~3. The inactive well exemption is applicable to all oil produced during the exemption period after the well is certified as a two-year inactive well.~~

4. The ten-year exempt period runs consecutively from the month the tax commissioner receives the industrial commission's certification even though all or a portion of the inactive well exemption may be rendered ineffective by the oil price trigger described in this section.

5. To be eligible for the inactive well exemption, the commissioner must receive a copy of the industrial commission's certification stating that the well qualifies as a two-year inactive well. The certification must be submitted to the commissioner within eighteen months after the two-year inactive well's qualification period to receive the exemption from the first day of eligibility. It is the operator's responsibility to ensure that the notification process is complete and that the oil purchaser has been informed.

History: Effective April 1, 1996; amended effective June 1, 2002; April 1, 2006.
General Authority: NDCC 57-51-21, 57-51.1-05
Law Implemented: NDCC 57-51.1-03(6)

ARTICLE 81-10
BANKS, TRUST COMPANIES, AND SAVINGS AND LOAN ASSOCIATIONS

[Repealed effective July 1, 2016]

~~Chapter~~
~~81-10-01 General~~

TITLE 87

VETERINARY MEDICAL EXAMINERS, BOARD OF

JULY 2016

CHAPTER 87-04-01

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

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

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

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

4. After a valid veterinarian-client-patient relationship has been established, a veterinarian shall make available, upon request, and may assess a reasonable cost for, a prescription for a drug that has been determined by the veterinarian to be appropriate for the patient.

History: Effective January 1, 1999; amended effective April 1, 2009; July 1, 2016.
General Authority: NDCC 43-29-03
Law Implemented: NDCC 43-29-03