

NORTH DAKOTA ADMINISTRATIVE CODE

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**Prepared by the Legislative Council staff
for the
Administrative Rules Committee**

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TITLE 7
AGRICULTURE COMMISSIONER

OCTOBER 2016

CHAPTER 7-14-02

7-14-02-01. Definitions.

For purposes of this chapter:

1. "Approved cultivar" means any variety of industrial hemp designated by the commissioner in a published list and may be amended from time to time.

~~2. "GBL" means cannabinoid, a nonpsychotropic compound.~~

~~3. "Certify" means to declare the number of acres of industrial hemp planted either to the local United States department of agriculture farm service agency or by a signed notarized form developed by the commissioner.~~

~~4. "Competent laboratory" means a laboratory that is determined by the commissioner as a qualified laboratory with qualified staff to appropriately test for ~~THC and GBL~~delta-9 tetrahydrocannabinol levels.~~

~~5.3.~~ "Criminal conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, or a judgment of conviction even though the court may have suspended execution of a sentence in accordance with subsection 3 of North Dakota Century Code section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of North Dakota Century Code section 12.1-32-02, or an equivalent statute.

~~6.4.~~ "Industrial hemp" means the plant Cannabis sativa L. and any part of such plant whether growing or not with no a delta-9 THC concentration of not more than three-tenths of one percent THC ~~in a mature seed or in a growing plant with a THC level above three-tenths of one percent if the GBL to THC ratio is not less than two to one~~on a dry-weight basis.

~~7.5.~~ "Seed" means any part of an industrial hemp plant that is represented, sold, or used to grow a plant.

~~8.6.~~ "THC" means delta-9 tetrahydrocannabinol ~~((6aR, 10aR)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol), a~~ psychotropic compound.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-02. Licensing.

1. Any ~~individual or entity~~ person desiring to obtain a state license to grow industrial hemp for commercial purposes shall comply with the following:
 - a. A completed license application must be submitted to the agriculture commissioner on such forms as supplied by the commissioner or otherwise approved by the commissioner and the proper fee prescribed by the statute ~~by January first of each production year~~.
 - b. A minimum of ~~ten acres~~ one-half of an acre plot must be planted for each license granted except for North Dakota state university for research purposes.
 - c. The applicant must list all individuals who will be involved in any manner in handling or ~~producing~~ growing industrial hemp.
 - d. The applicant, including each individual involved in the handling or production of industrial hemp, must submit written consent granting a state and national criminal history check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, and a statement indicating whether the applicant or individual has ever been convicted of a crime. The applicant must pay all costs associated with conducting each criminal history background check.
 - e. The applicant must provide to the commissioner field locations using geopositioning capability instrumentation along with an official aerial United States department of agriculture farm service agency map or any other method approved by the commissioner.
2. Licenses expire on December thirty-first of each year.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-03. License renewal.

1. Licensees wishing to renew their licenses must submit to the commissioner a completed license renewal application on such forms as prescribed by the commissioner ~~by January first of each year following the initial year of production~~.
2. For all crop not ~~marketed~~ sold or removed from the site during the licensed year, the licensee must apply for and receive a new license the following year.
3. A licensee shall submit the fee prescribed by statute with the renewal application for a license.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-04. Producing and handling requirements.

- ~~1.a.~~ The licensee shall ensure that all equipment that is used to sow or harvest the hemp is thoroughly cleaned after each use in order to avoid the inadvertent dissemination of industrial hemp.
- ~~b.~~ 2. All industrial hemp seed must be covered during transport to avoid the inadvertent dissemination of industrial hemp.
- ~~c.~~ 3. All volunteer industrial hemp plants not located in a field licensed to produce must be destroyed before reaching the seed-producing stage.

~~d.4.~~ All nonexempt plant material must be exported or sold to a United States drug enforcement administration registered processor~~reverse distributor for processing or fully incinerated onsite in a manner approved and supervised by the commissioner.~~

~~2.~~ All licenses granted by the commissioner must be submitted to the United States drug enforcement administration each year for approval.

~~3.~~ A license issued by the commissioner shall not be effective until the licensee receives a registration from the United States drug enforcement administration to import, produce, or process industrial hemp.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-05. Reporting requirements.

1. The following information must be supplied to the commissioner by July first of each year.
 - a. The licensee shall certify~~report~~ to the commissioner the final planted acreages of industrial hemp ~~on a form prescribed by the commissioner.~~
 - b. The licensee shall file with the commissioner documentation indicating that the seed planted was of produced from a type and variety ~~certified to have no more than three-tenths of one percent tetrahydrocannabinol. The documentation must include laboratory test results from a competent laboratory certifying that the seed has no more than three-tenths of one percent tetrahydrocannabinol~~that has been tested for delta-9 THC and contains less than three-tenths percent on a dry-weight basis.
 - c. The licensee shall report to the commissioner the name, address, and telephone number of any person from whom all seed used in the production of industrial hemp was purchased.
2. The licensee must report to the commissioner the name, address, and telephone number of any purchaser of industrial hemp seed and nonexempt plant parts at the time of the sale.
3. The holder of a license shall notify the commissioner of the following changes within fifteen days after a change:
 - a. To the name, address, or telephone number of the licenseholder; or
 - b. In the ownership of the land used to cultivate industrial hemp.
4. The licensee must notify the commissioner a minimum of ~~two weeks~~thirty days prior to the intended harvest date ~~to allow the commissioner to take and test samples. The commissioner, at any time, may take samples and submit them to a qualified laboratory for THC testing.~~ The licensee must notify the commissioner of the intended or current location of all storage facilities using geopositioning capability instrumentation.
5. The licensee must receive approval from the commissioner before selling or otherwise distributing any industrial hemp seed or other plant materials.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-08. Noncompliance.

1. ~~A licensee who does not comply with all the requirements of this chapter and North Dakota Century Code chapter 4-41 will forfeit the right to grow industrial hemp for a period of up to five years.~~ The commissioner may suspend or revoke a license for the failure of a licensee to comply with all the requirements of this chapter and North Dakota Century Code chapter 4-41. The commissioner may prohibit a person who does not comply with all the requirements of this chapter and North Dakota Century Code chapter 4-41 from obtaining a license to grow industrial hemp for a period of up to five years.
2. The commissioner ~~has the discretion to~~ may destroy all industrial hemp crop, grain, oil, plant parts, or fiber that was produced in a manner inconsistent with the requirements of this chapter. As a condition of licensure, the licensee agrees that no compensation will be paid by the state resulting from such destruction.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

7-14-02-09. Prohibitions.

1. A person may not advertise in any fashion that would indicate that industrial hemp, its derivatives, or any product made from those derivatives is psychoactive.
2. A person may not possess, transport, distribute, grow, or deal in any plant parts of industrial hemp without first having obtained a license according to section 7-14-02-02.
3. A person may not plant bin-run seed or ~~noncertified seed~~ seed whose parent plant has not been tested for delta-9 THC.

History: Effective January 1, 2007; amended effective October 1, 2016.

General Authority: NDCC 4-41-01

Law Implemented: NDCC 4-41-01

TITLE 10
ATTORNEY GENERAL

OCTOBER 2016

ARTICLE 10-16 MULTI-STATE LOTTERY

Chapter	
10-16-01	General Rules
10-16-02	Retailer
10-16-03	Conduct and Play
10-16-04	POWERBALL® Game
10-16-05	HOT LOTTO® Game
10-16-06	WILD CARD 2® Game <u>[Repealed]</u>
10-16-07	2BY2® Game
10-16-08	MEGA MILLIONS® Game
10-16-09	North Dakota Lottery Players Club SM Points for Prizes®
10-16-10	North Dakota Lottery Players Club SM Points for Drawings™
10-16-11	LUCKY FOR LIFE™ Game

CHAPTER 10-16-01

10-16-01-01. Definitions.

As used in this article:

1. "Applicant's agent" means a general manager, sole proprietor, partner of a partnership, or, for a corporation, an officer or director who is primarily responsible for financial affairs or a shareholder who owns ten percent or more of the common stock, of a business that is applying for or renewing a license. A general manager is a person who regularly is onsite and primarily responsible and accountable for managing and controlling the day-to-day operation of the business.
2. "Cash voucher" means a voucher generated by the lottery's player-activated terminal that can be validated for cash at the retailer's lottery terminal.
3. "Draw" means the formal process of randomly selecting winning numbers, letters, or symbols that determine the number of winning plays for each prize level of a game.
4. "Deposit account" means the account to which funds are deposited and from which subscription purchases are made.
5. "Game" means an on-line game authorized by the lottery.

- ~~5-6.~~ "Game group" means a group of lotteries that have joined together to offer a game on a multi-state basis according to the terms of the MUSL or the game group's rules or both.
- ~~6-7.~~ "Grand prize" means the top prize that can be won in a game.
- ~~7-8.~~ "Group play" means two or more individuals sharing a purchase made.
- ~~8-9.~~ "Lottery" means the North Dakota lottery.
- ~~9-10.~~ "Multi-state lottery" means a lottery game that spans the individual borders of a state, jurisdiction, province, district, commonwealth, territory, or country.
- ~~10-11.~~ "MUSL" means the multi-state lottery association.
- ~~11-12.~~ "North Dakota Lottery Players ClubSM" means a program that players can join to earn exclusive benefits and rewards.
- ~~12-13.~~ "Online gaming system" means a computer system designed to control, monitor, communicate with a terminal, and record play transactions and accounting data.
- ~~13-14.~~ "Play" means the numbers, letters, or symbols that are on a ticket or properly and validly registered subscription play to be played by a player in a draw, excluding a lottery promotion.
- ~~14-15.~~ "Play area" means the area of a play slip that contains one or more sets of numbered squares to be marked by a player for a game. Each set contains a certain number of numbers, letters, or symbols that correspond to the game.
- ~~15-16.~~ "Play slip" means a card used in marking a player's selections of numbers, letters, or symbols and containing one or more play areas for a game.
- ~~16-17.~~ "Player-activated terminal" means a device authorized by the lottery and operated by a player to function in an online, interactive mode with the lottery's computer system to receive and process lottery transactions, including the purchase and issuance of a ticket, the validation of a ticket, and the issuance of a cash voucher.
- ~~17-18.~~ "Points for DrawingsTM" means a program where players can enter drawings by using points received from the submission of valid tickets.
- ~~18-19.~~ "Points for Prizes[®]" means a rewards program where players can earn points by becoming registered members and submitting valid tickets.
- ~~19-20.~~ "Quick pick" means a random selection of numbers, letters, or symbols by a computer system that are printed on a ticket or properly and validly registered subscription play and played by a player for a draw in a game.
- ~~20-21.~~ "Retailer fraud" means an owner or employee of a licensed retailer who knowingly and intentionally:
- a. Fails to properly validate a player's winning ticket;
 - b. Fails to pay the player the proper prize amount on a winning ticket;
 - c. Fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or
 - d. Performs any other act that causes financial harm to a player in violation of the lottery law or rules.

- | ~~21.22.~~ "Set prize" means all prizes, except the grand prize for a game that are to be paid by a single cash payment and, except as provided by rule, will be equal to the prize amount established by the MUSL and/or the game group for the prize level of the game.
- | ~~22.23.~~ "Subscription" means a purchase of a draw game play for drawings up to one year.
- | ~~23.24.~~ "Terminal" means a device authorized by the lottery and operated by a retailer or the lottery to function in an on-line, interactive mode with the lottery's computer system to issue a ticket and enter, receive, and process a lottery transaction, including a purchase, validation of a ticket, and issuance of a report.
- | ~~24.25.~~ "Ticket holder" means a person who has signed a ticket or possesses an unsigned ticket.
- | ~~25.26.~~ "Top prize" means the first prize that can be won in a game.
- | ~~26.27.~~ "Validation" means the process of determining whether a ticket presented for a prize is a winning ticket.
- | ~~27.28.~~ "Winning account" means the account to which subscription winnings are deposited and from which player withdrawals are made.
- | ~~28.29.~~ "Winning numbers" means the numbers, letters, or symbols randomly selected in a draw to determine a winning play contained on a ticket or properly and validly registered subscription play or randomly selected in a lottery promotion to determine a winning prize stated on a ticket or coupon.

History: Effective February 1, 2004; amended effective April 1, 2006; July 1, 2008; July 6, 2014; January 31, 2016; [February 1, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

CHAPTER 10-16-02

10-16-02-07. Sales commission and bonus.

1. The lottery shall credit a retailer's account for:
 - a. A sales commission of five percent of the retail price of a ticket sold or otherwise issued by the retailer;
 - b. A sales commission of five percent of the amount of a subscription sale that is transacted through the North Dakota Lottery Players ClubSM when a player chooses a specific retailer. The retailer must be currently licensed when the subscription is purchased; and
 - c. A sales bonus for selling a ticket with a winning play, for a game as stated below. However, the retailer must be currently licensed when a draw is conducted that results in the winning play of a ticket. If the winning play for POWERBALL® has the power play option, or the winning play for MEGA MILLIONS® has the Megaplier® option, or the winning play for HOT LOTTO® has the triple sizzler option, the retailer's account must also be credited for an additional bonus as stated below:

<u>Prize</u>	<u>Bonus</u>	<u>Additional Bonus</u>
POWERBALL®		
Grand prize	\$50,000	Additional \$50,000 with power play
\$1,000,000	\$5,000	Additional \$5,000 with power play
\$50,000	\$1,000	Additional \$1,000 with power play
MEGA MILLIONS®		
Grand prize	\$50,000	Additional \$50,000 with Megaplier®
\$1,000,000	\$5,000	Additional \$5,000 with Megaplier®
\$5,000	\$250	Additional \$250 with Megaplier®
HOT LOTTO®		
Grand prize	\$5,000	Additional \$5,000 with triple sizzler
\$30,000	\$750	Additional \$750 with triple sizzler
\$3,000	\$150	Additional \$150 with triple sizzler
LUCKY FOR LIFE™		
\$7,000/week for life	\$25,000	
\$25,000/year for life	\$2,500	
\$5,000	\$250	
WILD CARD-2®		
Grand prize	\$2,000	
\$6,000	\$250	
2BY2®		
Grand prize		
\$22,000	\$500	
\$44,000*	\$1,000	

*Tuesday draw double grand prize winning play on a qualifying multi-draw ticket.

2. The lottery may credit a retailer's account for a fixed or graduated sales commission or bonus for a special promotion, including power play, Megaplier®, and triple sizzler, that the lottery conducts for a certain period of time based on parameters set by the lottery.

History: Effective February 1, 2004; amended effective January 1, 2006; January 3, 2008; January 31, 2010; January 15, 2012; October 19, 2013; July 6, 2014; October 4, 2015; [February 25, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

CHAPTER 10-16-03

10-16-03-01. Games authorized.

The lottery may conduct online games of POWERBALL®, MEGA MILLIONS®, HOT LOTTO®, ~~WILD CARD 2®~~, 2BY2®, and LUCKY FOR LIFE™.

History: Effective February 1, 2004; amended effective November 8, 2005; July 1, 2008; January 31, 2010; January 31, 2016; [February 25, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-13

10-16-03-08. Claim of a prize.

A prize for a validated winning ticket must be claimed as follows:

1. No prize may be awarded nor is the lottery liable for a ticket not submitted for validation or for an announcement or dissemination by the lottery or any other person of an incorrect number, letter, or symbol drawn.
2. A ticket bought or used to claim a prize in violation of federal or state law, or bought in violation of the lottery law or rules, is void and may not be used to claim a prize.
3. A ticket for a prize must be actually received or, if mailed, postmarked, within one hundred eighty days after the date of a draw for the game for which the ticket was issued. If the final day of the claim period is a Saturday, Sunday, or state holiday, the claim period is extended to the next business day. An unclaimed prize is forfeited and retained by the lottery. However, if the grand prize for the game of POWERBALL®, MEGA MILLIONS®, or HOT LOTTO®, ~~or~~ ~~WILD CARD 2®~~ is unclaimed, the MUSL shall administer the grand prize money. If the top prize or second prize for LUCKY FOR LIFE™ is unclaimed, the lottery's liability for that prize expires and no settlement of funds will be scheduled. If a lower tier prize for LUCKY FOR LIFE™ is unclaimed, the lottery's liability for that prize expires and is allocated back to the lottery in relation to the sale's percent for the specific drawing.
4. A person who owns or redeems a winning ticket:
 - a. Agrees to be bound by the lottery law, rules, procedure, policy, validation requirements, dispute resolution, and game group game rules related to the game for which the ticket was issued; and
 - b. Agrees that the state, lottery, the MUSL, game group, and their officers, employees, agents, representatives, and contractor are discharged from any liability upon payment of a prize on a ticket.
5. The owner of a winning ticket may win only one prize per play for the winning numbers, letters, or symbols drawn and is entitled only to the prize won by those numbers in the highest matching prize category.
6. A retailer may redeem a ticket only at the business address listed on the license. The retailer may pay a prize in cash or by business check, certified or cashier's check, money order, or combination of methods.
7. A person may redeem a winning ticket for a prize only during the normal business hours of a retailer provided that the lottery's online computer system is operating and a ticket may be validated. If the retailer is normally open for business before or after the hours when the lottery's on-line computer system operates, the retailer shall post the hours at the site when a person may redeem a ticket.

8. To claim a prize for an apparent winning ticket of less than six hundred dollars, a player may:
 - a. Present the ticket to a retailer, regardless of which retailer sold the ticket; or
 - b. Complete the back side of the ticket by entering the person's full name and address and signing the ticket, and present or mail the ticket to the lottery's office.
9. If a ticket has a prize value of less than six hundred dollars, is owned by one person, and is presented to a retailer, the retailer may redeem the ticket and pay the prize to the person who physically possesses an unsigned ticket or to the person whose signature is shown on the ticket. If a person desires to redeem a winning ticket that is signed, the retailer shall request evidential proof of identity from the player before the retailer may validate or pay the prize. If the player does not provide proof of identity, the retailer may not validate the ticket or pay the player a prize and shall return the ticket to the player. For an unsigned ticket or a signed ticket in which the ticket holder is the identified owner, the retailer shall validate the ticket and, for a winning ticket, pay the prize to the player. If the retailer is unable to validate a ticket, the retailer shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery.
10. If an apparent winning ticket has a total prize value of all plays of six hundred dollars or more and one person signed or claims ownership of the ticket, a retailer may not redeem the ticket and shall provide the ticket holder with a prize claim form and instruct the ticket holder how to file a claim with the lottery. The ticket holder shall complete and sign the form and back side of the ticket and present or mail the form and ticket to the lottery. For a validated winning ticket, the lottery shall present or mail a check to the player for the amount of the prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. The lottery shall pay the prize to the person whose name is on the ticket, notwithstanding the name on the claim form. For a nonwinning ticket, the lottery shall deny the claim, notify the claimant, and return the ticket.
11. If more than one person signed or claims ownership of an apparent winning ticket, the retailer shall provide the claimant with a prize claim form and instruct the claimant how to file a claim with the lottery, as follows:
 - a. Each person who claims part ownership of the ticket must complete and sign the prize claim form and designate the person's percentage of ownership and, if subdivision d applies, the one authorized payee;
 - b. At least one of the people who claim ownership must sign the ticket and that signature must be on the prize claim form;
 - c. The prize claim form and ticket must be presented or mailed to the lottery;
 - d. For a validated ticket, if the amount of the prize allocated to each claimant is six hundred dollars or more, the lottery shall present or mail a separate prize check to each claimant. The lottery shall present or mail a check to each claimant for the amount of each player's prize, less withholding of income tax required by federal or state law and any debt setoff according to section 10-16-01-03, unless the payment is delayed according to section 10-16-03-12. If the prize allocated to each claimant is less than six hundred dollars, at the claimant's request, the lottery shall issue a single prize check to the person designated and authorized on the prize claim form to receive payment of the prize on behalf of all the claimants or present or mail a check to each claimant for the amount of each player's prize; and

- e. Notwithstanding subdivision d, if the claimants desire to designate one person in whose name the entire claim may be made and list the persons to whom the winnings are taxable, the claimants may file, along with a claim prize form, internal revenue service form 5754 (statement by person(s) receiving gambling winnings) with the lottery.
12. The lottery shall pay a prize to a player within a reasonable time after the player's winning ticket is validated by the lottery.
13. Except as provided by rule, if two or more plays win the grand prize, the prize money must be divided equally among the players whose tickets won. Except as provided by rule, for a set prize, each player wins the set amount of a prize regardless of whether two or more players have winning tickets for the prize.
14. The lottery is not liable for a ticket not delivered to the correct address of the lottery or a delay in delivery of a ticket or damage to a ticket while being delivered to the lottery.
15. A player who redeems a winning ticket is solely responsible for any federal or state income tax liability related to the prize.
16. A person's right to a prize is assignable and payment of a prize may be made to a person pursuant to an appropriate judicial order.
17. A prize may not be payable to a trust until after the lottery conducts a debt setoff on the beneficiaries of the trust.
18. If a player redeems an original multi-draw ticket before the ticket's last draw and a retailer returns the original ticket, rather than an issued exchange ticket, to the player, the lottery may not pay another prize on the original ticket until after the exchange ticket expires and has not been redeemed.
19. A winning ticket with a total prize value of all plays of six hundred dollars or more may not be paid to a person who is identified as being in the United States illegally.

History: Effective February 1, 2004; amended effective April 1, 2006; April 1, 2008; January 31, 2010; January 1, 2011; October 19, 2013; January 31, 2016; [February 25, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-09, 53-12.1-13

10-16-03-08.1. Subscription.

1. A player shall purchase a subscription only from, and the financial transaction for that subscription must be only with, the lottery through the North Dakota Lottery Players Club™ website and payment processor. A player may use automated clearinghouse, debit card, or authorized credit card to pay for a subscription.
2. A person must be at least eighteen years of age.
3. A person must provide the following information when registering as a player, or a member of a group, for the lottery subscription service:
 - a. Name;
 - b. Address;
 - c. Date of birth;
 - d. Telephone number;

- e. Valid email address; and
 - f. Last four digits of their social security number.
4. A person, whether individually or as a member of a group, must have a North Dakota mailing address and must pass all verification processes used by the lottery during the player's registration process.
 5. A player may purchase one or more subscriptions for one or more games. Each subscription is limited to one play for a draw for one game. A player may purchase a subscription for up to fifty-two weeks. A subscription is not refundable or cancelable by a player unless the game group makes a matrix change to the game at which time, the subscription would be canceled by the lottery and funds used to purchase the subscription would be refunded to the player's **winning deposit** account through the lottery's subscription service, based on the number of draws actually held under the former game matrix in relation to the total number of draws purchased.
 6. To be valid, a subscription play must be properly and validly registered with the lottery on its subscriber data base at its central computer site which meets the requirements established by the product group and MUSL security and integrity committee. All data on a subscriber is confidential.
 7. The owner of a subscription play is the person whose name is validly and properly registered with the lottery. However, the lottery may split a prize among two or more persons who are registered members of a group play.
 8. After the lottery properly and validly registers a subscription play, the lottery shall send a confirmation email to the subscriber. The confirmation email is the player's evidence of an actual play in a draw and there is no actual ticket. The confirmation email must include:
 - a. Name of game. For the game of POWERBALL®, indication of whether the play has the power play option. For the game of MEGA MILLIONS®, indication of whether the play has the Megaplier® option. For the game of HOT LOTTO®, indication whether the play has the triple sizzler option;
 - b. Number of and starting and ending dates of the draws;
 - c. Numbers, letters, or symbols of the play;
 - d. The subscriber is responsible for ensuring that all subscriber information and game play numbers, letters, or symbols are correct; and
 - e. Explanation of how a prize will be awarded.
 9. Except as provided by subsection 10, a subscription play is valid for only the date range of draws specified in the confirmation email. The effective date of a new subscription play will be valid for the present draw in the game, if it is purchased by 8:30 p.m. central time for LUCKY FOR LIFE™ or by 8:58 p.m. central time for POWERBALL®, HOT LOTTO®, MEGA MILLIONS®, and 2BY2®.
 10. If the value of a prize on a winning POWERBALL®, HOT LOTTO®, ~~WILD CARD 2®~~, MEGA MILLIONS®, LUCKY FOR LIFE™, or 2BY2® subscription play for a draw is:
 - a. Less than six hundred dollars, the lottery shall automatically deposit the funds into the player's winning account.

- b. Equal to or more than six hundred dollars, the lottery shall contact the player by email and phone to arrange payment of the prize, less withholding of income tax required by federal or state law and any debt setoff according to North Dakota Century Code section 53-12.1-12.
11. If the owner of a subscription changes the owner's name, the owner shall provide the lottery with a notarized letter of the change. If the owner of a subscription dies, the lawful representative of the owner's estate shall provide the lottery with a notarized statement of the death and the lottery shall change the ownership of the subscription to "The Estate of" the owner.

History: Effective November 8, 2005; amended effective January 3, 2008; November 1, 2008; July 1, 2010; October 19, 2013; July 6, 2014; January 31, 2016; [February 1, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-01, 53-12.1-02, 53-12.1-03, 53-12.1-08, 53-12.1-13

**CHAPTER 10-16-06
WILD CARD 2® GAME**

[Repealed effective February 25, 2016]

Section

- ~~10-16-06-01 — Game Description~~
- ~~10-16-06-02 — Expected Prize Pool Percentages and Odds~~
- ~~10-16-06-03 — Probability of Winning [Repealed]~~
- ~~10-16-06-04 — Prize Pool and Payment~~
- ~~10-16-06-05 — Prize Payment [Repealed]~~

CHAPTER 10-16-11

10-16-11-04. Prize liability limits.

There are ten prize levels in the game.

1. Except as provided in these rules, the top prize must be annuitized and based on a top prize liability that will be split equally among the number of winning game tickets. A top prize winner may request the cash option, the amount of which is to be established by the game group for a defined period of drawings. Notice of the amount of and changes to the cash option must be posted on the game's website. Under certain circumstances, as detailed below, the top prize is required to be paid in a single lump sum cash payment and no annuitized payment option is available.
 - a. One top prize winner. If there is one top prize winner, the annuitized prize value will be seven thousand dollars per week for life. As an alternative to the annuitized payment option, the top prize winner may request the top prize cash option.
 - b. Two to fourteen top prize winners. If there are between two and fourteen top prize winners, the annuitized prize option, based on an annuitized prize value of seven thousand dollars per week, will be divided by the total number of top prize winners. Any of these two to fourteen top prize winners may choose the cash option as an alternative to the annuitized payment option. The amount of the cash option for this category will be the amount of the top prize cash option divided by the total number of top prize winners.
 - c. Fifteen or more top prize winners. If there are fifteen or more top prize winners, the top prize liability will be capped at seven million one hundred twenty-five thousand dollars, must be split equally among all top prize winners, and paid in a single lump sum cash payment without an annuitized payment option.
 - d. The winner or winners of the top prize who do not request the cash option must be paid their appropriate top prize share on ~~a weekly~~an annual basis, ~~or according to such other schedule of payments set at the discretion of the lottery as permitted in the rules~~ for a minimum period of twenty years. The first top prize payment will be made when the prize is claimed at the lottery's office.
 - e. Measuring life. For a single wager, the measuring life of a top prize winner used to determine the duration over which the top prize is paid, shall be the natural life of the individual determined by the lottery to be the top prize winner. If the top prize under a single wager is being claimed by more than one natural person or by a legal entity, the measuring life for that top prize winner shall be twenty years.
 - f. If paid in a single lump sum cash payment, top prize amounts will be rounded to the nearest whole dollar.
2. Except as provided in these rules, the second prize winner will be paid twenty-five thousand dollars a year for life. A second prize winner may request the cash option, the amount of which is to be established by the game group for a defined period of drawings. Notice of the amount of and changes to the cash option must be posted on the game's website. Under certain circumstances, as detailed below, the second prize is required to be paid in a single lump sum cash payment and no annuitized payment option is available.
 - a. One to twenty second prize winners. If there are between one and twenty second prize winners, the annuitized prize value will be twenty-five thousand dollars per year for life. Any of these one to twenty second prize winners may choose the second prize cash option as an alternative to the annuitized payment option.

- b. Twenty-one or more second prize winners. If there are twenty-one or more second prize winners, the second prize liability is capped at nine million four hundred thousand dollars, must be split equally among all second prize winners, and paid in a single lump sum cash payment without an annuitized payment option.
 - c. The winner or winners of the second prize who do not request the cash option must be paid their appropriate second prize share on an annual basis for a minimum period of twenty years. The initial second prize payment will be made when the prize is claimed at the lottery's office; subsequent second prize payments will be made annually thereafter.
 - d. Measuring life. For a single wager, the measuring life of a second prize winner used to determine the duration over which the second prize is paid, is the natural life of the individual determined by the lottery to be the second prize winner. If the second prize under a single wager is being claimed by more than one natural person or by a legal entity, the measuring life for that second prize winner is twenty years.
 - e. If paid in a single lump sum cash payment, second prize amounts will be rounded to the nearest whole dollar.
3. Except as provided in these rules, the third prize will be paid as a five thousand dollar set prize. If there are more than one thousand winners of this prize level in a single drawing, the total prize liability of five million dollars will be split equally among the winners. Under no circumstances, however, will the value of the third prize fall below a minimum prize value of two hundred dollars per winner regardless of the number of winners. Third prizes will be rounded to the nearest whole dollar and paid in a single lump sum cash payment.

History: Effective January 31, 2016; [amended effective February 1, 2016](#).

General Authority: NDCC 53-12.1-13

Law Implemented: NDCC 53-12.1-13

TITLE 18.5
CREDIT REVIEW BOARD

OCTOBER 2016

**TITLE 18.5
CREDIT REVIEW BOARD**

[Repealed effective October 1, 2016]

Article

- ~~18.5-01 ——— General Administration~~
- ~~18.5-02 ——— Mediation and Credit Assistance~~
- ~~18.5-03 ——— Legal and Tax Assistance~~

TITLE 18.6

NORTH DAKOTA MEDIATION SERVICE AND CREDIT REVIEW BOARD

OCTOBER 2016

ARTICLE 18.6-01
GENERAL ADMINISTRATION

Chapter

<u>18.6-01-01</u>	<u>Organization of Board</u>
<u>18.6-01-02</u>	<u>Fees</u>
<u>18.6-01-03</u>	<u>Mediation</u>

CHAPTER 18.6-01-01
ORGANIZATION OF BOARD

Section

<u>18.6-01-01-01</u>	<u>Definitions</u>
<u>18.6-01-01-02</u>	<u>Organization of Credit Review Board</u>

18.6-01-01-01. Definitions.

For purposes of this article:

1. "Actual cost of the mediator" means fees associated with preparing and conducting mediation.
2. "Administrator" means the administrator of the North Dakota mediation service.
3. "Board" means the credit review board, or its authorized agent when applicable.
4. "Commissioner" means the North Dakota agriculture commissioner or the North Dakota agriculture commissioner's designee or representative.
5. "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.
6. "Party" is a person who participates in mediation and whose agreement is necessary to resolve a dispute and who is:
 - a. A farmer, creditor of a farmer, or a person dealing with a farmer.
 - b. Eligible for mediation with an agency of the United States department of agriculture.
 - c. A landowner.

d. An owner, lessee, or lessor of mineral interests.

e. A person involved in a dispute related to easements for oil- and gas-related pipelines and associated facilities.

7. "Mediator" means an individual who conducts mediation.

8. "Nonparty participant" means a person, other than a party or mediator, who participates in mediation.

9. "Service" means the North Dakota mediation service.

10. "Staff" means a person hired by the commissioner to assist in administering the service or to assist the credit review board in its responsibilities and duties.

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-04

18.6-01-01-02. Organization of credit review board.

1. Board responsibilities and duties. The board has these responsibilities and duties:

a. Adopting policies governing mediators and staff of the service, and the nature and scope of mediation.

b. Establishing fees for mediation.

c. Recommending policies and procedures to the industrial commission regarding Bank of North Dakota farm loan programs.

2. Commissioner responsibilities and duties. The commissioner has these responsibilities and duties:

a. Establishing and administering the service.

b. Hiring the administrator of the service.

c. Hiring staff or contracting with mediators.

3. Inquiries. Inquiries regard the board or service may be addressed to the administrator:

Administrator
Credit Review Board
North Dakota Department of Agriculture
600 East Boulevard Avenue
Department 602
Bismarck, North Dakota 58505-0020
Telephone: 701-328-2231

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-09, 28-32-02.1, 28-32-02.2

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03

CHAPTER 18.6-01-02
FEES

Section

18.6-01-02-01 Fees

18.6-01-02-01. Fees.

The board shall establish fees to be paid by the parties using the service pursuant to North Dakota Century Code chapter 6-09.10. Parties to oil and gas production damage mediation conducted under North Dakota Century Code chapter 38-11.1 will be charged the actual cost of the mediator to the service.

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-03, 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 38-11.1-09.1

CHAPTER 18.6-01-03 **MEDIATION**

Section

18.6-01-03-01 Eligibility for Mediation

18.6-01-03-02 Mediation Process

18.6-01-03-03 Mediation Confidentiality

18.6-01-03-01. Eligibility for mediation.

Any party who is eligible for assistance pursuant to North Dakota Century Code chapters 6-09.10 and 38-11.1 is eligible to request mediation.

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-04, 6-09.10-09, 28-32-02.1, 38-11.1-09.2

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-04, 38-11.1-09.2

18.6-01-03-02. Mediation process.

1. A party may initiate mediation by submitting a request to the administrator.
2. The administrator shall notify the responding party of the request and attempt to obtain the responding party's signed consent for mediation to commence.
3. If a responding party refuses to consent, the administrator may not commence mediation and shall then provide notice to the initiating party.
4. If a responding party consents to mediation, each party shall provide the administrator a list of potential parties and nonparty participants.
5. After receiving consent from the responding party, the administrator may assign a mediator to conduct mediation. If a party requests assistance in preparing for mediation, the administrator may provide financial advisory and counseling services as reasonable and necessary to prepare parties for mediation.
6. The administrator shall send a notice to all parties and nonparty participants, including the date, time, and place for mediation.

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-04

18.6-01-03-03. Mediation confidentiality.

All parties and nonparty participants shall agree to keep confidential the substance of all mediation discussion. The administrator, parties, or nonparty participants may disclose confidential information only as permitted by North Dakota Century Code section 6-09.10-10.

History: Effective October 1, 2016.

General Authority: NDCC 6-09.10-09, 28-32-02.1

Law Implemented: NDCC 6-09.10-02.1, 6-09.10-03, 6-09.10-04, 6-09.10-10

TITLE 33
STATE DEPARTMENT OF HEALTH

OCTOBER 2016

ARTICLE 33-10 RADIOLOGICAL HEALTH RULES

Chapter	
33-10-01	General Provisions
33-10-02	Registration of Radiation Machine Facilities and Services
33-10-03	Licensing of Radioactive Material [Repealed]
33-10-03.1	Rules of General Applicability to Domestic Licensing of Byproduct Material
33-10-04	Standards for Protection Against Radiation [Repealed]
33-10-04.1	Standards for Protection Against Radiation [Repealed]
33-10-04.2	Standards for Protection Against Radiation
33-10-05	Radiation Safety Requirements for Industrial Radiographic Operations [Repealed]
33-10-05.1	Radiation Safety Requirements for Industrial Radiographic Operations
33-10-06	X-Rays in the Healing Arts
33-10-07	Use of Radionuclides in the Healing Arts [Repealed]
33-10-07.1	Medical Use of Radioactive Material [Repealed]
33-10-07.2	Medical Use of Byproduct Material
33-10-08	Radiation Safety Requirements for Analytical X-Ray Equipment
33-10-09	Radiation Safety Requirements for Particle Accelerators
33-10-10	Notices, Instructions, and Reports to Workers - Inspections [Repealed]
33-10-10.1	Notices, Instructions, and Reports to Workers - Inspections
33-10-11	Fees for Issuance of License and Registration Certificates and Inspections
33-10-12	Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies [Repealed]
33-10-12.1	Licenses and Radiation Safety Requirements for Well Logging
33-10-13	Transportation of Radioactive Material [Repealed]
33-10-13.1	Packaging and Transportation of Radioactive Material
33-10-14	Licenses and Radiation Safety Requirements for Irradiators [Repealed]
33-10-14.1	Licenses and Radiation Safety Requirements for Irradiators
33-10-15	Therapeutic Radiation Machines
33-10-16	Domestic Licensing of Source Material
33-10-17	Domestic Licensing of Special Nuclear Material
33-10-18	General Domestic Licenses for Byproduct Material
33-10-19	Reciprocal Recognition of Licenses
33-10-20	Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material
33-10-21	Specific Domestic Licenses of Broad Scope for Byproduct Material
33-10-22	[Reserved] <u>Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material</u>

CHAPTER 33-10-03.1

33-10-03.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 30.

10 Code of Federal Regulations 30.1, 30.2, 30.3, 30.4, 30.7, 30.9, 30.10, 30.11, 30.12, 30.13, 30.14, 30.15, 30.18, 30.19, 30.20, 30.21, 30.22, 30.31, 30.32, 30.33, 30.34, 30.35, 30.36, 30.37, 30.38, 30.39, 30.41, 30.50, 30.51, 30.52, 30.53, 30.61, 30.62, 30.70, 30.71, and 30.72 and appendix A through appendix E to part 30 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 30.21(c), 30.3(b)(1), 30.3(b)(2), 30.3(b)(3), 30.34(d), 30.34(e)(1), 30.34(e)(3), ~~and 30.41(b)(6)~~, paragraph (2) of the definition of "commencement of construction", and paragraph (9)(ii) of the definition of "construction".
2. Requirements in 10 Code of Federal Regulations part 30 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional office", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 30, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 30.12, 30.21(c), 30.34(h)(1), and 30.50(c)(1).
4. 10 Code of Federal Regulations 30.7 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 30.
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 30.
8. North Dakota State department of health radioactive material license replaces NRC form 374, "byproduct material license", as specified in 10 Code of Federal Regulations part 30.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 30.
10. For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-04.2 STANDARDS FOR PROTECTION AGAINST RADIATION

Section

33-10-04.2-01	Adoption by Reference of Several Sections in 10 CFR Code of Federal Regulations Part 20
33-10-04.2-02	Individuals Working With Medical Fluoroscopic Equipment
33-10-04.2-03	Location of Individual Monitoring Devices
33-10-04.2-04	Effective Dose Equivalent Determination During Medical Fluoroscopy
33-10-04.2-05	Radiation Machine Security and Prevention of Unauthorized Use
33-10-04.2-06	Radiation Machine Labels
33-10-04.2-07	Additional Requirements - Vacating Premises

33-10-04.2-01. Adoption by reference of several sections in 10 [CFR Code of Federal Regulations part 20.](#)

10 Code of Federal Regulations 20.1001, 20.1002, 20.1003, 20.1004, 20.1005, 20.1008, 20.1101, 20.1201, 20.1202, 20.1203, 20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1401, 20.1402, 20.1403, 20.1404, 20.1405, 20.1406, 20.1501, 20.1502, 20.1601, 20.1602, 20.1701, 20.1702, 20.1703, 20.1704, 20.1705, 20.1801, 20.1802, 20.1901, 20.1902, 20.1903, 20.1904, 20.1905, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005, 20.2006, 20.2007, 20.2008, 20.2101, 20.2102, 20.2103, 20.2104, 20.2105, 20.2106, 20.2107, 20.2108, 20.2110, 20.2201, 20.2202, 20.2203, 20.2204, 20.2205, 20.2206, 20.2207, 20.2301, and 20.2302, appendix A through C to part 20, appendix E to part 20, and appendix G to part 20 are adopted by reference as they exist on ~~January 1, 2010~~ [October 1, 2015](#), with the following exceptions:

1. Not adopted by reference are [10 Code of Federal Regulations \(CFR\) 20.1406\(b\)](#), 20.1905(g), 20.2203(c), and 20.2206(a)(1), (a)(3), (a)(4), and (a)(5).
2. All of the requirements in chapter 33-10-04.2 apply to both licensees and registrants. A reference in 10 CFR part 20 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation", and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
3. Where the words "NRC", "commission", "administrator of the appropriate NRC regional office", "administrator of the nearest commission regional office", or "NRC regional office" appear in 10 CFR part 20, substitute the words "North Dakota state department of health".
4. Requirements in 10 CFR [part 20](#) that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 19443, "occupational radiation exposure history", must be used instead of NRC form 4 as specified in 10 CFR [part 20](#).
7. North Dakota state form number 8416, "current occupational radiation exposure", must be used instead of NRC form 5 as specified in 10 CFR [part 20](#).
8. NRC form 748 shall not be used as described in 10 CFR [part 20](#).

9. The words "in the Federal Register and" shall be omitted from 10 CFR 20.1405(b).

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

33-10-04.2-03. Location of individual monitoring devices.

Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with 10 CFR 20.1502 wear individual monitoring devices as follows:

1. An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar);
2. An individual monitoring device used for monitoring the dose to an embryo or fetus of a declared pregnant woman, pursuant to 10 CFR 20.1208, shall be located at the waist under any protective apron being worn by the woman;
3. An individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with subparagraph a of 10 CFR 20.1201, shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye; and
4. An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with subparagraph ~~b~~a of 10 CFR 20.1201, shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

Table 4.2-07.1

Standards for Unrestricted Release for NORM and TENORM

(a) Surface contamination limits

(1) Alpha emitters

(i) Removable:	0.55Bq = 100cm ²	15.0 pCi = 100 cm ²	33 dpm 100 cm ²	average over any one surface
	1.665 Bq = 100 cm ²	45.0 pCi = 100 cm ²	100 dpm 100 cm ²	maximum
(ii) Total (fixed):	166.5 Bq = 100 cm ²	150.0 pCi = 100 cm ²	1,000 dpm 100 cm ²	average over any one surface
	832.5 Bq = 100 cm ²	2,250.0 pCi = 100 cm ²	5,000 dpm 100 cm ²	maximum
	2.5 μSv = hr	(0.25 mrem) = hr		maximum at 1 cm from surface

(2) Beta-gamma emitters

(i) Removable: (all beta-gamma emitters except hydrogen-3)	3.7 Bq = 100 cm ²	100.0 pCi = 100 cm ²		average over any one surface
	18.5 Bq = 100 cm ²	500.0 pCi = 100 cm ²		maximum
(ii) Total (fixed)	2.5 μSv = hr	(0.25 mrem) = hr		maximum at 1 cm from surface

(b) Concentration in air and water: Appendix B, Table 2 of chapter 33-10-04.2.

(c) Concentrations in soil and other materials except water:

(1) Radium in soil: Concentration of radionuclides above background concentrations for total radium, averaged over areas of one hundred square meters, shall not exceed:

(i) Five (5.0) picocuries per gram of soil, averaged over layers of fifteen centimeters thickness more than fifteen centimeters below the surface.

(ii) Five (5.0) picocuries per gram of dry soil, averaged over layers of fifteen centimeters thickness more than fifteen centimeters below the surface.

(2) Radium in other materials: Concentration of radionuclides above background concentrations for total radium shall not exceed five (5.0) picocuries per gram.

(d) The level of gamma radiation measured at a distance of hundred centimeters from the surface shall not exceed background.

CHAPTER 33-10-05.1

33-10-05.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 34.

10 Code of Federal Regulations 34.1, 34.3, 34.11, 34.13, 34.20, 34.21, 34.23, 34.25, 34.27, 34.29, 34.31, 34.33, 34.35, 34.41, 34.42, 34.43, 34.45, 34.46, 34.47, 34.49, 34.51, 34.53, 34.61, 34.63, 34.65, 34.67, 34.69, 34.71, 34.73, 34.75, 34.79, 34.81, 34.83, 34.85, 34.87, 34.89, 34.101, and 34.111 and appendix A to part 34 are adopted by reference as they exist on ~~January 1, 2010~~[October 1, 2015](#), with the following exceptions:

1. All of the requirements in chapter 33-10-05.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 34 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", and a reference to "licensed material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
2. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", "NRC regional office", "administrator of the appropriate nuclear regulatory commission's regional office", or "NRC's office of nuclear material safety and safeguards, division of industrial and medical nuclear safety" appear in 10 Code of Federal Regulations part 34, substitute the words "North Dakota state department of health".
3. Requirements in 10 Code of Federal Regulations [part 34](#) that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
4. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations [part 34](#).
5. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-07.2

33-10-07.2-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 35.

10 Code of Federal Regulations 35.1, 35.2, 35.5, 35.6, 35.7, 35.10, 35.11, 35.12, 35.13, 35.14, 35.15, 35.18, 35.19, 35.24, 35.26, 35.27, 35.40, 35.41, 35.49, 35.50, 35.51, 35.55, 35.57, 35.59, 35.60, 35.61, 35.63, 35.65, 35.67, 35.69, 35.70, 35.75, 35.80, 35.92, 35.100, 35.190, 35.200, 35.204, 35.290, 35.300, 35.310, 35.315, 35.390, 35.392, 35.394, 35.396, 35.400, 35.404, 35.406, 35.410, 35.415, 35.432, 35.433, 35.457, 35.490, 35.491, 35.500, 35.590, 35.600, 35.604, 35.605, 35.610, 35.615, 35.630, 35.632, 35.633, 35.635, 35.642, 35.643, 35.645, 35.647, 35.652, 35.655, 35.657, 35.690, 35.1000, 35.2024, 35.2026, 35.2040, 35.2041, 35.2060, 35.2061, 35.2063, 35.2067, 35.2070, 35.2075, 35.2080, 35.2092, 35.2204, 35.2310, 35.2404, 35.2406, 35.2432, 35.2433, 35.2605, 35.2610, 35.2630, 35.2632, 35.2642, 35.2643, 35.2645, 35.2647, 35.2652, 35.2655, 35.3045, 35.3047, and 35.3067 are adopted by reference as they exist on January 1, 2010, with the following exceptions:

1. Not adopted by reference are 35.11(c)(1) and 35.13~~(2)~~(a)(1).
2. Requirements in 10 Code of Federal Regulations 35 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "NRC regional office", or "director, office of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 35, substitute the words "North Dakota state department of health".
4. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations 34.
6. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-11

33-10-11-04. Payment of fees.

The following fees are nonrefundable:

1. **License and registration fees.** The appropriate licensing or registration fee shall accompany the application for licensure or registration when filed with the department. For new radioactive material licenses, the application fee is equal to the appropriate annual fee.
2. **Amendment fees.** The amendment fee given in appendix A category 24 shall accompany the application for amendment when filed with the department.
3. **Reciprocity fee.** The appropriate reciprocity fee shall accompany the written notification as required in chapters 33-10-03.1 and 33-10-02.
4. **Special project fees.** Fees for special projects are payable upon notification by the department when the review of the project is completed. Special projects mean those projects submitted to the department for review and for which specific fees are not prescribed in this chapter. Special project fees will be based upon the current professional staff hourly rate (thirty-three percent of the current nuclear regulatory commission rate listed in 10 CFR 170).
5. **Annual fees.** Annual fees are required to be paid by all radioactive material licensees no later than January first of each year the license is active, except that the annual fee due on January first of the year following the issuance of a new license shall be prorated to the number of months the license was in effect the first calendar year (example: for a new license issued in May the annual fee due January first would be seven-twelfths [June-December] of the annual fee listed in appendix A).
6. **Inspection and survey fees.** Fees for regulatory inspections and surveys of North Dakota licensees are included in the registration or annual fees for each registration or license type. Nonroutine inspections will require the nonroutine inspection fee to be paid upon notification by the department when the inspection has been completed.
7. **Annual fees for small entities.** If a licensee qualifies as a small entity and provides the department with the proper certification, the small entity fee of sixty percent of the applicable annual fee listed in appendix A shall be paid.
 - a. "Small business" means a business entity, including its affiliates, which:
 - (1) Is independently owned and operated; and
 - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
 - b. "Small entity" includes small business, small organization, and small political subdivision;
 - c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
 - d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
 - e. A licensee who seeks to establish status as a small entity for purposes of paying the fees required under this chapter shall file a certification statement with the department. The licensee shall:

- (1) Certify, on the business's letterhead, that the business meets the conditions in this subsection;
 - (2) Sign the certification as the chief executive officer of the business or as an official designee; and
 - (3) Have the certification notarized.
- f. A licensee who seeks to qualify as a small entity shall submit the certification with the reduced annual fee payment.
 - g. For purposes of this chapter, the licensee shall submit a new certification with its annual fee payment each year.
8. **Method of payment.** Fee payments shall be by check, draft, or money order made payable to the North Dakota state department of health. Payment may also be made by credit card by calling 701-328-5188.
 9. **Submittal of application and fee payment.** The application for licensure or registration shall be accompanied by the fee payment and shall be submitted to:

North Dakota State Department of Health
Division of Air Quality
918 East Divide Avenue, Second Floor
Bismarck, ND 58501-1947

History: Effective October 1, 1982; amended effective June 1, 1986; June 1, 1992; March 1, 1994; July 1, 1995; May 1, 1998; March 1, 2003; January 1, 2011.

General Authority: NDCC 23-20.1-04, 23-20.1-04.5

Law Implemented: NDCC 23-20.1-04, 23-20.1-04.5

Appendix A

Schedule of Fees for 2011 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees:

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$96,880	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$590 \$830	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$590 \$1,240	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				

A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	Nonroutine inspection Annual fee	Full cost \$503,740	Items 23 and/or 27 as applicable
B	Licenses for possession, use and or installation of source material for shielding only	Nonroutine inspection Annual fee	\$180 \$300	Items 23 and/or 27 as applicable
C	All other source material licenses	Nonroutine inspection Annual fee	\$670 \$2,070	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$1,420 \$5,900	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$890 \$2,710	Items 23 and/or 27 as applicable

C	Licenses issued pursuant to chapter 33-10-03 authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$850 \$5,900	Items 23 and/or 27 as applicable
D	Licenses and approvals issued pursuant to chapter 33-10-03 authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$530 \$2,360	Items 23 and/or 27 as applicable
E	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee	\$310 \$1,060	Items 23 and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$350 \$1,030	Items 23 and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$620 \$9,440	Items 23 and/or 27 as applicable

H	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03	Nonroutine inspection Annual fee	\$470 \$3,070	Items 23 and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require device evaluation to persons exempt from the licensing requirements of chapter 33-10-03, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03	Nonroutine inspection Annual fee	\$310 \$4,250	Items 23 and/or 27 as applicable
K	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require sealed source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee	\$460 \$1,180	Items 23 and/or 27 as applicable

	L	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection	\$530	Items 23 and/or 27 as applicable
			Annual fee	\$1,770	
	M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection	\$410	Items 23 and/or 27 as applicable
			Annual fee	\$1,650	
	N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 15 and 16, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection	\$460	Items 23 and/or 27 as applicable
			Annual fee	\$2,670	
	O	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 for industrial radiographic operations	Nonroutine inspection	\$1,110	Items 23 and/or 27 as applicable
			Annual fee	\$3,600	
	P	All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection	\$800	Items 23 and/or 27 as applicable
			Annual fee	\$1,030	
		4 Portable x-ray fluorescence analyzers only	Nonroutine inspection	\$410	Items 23 and/or 27 as applicable
			Annual fee	\$590	
	Q	Registration of a device(s) generally licensed under chapter 33-10-03	Nonroutine inspection	\$300	Items 23 and/or 27 as applicable
			Annual fee	\$590	
		(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING					

A	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee	Full cost \$58,880	Items 23 and/or 27 as applicable
B	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee	\$930 \$7,080	Items 23 and/or 27 as applicable
C	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee	\$930 \$3,300	Items 23 and/or 27 as applicable

5. WELL LOGGING

A	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee	\$530 \$2,950	Items 23 and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally-occurring or accelerator-produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee	Full cost \$6,840	Items 23 and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally-occurring or accelerator-produced radioactive material, source material or special nuclear material	Nonroutine inspection Annual fee	\$850 \$3,190	Items 23 and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$850 \$7,320	Items 23 and/or 27 as applicable
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$800 \$7,670	Items 23 and/or 27 as applicable

C	Other licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, source material, naturally-occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$670 \$2,600	Items 23 and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$530 \$1,530	Items 23 and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$530 \$1,770	Items 23 and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$310 \$830	Items 23 and/or 27 as applicable
10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$310 \$830	Items 23 and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				
14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03	Annual fee	Same as annual fee for license type	Items 23 and/or 27 as applicable

	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
A	Leak test and analysis services (for other licensed entities) only	Nonroutine inspection	\$410 Annual fee \$770	Items 23 and/or 27 as applicable
B	Instrument calibration services (for other licensed entities) only	Nonroutine inspection	\$410 Annual fee \$770	Items 23 and/or 27 as applicable
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection	\$470 Annual fee \$1,030	Items 23 and/or 27 as applicable
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection	\$300 Annual fee \$530	Items 23 and/or 27 as applicable
18.	Storage of radioactive material only	Nonroutine inspection	\$410 Annual fee \$710	Items 23 and/or 27 as applicable
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection	\$590 Annual fee \$9,440	Items 23 and/or 27 as applicable
20.	Radiation training courses involving the use of licensed material by the instructor and/or the participants		Annual fee \$240	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials		Annual fee \$240	Item 27 as applicable
22.	Installation, removal, repair, and servicing of devices containing radioactive materials		Annual fee \$900	Item 27 as applicable
23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)		Annual fee 25 percent of base fee for category type per location	Item 27 as applicable

24.	Administrative fee for all license amendments	Amendment	\$120	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate—In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$140	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Appendix A – Schedule of Fees for 2012 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees:

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$114,320	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$700 \$980	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$700 \$1,460	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				

A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	Nonroutine inspection Annual fee-	Full cost \$594,410	Items 23 and/or 27 as applicable
B	Licenses for possession, use and or installation of source material for shielding only	Nonroutine inspection Annual fee-	\$210 \$350	Items 23 and/or 27 as applicable
C	All other source material licenses	Nonroutine inspection Annual fee-	\$790 \$2,440	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee-	\$1,680 \$6,960	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee-	\$1,050 \$3,200	Items 23 and/or 27 as applicable

G	Licenses issued pursuant to chapter 33-10-03 authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee-	\$1,000 \$6,960	Items 23- and/or 27 as applicable
D	Licenses and approvals issued pursuant to chapter 33-10-03 authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee-	\$630 \$2,780	Items 23- and/or 27 as applicable
E	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee-	\$370 \$1,250	Items 23- and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee-	\$410 \$1,220	Items 23- and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee-	\$730 \$11,140	Items 23- and/or 27 as applicable

H	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03	Nonroutine inspection Annual fee-	\$550 \$3,620	Items 23- and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require device evaluation to persons exempt from the licensing requirements of chapter 33-10-03, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03	Nonroutine inspection Annual fee-	\$370 \$5,020	Items 23- and/or 27 as applicable
K	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require sealed-source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee-	\$540 \$1,390	Items 23- and/or 27 as applicable

L	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$630 \$2,090	Items 23- and/or 27 as applicable
M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$480 \$1,950	Items 23- and/or 27 as applicable
N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 15 and 16, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection Annual fee	\$540 \$3,150	Items 23- and/or 27 as applicable
O	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 for industrial radiographic operations	Nonroutine inspection Annual fee	\$1,310 \$4,250	Items 23- and/or 27 as applicable
P	All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection Annual fee	\$940 \$1,220	Items 23- and/or 27 as applicable
	4 Portable x-ray fluorescence analyzers only	Nonroutine inspection Annual fee	\$480 \$700	Items 23- and/or 27 as applicable
Q	Registration of a device(s) generally licensed under chapter 33-10-03	Nonroutine inspection Annual fee	\$350 \$700	Items 23- and/or 27 as applicable
	(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING				

A	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee-	Full cost \$69,480	Items 23 and/or 27 as applicable
B	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,100 \$8,350	Items 23 and/or 27 as applicable
C	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,100 \$3,890	Items 23 and/or 27 as applicable

5. WELL LOGGING

A	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee-	\$630 \$3,480	Items 23- and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally-occurring or accelerator-produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee-	Full cost \$8,070	Items 23- and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material	Nonroutine inspection Annual fee-	\$1,000 \$3,760	Items 23- and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR-PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee-	\$1,000 \$8,640	Items 23- and/or 27 as applicable
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee-	\$940 \$9,050	Items 23- and/or 27 as applicable

G	Other licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, source material, naturally occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$790 \$3,070	Items 23- and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$630 \$1,810	Items 23- and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$630 \$2,090	Items 23- and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$370 \$980	Items 23- and/or 27 as applicable
10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$370 \$980	Items 23- and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				
14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03	Annual fee	Same as annual fee for license type	Items 23- and/or 27 as applicable

	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
	A Leak test and analysis services (for other licensed entities) only	Nonroutine inspection	\$480	Items 23 and/or 27 as applicable
		Annual fee	\$910	
	B Instrument calibration services (for other licensed entities) only	Nonroutine inspection	\$480	Items 23 and/or 27 as applicable
		Annual fee	\$910	
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection	\$550	Items 23 and/or 27 as applicable
		Annual fee	\$1,220	
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection	\$350	Items 23 and/or 27 as applicable
		Annual fee	\$630	
18.	Storage of radioactive material only	Nonroutine inspection	\$480	Items 23 and/or 27 as applicable
		Annual fee	\$840	
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection	\$700	Items 23 and/or 27 as applicable
		Annual fee	\$11,140	
20.	Radiation training courses involving the use of licensed material by the instructor and/or the participants	Annual fee	\$280	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials	Annual fee	\$280	Item 27 as applicable
22.	Installation, removal, repair, and servicing of devices containing radioactive materials	Annual fee	\$1,060	Item 27 as applicable
23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)	Annual fee	25 percent of base fee for category type per location	Item 27 as applicable

24.	Administrative fee for all licensed amendments	Amendment	\$140	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate – In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$170	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Appendix A – Schedule of Fees for 2013 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees:

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$134,900	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$830 \$1,160	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$830 \$1,720	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				

A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	Nonroutine inspection Annual fee	Full cost \$701,400	Items 23 and/or 27 as applicable
B	Licenses for possession, use and or installation of source material for shielding only	Nonroutine inspection Annual fee	\$250 \$410	Items 23 and/or 27 as applicable
C	All other source material licenses	Nonroutine inspection Annual fee	\$930 \$2,880	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$1,980 \$8,210	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$1,240 \$3,780	Items 23 and/or 27 as applicable

G	Licenses issued pursuant to chapter 33-10-03 authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$1,180 \$8,210	Items 23 and/or 27 as applicable
D	Licenses and approvals issued pursuant to chapter 33-10-03 authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$740 \$3,280	Items 23 and/or 27 as applicable
E	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee	\$440 \$1,480	Items 23 and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$480 \$1,440	Items 23 and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$860 \$13,150	Items 23 and/or 27 as applicable

H	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03	Nonroutine inspection Annual fee	\$650 \$4,270	Items 23 and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require device evaluation to persons exempt from the licensing requirements of chapter 33-10-03, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03	Nonroutine inspection Annual fee	\$440 \$5,920	Items 23 and/or 27 as applicable
K	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require sealed source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee	\$640 \$1,640	Items 23 and/or 27 as applicable

L	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$740 \$2,470	Items 23 and/or 27 as applicable
M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$570 \$2,300	Items 23 and/or 27 as applicable
N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 18 and 19, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection Annual fee	\$640 \$3,720	Items 23 and/or 27 as applicable
O	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 for industrial radiographic operations	Nonroutine inspection Annual fee	\$1,550 \$5,020	Items 23 and/or 27 as applicable
P	All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection Annual fee	\$1,110 \$1,440	Items 23 and/or 27 as applicable
	1 Portable x-ray fluorescence analyzers only	Nonroutine inspection Annual fee	\$570 \$830	Items 23 and/or 27 as applicable
Q	Registration of a device(s) generally licensed under chapter 33-10-03	Nonroutine inspection Annual fee	\$410 \$830	Items 23 and/or 27 as applicable
	(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING				

A	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee-	Full cost \$81,990	Items 23 and/or 27 as applicable
B	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,300 \$9,850	Items 23 and/or 27 as applicable
C	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,300 \$4,590	Items 23 and/or 27 as applicable

5. WELL LOGGING

A	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee	\$740 \$4,110	Items 23 and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally-occurring or accelerator-produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee	Full cost \$9,520	Items 23 and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A.	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material	Nonroutine inspection Annual fee	\$1,180 \$4,440	Items 23 and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,180 \$10,200	Items 23 and/or 27 as applicable
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,110 \$10,680	Items 23 and/or 27 as applicable

G	Other licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, source material, naturally occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices, or as listed in items 1-4 below	Nonroutine inspection Annual fee	\$930 \$3,620	Items 23 and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$740 \$2,140	Items 23 and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$740 \$2,470	Items 23 and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$440 \$1,160	Items 23 and/or 27 as applicable
10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$440 \$1,160	Items 23 and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				

14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03	Annual fee	Same as annual fee for license type	Items 23 and/or 27 as applicable
	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
A	Leak test and analysis services (for other licensed entities) only	Nonroutine inspection Annual fee	\$570 \$1,070	Items 23 and/or 27 as applicable
B	Instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$570 \$1,070	Items 23 and/or 27 as applicable
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$650 \$1,440	Items 23 and/or 27 as applicable
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection Annual fee	\$410 \$740	Items 23 and/or 27 as applicable
18.	Storage of radioactive material only	Nonroutine inspection Annual fee	\$570 \$990	Items 23 and/or 27 as applicable
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection Annual fee	\$830 \$13,150	Items 23 and/or 27 as applicable
20.	Radiation training courses involving the use of licensed material by the instructor and/or the participants	Annual fee	\$330	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials	Annual fee	\$330	Item 27 as applicable
22.	Installation, removal, repair, and servicing of devices containing radioactive materials	Annual fee	\$1,250	Item 27 as applicable

23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)	Annual fee	25 percent of base fee for category type per location	Item 27 as applicable
24.	Administrative fee for all license amendments	Amendment	\$170	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate – In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$200	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Appendix A – Schedule of Fees for 2014 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees:

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$159,180	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$980 \$1,370	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$980 \$2,030	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				

A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	Nonroutine inspection Annual fee	Full cost \$827,650	Items 23 and/or 27 as applicable
B	Licenses for possession, use and or installation of source material for shielding only	Nonroutine inspection Annual fee	\$300 \$480	Items 23 and/or 27 as applicable
C	All other source material licenses	Nonroutine inspection Annual fee	\$1,100 \$3,400	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$2,340 \$9,690	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$1,460 \$4,460	Items 23 and/or 27 as applicable

G	Licenses issued pursuant to chapter 33-10-03 authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator produced radioactive material	Nonroutine inspection Annual fee	\$1,390 \$9,690	Items 23 and/or 27 as applicable
D	Licenses and approvals issued pursuant to chapter 33-10-03 authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material or naturally occurring or accelerator produced radioactive material	Nonroutine inspection Annual fee	\$870 \$3,870	Items 23 and/or 27 as applicable
E	Licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee	\$520 \$1,750	Items 23 and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$570 \$1,700	Items 23 and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$1,010 \$15,520	Items 23 and/or 27 as applicable

H	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03	Nonroutine inspection Annual fee	\$770 \$5,040	Items 23 and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator produced radioactive material that do not require device evaluation to persons exempt from the licensing requirements of chapter 33-10-03, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03	Nonroutine inspection Annual fee	\$520 \$6,990	Items 23 and/or 27 as applicable
K	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator produced radioactive material that do not require sealed source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee	\$760 \$1,940	Items 23 and/or 27 as applicable

	L	Licenses of broad-scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$870 \$2,910	Items 23 and/or 27 as applicable
	M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$670 \$2,710	Items 23 and/or 27 as applicable
	N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 15 and 16, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection Annual fee	\$760 \$4,390	Items 23 and/or 27 as applicable
	O	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 for industrial radiographic operations	Nonroutine inspection Annual fee	\$1,830 \$5,920	Items 23 and/or 27 as applicable
	P	All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection Annual fee	\$1,310 \$1,700	Items 23 and/or 27 as applicable
		1 Portable x-ray fluorescence analyzers only	Nonroutine inspection Annual fee	\$670 \$980	Items 23 and/or 27 as applicable
	Q	Registration of a device(s) generally licensed under chapter 33-10-03	Nonroutine inspection Annual fee	\$480 \$980	Items 23 and/or 27 as applicable
		(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING					

A	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee-	Full-cost \$96,750	Items 23 and/or 27 as applicable
B	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,530 \$11,620	Items 23 and/or 27 as applicable
C	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee-	\$1,530 \$5,420	Items 23 and/or 27 as applicable

5. WELL LOGGING

A	Licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee	\$870 \$4,850	Items 23 and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee	Full cost \$11,230	Items 23 and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material	Nonroutine inspection Annual fee	\$1,390 \$5,240	Items 23 and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR-PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,390 \$12,040	Items 23 and/or 27 as applicable
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,310 \$12,600	Items 23 and/or 27 as applicable

G	Other licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, and source material, naturally occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,100 \$4,270	Items 23 and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$870 \$2,530	Items 23 and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$870 \$2,910	Items 23 and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$520 \$1,370	Items 23 and/or 27 as applicable
10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$520 \$1,370	Items 23 and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by the NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				

14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03	Annual fee	Same as annual fee for license type	Items 23 and/or 27 as applicable
	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
A	Leak test and analysis services (for other licensed entities) only	Nonroutine inspection Annual fee	\$670 \$1,260	Items 23 and/or 27 as applicable
B	Instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$670 \$1,260	Items 23 and/or 27 as applicable
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$770 \$1,700	Items 23 and/or 27 as applicable
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection Annual fee	\$480 \$870	Items 23 and/or 27 as applicable
18.	Storage of radioactive material only	Nonroutine inspection Annual fee	\$670 \$1,170	Items 23 and/or 27 as applicable
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection Annual fee	\$980 \$15,520	Items 23 and/or 27 as applicable
20.	Radiation training courses involving the use of licensed material by the instructor and/or the participants	Annual fee	\$390	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials	Annual fee	\$390	Item 27 as applicable
22.	Installation, removal, repair, and servicing of devices containing radioactive materials	Annual fee	\$1,480	Item 27 as applicable

23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)	Annual fee	25 percent of base fee for category type per location	Item 27 as applicable
24.	Administrative fee for all license amendments	Amendment	\$200	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate – In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$240	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Appendix A – Schedule of Fees for 2015 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees:

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$187,830	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$1,160 \$1,620	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$1,160 \$2,400	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				
A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as	Nonroutine inspection Annual fee	Full cost \$976,630	Items 23 and/or 27 as applicable

	well as licenses authorizing the possession and maintenance of a facility in a standby mode			
B	Licenses for possession, use and/or installation of source material for shielding only	Nonroutine inspection Annual fee	\$350 \$570	Items 23 and/or 27 as applicable
G	All other source material licenses	Nonroutine inspection Annual fee	\$1,300 \$4,010	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR-PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator-produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$2,760 \$11,430	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator-produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$1,720 \$5,260	Items 23 and/or 27 as applicable
G	Licenses issued pursuant to chapter 33-10-03 authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$1,640 \$11,430	Items 23 and/or 27 as applicable
D	License and approvals issued pursuant to chapter 33-10-03 authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing	Nonroutine inspection Annual fee	\$1,030 \$4,570	Items 23 and/or 27 as applicable

	of byproduct material or naturally-occurring or accelerator-produced radioactive material			
E	Licenses for possession and use of byproduct material or naturally-occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee	\$610 \$2,070	Items 23 and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$670 \$2,010	Items 23 and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$1,190 \$18,310	Items 23 and/or 27 as applicable
H	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03	Nonroutine inspection Annual fee	\$910 \$5,950	Items 23 and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require device	Nonroutine inspection Annual fee	\$610 \$8,250	Items 23 and/or 27 as applicable

	evaluation to persons exempt from the licensing requirements of chapter 33-10-03, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03			
K	Licenses issued pursuant to chapter 33-10-03 to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require sealed source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee-	\$900 \$2,290	Items 23 and/or 27 as applicable
L	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee-	\$1,030 \$3,430	Items 23 and/or 27 as applicable
M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee-	\$790 \$3,200	Items 23 and/or 27 as applicable
N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 15 and 16, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection Annual fee-	\$900 \$5,180	Items 23 and/or 27 as applicable

	○ Licenses for possession and use of byproduct material or naturally-occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 for industrial radiographic operations	Nonroutine inspection Annual fee	\$2,160 \$6,990	Items 23 and/or 27 as applicable
	P All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection Annual fee	\$1,550 \$2,010	Items 23 and/or 27 as applicable
	1 Portable x ray fluorescence analyzers only	Nonroutine inspection Annual fee	\$790 \$1,160	Items 23 and/or 27 as applicable
	Q Registration of a device(s) generally licensed under chapter 33-10-03	Nonroutine inspection Annual fee	\$570 \$1,160	Items 23 and/or 27 as applicable
	(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING				
	A Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee	Full cost \$114,170	Items 23 and/or 27 as applicable
	B Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive	Nonroutine inspection Annual fee	\$1,810 \$13,710	Items 23 and/or 27 as applicable

	material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.			
G	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee	\$1,810 \$6,400	Items 23 and/or 27 as applicable
5. WELL LOGGING				
A	Licenses for possession and use of byproduct material, naturally occurring or accelerator produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee	\$1,030 \$5,720	Items 23 and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally occurring or accelerator produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee	Full cost \$13,250	Items 23 and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally occurring or accelerator produced radioactive material, source material, or special nuclear material	Nonroutine inspection Annual fee	\$1,640 \$6,180	Items 23 and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator produced radioactive material, source material, or special nuclear	Nonroutine inspection Annual fee	\$1,640 \$14,210	Items 23 and/or 27 as applicable

	material in sealed sources contained in teletherapy devices			
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,550 \$14,870	Items 23 and/or 27 as applicable
G	Other licenses issued pursuant to chapter 33-10-03 for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, source material, naturally occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,300 \$5,040	Items 23 and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$1,030 \$2,990	Items 23 and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$1,030 \$3,430	Items 23 and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$610 \$1620	Items 23 and/or 27 as applicable

10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally-occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$610 \$1,620	Items 23 and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				
14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03	Annual fee	Same as annual fee for license type	Items 23 and/or 27 as applicable
	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
A	Leak test and analysis services (for other licensed entities) only	Nonroutine inspection Annual fee	\$790 \$1,490	Items 23 and/or 27 as applicable
B	Instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$790 \$1,490	
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$910 \$2,010	Items 23 and/or 27 as applicable
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection Annual fee	\$570 \$1,030	Items 23 and/or 27 as applicable
18.	Storage of radioactive material only	Nonroutine inspection Annual fee	\$790 \$1,380	Items 23 and/or 27 as applicable
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection Annual fee	\$1,160 \$18,310	Items 23 and/or 27 as applicable

20	Radiation training courses involving the use of licensed material by the instructor and/or the participants	Annual fee	\$460	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials	Annual fee	\$460	Item 27 as applicable
22.	Installation, removal, repair, and servicing of devices containing radioactive materials	Annual fee	\$1,750	Item 27 as applicable
23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)	Annual fee	25 percent of base fee for category type per location	Item 27 as applicable
24.	Administrative fee for all license amendments	Amendment	\$240	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate – In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$280	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Appendix A - Schedule of Fees for 2016 Radioactive Material Licenses

Applicants for radioactive material licenses and other regulatory services and holders of radioactive material licenses shall pay the following fees.

Category	Description	Base Fees (USD)		Additional Charges
1. SPECIAL NUCLEAR MATERIAL				
A	Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only.	Nonroutine inspection Annual fee	Full cost \$221,640	Items 23 and/or 27 as applicable
B	Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (regulated by NRC)	Nonroutine inspection Annual fee	N/A N/A	Items 23 and/or 27 as applicable
C	Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	Nonroutine inspection Annual fee	\$1,370 \$1,910	Items 23 and/or 27 as applicable
D	All other special nuclear material licenses except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity	Nonroutine inspection Annual fee	\$1,370 \$2,830	Items 23 and/or 27 as applicable
2. SOURCE MATERIAL				

A	Licenses for possession and use of source material in recovery operations such as milling, in situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, or buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode	Nonroutine inspection Annual fee	Full cost \$1,152,420	Items 23 and/or 27 as applicable
B	Licenses for possession, use and or installation of source material for shielding only	Nonroutine inspection Annual fee	\$410 \$670	Items 23 and/or 27 as applicable
C	All other source material licenses	Nonroutine inspection Annual fee	\$1,530 \$4,730	Items 23 and/or 27 as applicable
3. BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR-PRODUCED RADIOACTIVE MATERIAL				
A	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator-produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$3,260 \$13,490	Items 23 and/or 27 as applicable
B	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for processing or manufacturing of items containing byproduct material or naturally occurring or accelerator-produced radioactive material for commercial distribution	Nonroutine inspection Annual fee	\$2,030 \$6,210	Items 23 and/or 27 as applicable

C	Licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$1,940 \$13,490	Items 23 and/or 27 as applicable
D	Licenses and approvals issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material or naturally occurring or accelerator-produced radioactive material	Nonroutine inspection Annual fee	\$1,220 \$5,390	Items 23 and/or 27 as applicable
E	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	Nonroutine inspection Annual fee	\$720 \$2,440	Items 23 and/or 27 as applicable
F	Licenses for possession and use of less than 370 terabecquerels [10,000 curies] of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$790 \$2,370	Items 23 and/or 27 as applicable
G	Licenses for possession and use of 370 terabecquerels [10,000 curies] or more of byproduct material or naturally occurring or accelerator-produced radioactive material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes	Nonroutine inspection Annual fee	\$1,400 \$21,610	Items 23 and/or 27 as applicable

H	Licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material that require device review to persons exempt from the licensing requirements of chapter 33-10-03 <u>33-10-03.1</u> , except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licenses of chapter 33-10-03 <u>33-10-03.1</u>	Nonroutine inspection Annual fee	\$1,070 \$7,020	Items 23 and/or 27 as applicable
I	Licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require device evaluation to persons exempt from the licensing requirements of chapter 33-10-03 <u>33-10-03.1</u> , except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of chapter 33-10-03 <u>33-10-03.1</u>	Nonroutine inspection Annual fee	\$720 \$9,740	Items 23 and/or 27 as applicable
K	Licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> to distribute items containing byproduct material or naturally occurring or accelerator-produced radioactive material, or quantities of byproduct material or naturally occurring or accelerator-produced radioactive material that do not require sealed source and/or device review to persons generally licensed under this chapter, except specific licenses authorizing for redistribution of items that have been authorized for distribution to persons generally licensed under this chapter	Nonroutine inspection Annual fee	\$1,060 \$2,700	Items 23 and/or 27 as applicable

L	Licenses of broad scope for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$1,220 \$4,050	Items 23 and/or 27 as applicable
M	Other licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for research and development that do not authorize commercial distribution	Nonroutine inspection Annual fee	\$930 \$3,780	Items 23 and/or 30 as applicable
N	Licenses that authorize services for other licensees, except (1) licenses that authorize calibration or leak testing services only are subject to the fees specified in fee Categories 15 and 16, and (2) licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C.	Nonroutine inspection Annual fee	\$1,060 \$6,110	Items 23 and/or 27 as applicable
O	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material issued pursuant to chapter 33-10-05 <u>33-10-05.1</u> for industrial radiographic operations	Nonroutine inspection Annual fee	\$2,550 \$8,250	Items 23 and/or 27 as applicable
P	All other specific byproduct material or naturally occurring or accelerator-produced radioactive material licenses, except as described in item 1 below or listed in Categories 4A through 9	Nonroutine inspection Annual fee	\$1,830 \$2,370	Items 23 and/or 27 as applicable
	1 Portable x-ray fluorescence analyzers only	Nonroutine inspection Annual fee	\$930 <u>\$300</u> \$1,370 <u>\$590</u>	Items 23 and/or 27 as applicable
Q.	Registration of a device(s) generally licensed under chapter 33-10-03 <u>33-10-03.1</u>	Nonroutine inspection Annual fee	\$670 \$1,370	Items 23 and/or 27 as applicable

	(Each address or location where the device(s) are used or stored represents a separate general license and requires a separate registration and fee.)			
4. WASTE DISPOSAL AND PROCESSING				
A	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	Nonroutine inspection Annual fee	Full cost \$134,720	Items 23 and/or 27 as applicable
B	Licenses specifically authorizing the receipt of waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee	\$2,140 \$16,180	Items 23 and/or 27 as applicable
C	Licenses specifically authorizing the receipt of prepackaged waste byproduct material, naturally occurring, technologically enhanced, or accelerator-produced radioactive material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	Nonroutine inspection Annual fee	\$2,140 \$7,550	Items 23 and/or 27 as applicable

5. WELL LOGGING				
A	Licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	Nonroutine inspection Annual fee	\$1,220 \$6,750	Items 23 and/or 27 as applicable
B	Licenses for possession and use of byproduct material or naturally occurring or accelerator-produced radioactive material, for field flooding tracer studies	Nonroutine inspection Annual fee	Full cost \$15,640	Items 23 and/or 27 as applicable
6. NUCLEAR LAUNDRY				
A	Licenses for commercial collection and laundry of items contaminated with byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material	Nonroutine inspection Annual fee	\$1,940 \$7,290	Items 23 and/or 27 as applicable
7. HUMAN USE OF BYPRODUCT, NATURALLY OCCURRING OR ACCELERATOR-PRODUCED, SOURCE, OR SPECIAL NUCLEAR MATERIAL				
A	Licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,940 \$16,770	Items 23 and/or 27 as applicable
B	Licenses of broad scope issued to medical institutions or two or more physicians pursuant to chapter 33-10-03 <u>33-10-03.1</u> authorizing research and development, including human use of byproduct material, except licenses for byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,830 \$17,550	Items 23 and/or 27 as applicable

C	Other licenses issued pursuant to chapter 33-10-03 <u>33-10-03.1</u> for human use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, and/or special nuclear material, except licenses for byproduct material, source material, naturally occurring or accelerator-produced radioactive material, and special nuclear material in sealed sources contained in teletherapy devices	Nonroutine inspection Annual fee	\$1,530 \$5,950	Items 23 and/or 27 as applicable
8. VETERINARY MEDICINE				
A	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic procedures only	Nonroutine inspection Annual fee	\$1,220 \$3,530	Items 23 and/or 27 as applicable
B	Licenses issued for the veterinary use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material in animals for diagnostic and/or therapeutic procedures	Nonroutine inspection Annual fee	\$1,220 \$4,050	Items 23 and/or 27 as applicable
9.	Civil defense licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$720 \$1,910	Items 23 and/or 27 as applicable
10. DEVICE, PRODUCT OR SEALED SOURCE SAFETY EVALUATION (Regulated by NRC)				
11.	Licenses for possession and use of byproduct material, naturally occurring or accelerator-produced radioactive material, source material, or special nuclear material for civil defense activities	Nonroutine inspection Annual fee	\$720 \$1,910	Items 23 and/or 27 as applicable
12. SPENT FUEL STORAGE (Regulated by NRC)				
13. IMPORT AND EXPORT LICENSES (Regulated by NRC)				

14.	Reciprocity: Other agreement state and/or NRC licensees who conduct activities in North Dakota under the reciprocity provisions of chapters 33-10-02 and 33-10-03 and <u>33-10-19</u>	Annual fee	Same as annual fee for license type	Items 23 and/or 27 as applicable
	(Application fee is due three working days prior to entering the state.)	Nonroutine inspection	Same as inspection fee for license type	
15. SERVICES FOR OTHER LICENSED ENTITIES				
A	Leak test and analysis services (for other licensed entities) only	Nonroutine inspection Annual fee	\$930 \$1,760	Items 23 and/or 27 as applicable
B	Instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$930 \$1,760	Items 23 and/or 27 as applicable
16.	Combination leak test and analysis services and instrument calibration services (for other licensed entities) only	Nonroutine inspection Annual fee	\$1,070 \$2,370	Items 23 and/or 27 as applicable
17.	Calibration and/or reference sources (not for providing service to other licensed entities) only	Nonroutine inspection Annual fee	\$670 \$1,220	Items 23 and/or 27 as applicable
18.	Storage of radioactive material only	Nonroutine inspection Annual fee	\$930 \$1,630	Items 23 and/or 27 as applicable
19.	Providing deliberate operations to reduce or remove residual radioactivity from equipment, facilities, and land owned, possessed, or controlled by other persons to a level that permits release of equipment, facilities, and land for unrestricted use and/or termination of a license rendered from a fixed facility or a mobile unit	Nonroutine inspection Annual fee	\$1,370 \$21,610	Items 23 and/or 27 as applicable
20.	Radiation training courses involving the use of licensed material by the instructor and/or the participants	Annual fee	\$540	Item 27 as applicable
21.	Demonstration and sales of devices containing radioactive materials	Annual fee	\$540	Item 27 as applicable

22.	Installation, removal, repair, and servicing of devices containing radioactive materials	Annual fee	\$2,070	Item 27 as applicable
23.	Multiple offices: Add the following fees per additional office location (This does not apply to additional locations in Category 21 above.)	Annual fee	25 percent of base fee for category type per location	Item 27 as applicable
24.	Administrative fee for all license amendments	Amendment	\$280	Item 27 as applicable
25.	Inspection of radioactive materials package shipments to low-level radioactive waste disposal facility	Inspection	Full cost	Item 27 as applicable
26.	Certificate - In vitro testing with radioactive material under general license	Certificate (valid for three years)	\$330	Item 27 as applicable
27.	Late payment of any fees described in items 1 through 26 above	From payment due date	\$1	An additional fee per day after 30 days late

Note 1: All fee amounts are shown in United States dollars (USD).

Note 2: The fees established under this appendix may be adjusted on an annual basis to account for any increase in the consumer price index published by the department of labor, as of the close of the twelve-month period ending on August thirty-first of each calendar year. Fee adjustments will be rounded off to the nearest dollar amount (example: for a value of 0.50 or greater, the number would be rounded up; for a value of 0.49 or less, the number would be rounded down).

Note 3: A current list of fees established under this appendix will be maintained on the North Dakota state department of health website.

History: Effective October 1, 1982; amended effective June 1, 1986; June 1, 1992; March 1, 1994; July 1, 1995; May 1, 1998; March 1, 2003; January 1, 2011; October 1, 2016.

General Authority: NDCC 23-20.1-04.5, 28-32-02

Law Implemented: NDCC 23-20.1-04, 23-20.1-04.5

CHAPTER 33-10-12.1

33-10-12.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 39.

10 Code of Federal Regulations 39.1, 39.2, 39.11, 39.13, 39.15, 39.17, 39.31, 39.33, 39.35, 39.37, 39.39, 39.41, 39.43, 39.45, 39.47, 39.49, 39.51, 39.53, 39.55, 39.61, 39.63, 39.65, 39.67, 39.69, 39.71, 39.73, 39.75, 39.77, and 39.91 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. All of the requirements in chapter 33-10-12.1 apply to both licensees and registrants. A reference in 10 Code of Federal Regulations part 39 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material" includes "registered source of radiation", and a reference to "licensed radioactive materials" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
2. Where the words "NRC", "commission", or "NRC regional office" appear in 10 Code of Federal Regulations part 39, substitute the words "North Dakota state department of health".
3. Requirements in 10 Code of Federal Regulations part 39 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
4. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 39.
5. For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-13.1

33-10-13.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 71.

10 Code of Federal Regulations 71.0, 71.3, 71.4, 71.5, 71.7, 71.8, 71.9, 71.10, 71.12, 71.13, 71.14, 71.15, 71.17, 71.20, 71.21, 71.22, 71.23, 71.47, 71.81, 71.83, 71.85, 71.87, 71.88, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.127, 71.129, 71.131, 71.133, 71.135, and 71.137 and appendix A to part 71 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 71.0(d), 71.14(b), and 71.101(c)(2), (d), and (e).
2. Requirements in 10 Code of Federal Regulations part 71 that apply to "licensed material" or "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 71, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 71.5(b), 71.10, 71.17(b), (c) (3), and (e), 71.85(c), 71.88(a)(4), 71.93(c), 71.95, 71.97(c), (c)(3)(iii), and (f), and 71.101(c) (1).
4. 10 Code of Federal Regulations 71.9 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. State form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations part 71.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02

CHAPTER 33-10-14.1

33-10-14.1-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 36.

10 Code of Federal Regulations 36.1, 36.2, 36.11, 36.13, 36.15, 36.17, 36.19, 36.21, 36.23, 36.25, 36.27, 36.29, 36.31, 36.33, 36.35, 36.37, 36.39, 36.41, 36.51, 36.53, 36.55, 36.57, 36.59, 36.61, 36.63, 36.65, 36.67, 36.69, 36.81, and 36.83 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference is paragraph (2) of the definition of "commencement of construction", and paragraph (9)(ii) of the definition "construction".
2. Requirements in 10 Code of Federal Regulations part 36 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
- ~~2.~~3. Where the words "NRC", "commission", or "NRC regional office" appear in 10 Code of Federal Regulations part 36, substitute the words "North Dakota state department of health".
- ~~3.~~4. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
- ~~4.~~5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 36.
- ~~5.~~6. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-09.1

CHAPTER 33-10-16

33-10-16-01. Adoption by reference of several sections in 10 Code of Federal Regulations, part 40.

10 Code of Federal Regulations 40.1, 40.2, 40.3, 40.4, 40.7, 40.9, 40.10, 40.11, 40.12, 40.13, 40.14, 40.20, 40.21, 40.22, 40.25, 40.26, 40.31, 40.32, 40.34, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.45, 40.46, 40.51, [40.54](#), [40.55](#), 40.60, 40.61, 40.62, 40.63, 40.65, and 40.71 and appendix A to part 40 are adopted by reference as they exist on ~~January 1, 2010~~[October 1, 2015](#), with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 40.12(b); 40.31(j), (k), and (l); ~~and 40.32(d), (e), and (g) and those portions of paragraph (e) which apply to uranium enrichment and uranium hexafluoride facilities;~~ 40.41(d), (e)(1), (e)(3), and (g); ~~and 40.51(b) (6); and appendix A, criterion 11A through F and criterion 12; paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".~~
2. Requirements in 10 Code of Federal Regulations part 40 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", or "administrator of the appropriate regional office" appear in 10 Code of Federal Regulations part 40, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 40.11.
4. 10 Code of Federal Regulations [part 40](#) employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8414, "notice to employees", must be posted instead of NRC form 3 that is specified in 10 Code of Federal Regulations [part 40](#).
7. North Dakota state form number 16092, "registration certificate: use of depleted uranium under general license", must be used instead of nuclear regulatory commission form 244 that is specified in 10 Code of Federal Regulations part 40.
8. North Dakota state form number 8418, "application for radioactive material license", must be used instead of NRC form 313 as specified in 10 Code of Federal Regulations part 40.
9. North Dakota state form number 18941, "certificate: disposition of radioactive material", must be used instead of NRC form 314 as specified in 10 Code of Federal Regulations part 40.
10. For references to 10 Code of Federal Regulations parts 170 and 171, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-17

33-10-17-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 70.

10 Code of Federal Regulations 70.1, 70.2, 70.3, 70.4, 70.7, 70.9, 70.10, 70.11, 70.12, 70.17, 70.18, 70.19, 70.20, 70.21, 70.22, 70.23, 70.25, 70.31, 70.32, 70.33, 70.34, 70.35, 70.36, 70.38, 70.39, 70.41, 70.42, 70.50, 70.51, 70.56, and 70.81 are adopted by reference as they exist on ~~January 1, 2010~~[October 1, 2015](#), with the following exceptions:

1. The following are not adopted by reference: 10 Code of Federal Regulations 70.1(c), (d), and (e); 70.20a; 70.20b; 70.21(a)(1), (c), (f), (g), and (h); 70.22(b), (c), (f), (g), (h), (i), (j), (k), (l), (m), and (n); 70.23(a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), and (b); 70.23a; 70.25(a)(1); 70.31(c), (d), and (e); 70.32(a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (b)(1), (b)(3), (b)(4), (c), (d), (e), (f), (g), (h), (i), (j), and (k); 70.42(b)(6); ~~and 70.51(c); paragraph (2) of the definition of "commencement of construction"; and paragraph (9)(ii) of the definition of "construction".~~
2. Requirements in 10 Code of Federal Regulations part 70 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", "NRC regional administrator", "NRC regional office", "administrator of the appropriate nuclear regulatory commission's regional office", "administrator of the appropriate regional office", or "nuclear regulatory commission's office of nuclear material safety and safeguards, division of industrial and medical nuclear safety" appear in 10 Code of Federal Regulations part 70, substitute the words "North Dakota state department of health".
4. 10 Code of Federal Regulations 70.7 employee protection also applies to violations of North Dakota Century Code chapters 23-20 and 23-20.1.
5. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
6. North Dakota state form number 8418, "application for radioactive material license", must be used instead of nuclear regulatory commission form 313 as specified in 10 Code of Federal Regulations [part 70](#).
7. North Dakota state form number 8414, "notice to employees", must be posted instead of United States nuclear regulatory commission form 3 that is specified in 10 Code of Federal Regulations [part 70](#).
8. For references to 10 Code of Federal Regulations part 170, section 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; [amended effective October 1, 2016](#).

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-18

33-10-18-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 31.

10 Code of Federal Regulations 31.1, 31.2, 31.3, 31.5, 31.6, 31.7, 31.8, 31.9, 31.10, 31.11, and 31.12 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference are 10 Code of Federal Regulations 31.3(b) and (c) and 31.6(a).
2. Requirements in 10 Code of Federal Regulations 31 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "United States nuclear regulatory commission", or "director of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 31, substitute the words "North Dakota state department of health" except when used in 10 Code of Federal Regulations 31.8(c)(2) and 31.11(d)(2).
4. Reporting required in 10 Code of Federal Regulations 31.5(c)(5), 31.5(c)(8)(ii), 31.5(c)(9)(i), 31.5(c)(11), and 31.5(c)(14) shall be submitted to the North Dakota state department of health as follows:
 - a. By mail addressed to: Radiation Control Program, North Dakota Department of Health, 918 East Divide Avenue, Second Floor, Bismarck, ND 58501-1947.
 - b. By hand delivery to: Radiation Control Program, North Dakota Department of Health, 915 East Divide Avenue, Second Floor, Bismarck, ND.
 - c. By electronic submission to ram@nd.gov. Electronic submissions must be made in a manner that enables the North Dakota state department of health to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.
5. North Dakota state form number 8423, "certificate - in vitro testing with radioactive material under general license", must be used instead of nuclear regulatory commission form 483 as specified in 10 Code of Federal Regulations part 31.
- ~~5.6.~~ References in 10 Code of Federal Regulations part 31 to specific licenses issued by an agreement state also include specific licenses issued by the United States nuclear regulatory commission.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-19

33-10-19-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 150.

10 Code of Federal Regulations 150.1, 150.2, 150.3, 150.11, 150.20, 150.31, and 150.32 are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 150.3 foreign obligations.
2. Requirements in 10 Code of Federal Regulations part 150 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "nuclear regulatory commission", "regional administrator", "United States nuclear regulatory commission", "region", or "regional administrator of the United States nuclear regulatory commission regional office" appear in 10 Code of Federal Regulations part 150, substitute the words "North Dakota state department of health" except when used in section 150.5.
4. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.
5. North Dakota state form number 58230, "radioactive material reciprocity request", must be used instead of nuclear regulatory commission form 241 as specified in 10 Code of Federal Regulations part 150.
6. Where the words "non-agreement states", "areas of exclusive federal jurisdiction within agreement states", or "offshore waters" are used in 10 Code of Federal Regulations 150.20(a)(1)(i), (ii), (iii), (b), (b)(3), and (b)(4) substitute the words "state of North Dakota".
7. Where the words "agreement states license" are used in 10 Code of Federal Regulations 150.20, also add the words "nuclear regulatory commission license". Where the words "license issued by an agreement state" are used in 10 Code of Federal Regulations 150.20 also add the words "license issued by the nuclear regulatory commission". Where the words "license from an agreement state" are used in 10 Code of Federal Regulations 150.20 also add the words "license from the nuclear regulatory commission".
8. The words "for the first time in a calendar year" are stricken from 10 Code of Federal Regulations 150.20(b)(1).
9. Where the words "in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore water authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time" are used in 10 Code of Federal Regulations 150.20(b)(4), substitutes the words "in a 365-day period".
10. For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-20

33-10-20-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 32.

10 Code of Federal Regulations 32.1, 32.2, 32.3, 32.13, 32.17, 32.24, 32.51, 32.51(a), 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.59, 32.61, 32.62, 32.71, 32.72, 32.74, 32.101, 32.102, 32.103, ~~and 32.110, 32.201, 32.210, and 32.301~~ are adopted by reference as they exist on ~~January 1, 2010~~October 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations 32.1(c)(1).
2. Requirements in 10 Code of Federal Regulations part 32 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
3. Where the words "NRC", "commission", "NRC regional office", or "director of nuclear material safety and safeguards" appear in 10 Code of Federal Regulations part 32, substitute the words "North Dakota state department of health" except when used in 32.51(a)(3)(iii), 32.54(a), 32.58, 32.71(d), 32.72(b)(5), and 32.74(a)(3).
4. Reporting required in 10 Code of Federal Regulations 32.56(a) shall be submitted to the North Dakota state department of health as follows:
 - a. By mail addressed to: Radiation Control Program, North Dakota Department of Health, 918 East Divide Avenue, Second Floor, Bismarck, ND 58501-1947.
 - b. By hand delivery to: Radiation Control Program, North Dakota Department of Health, 918 East Divide Avenue, Second Floor, Bismarck, ND.
 - c. By electronic submission to ram@nd.gov. Electronic submissions must be made in a manner that enables the North Dakota state department of health to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time.
5. North Dakota state form number 8418, "application for radioactive material license", must be used instead of nuclear regulatory commission form 313 as specified in 10 Code of Federal Regulations part 32.
- ~~5.6.~~ For references to 10 Code of Federal Regulations part 170, see chapter 33-10-11 for applicable fee schedules.

History: Effective January 1, 2011; amended effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.1-04

CHAPTER 33-10-22

[RESERVED] PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

Section

33-10-22-01 Adoption by Reference of Several Sections in 10 Code of Federal Regulations Part 37

33-10-22-01. Adoption by reference of several sections in 10 Code of Federal Regulations part 37.

10 Code of Federal Regulations 37.1, 37.3, 37.5, 37.11, 37.21, 37.23, 37.25, 37.27, 37.29, 37.31, 37.33, 37.41, 37.43, 37.45, 37.47, 37.49, 37.51, 37.53, 37.55, 37.57, 37.71, 37.73, 37.75, 37.77, 37.79, 37.81, 37.101, 37.103, 37.105, and appendix A to part 37 are adopted by reference as they exist on October 1, 2015, with the following exceptions:

1. Not adopted by reference is 10 Code of Federal Regulations (CFR) 37.11(b) and 37.43(d)(9).
2. All of the requirements in chapter 33-10-22 apply to both licensees and registrants. A reference in 10 CFR part 37 to "license" includes "registration", a reference to "licensee" includes "registrant", a reference to "licensed" includes "registered", a reference to "licensed material(s)" includes "registered source of radiation" and a reference to "licensed radioactive material" includes "registered source of radiation". "Registrant" means any person who is registered with the department and is legally obligated to register with the department pursuant to article 33-10 and North Dakota Century Code chapter 23-20.1. "Registration" means the notification of the North Dakota state department of health of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with North Dakota Century Code chapter 23-20.
3. Where the word "NRC" appears in 10 CFR 37.31(d), 37.43(c)(3)(iii), 37.57(a), 37.57(c), 37.77 [with the exception of "the NRC's Web site" in 37.77(a)(1)], and 37.81(g), substitute the words "North Dakota state department of health".
4. Where the word "Commission" appears in 10 CFR 37.5 (definitions of "byproduct material" and "person"), 37.11(a), 37.43(a)(3), 37.43(c)(1)(ii), 37.101, 37.103, and 37.105, substitute the words "North Dakota state department of health".
5. Where the words "NRC regional office" appear in 10 CFR 37.41(a)(3) and 37.81, substitute the words "North Dakota state department of health".
6. Where the words "appropriate NRC regional office listed in § 30.6(a)(2) of this chapter" appear in 10 CFR 37.45(b), substitute the words "North Dakota state department of health".
7. Where the words "NRC's Operational Center (301-816-5100)" appear in 10 CFR 37.57(a), 37.57(b), and 37.81, substitute the words "North Dakota state department of health".
8. Where the words "NRC's Operational Center" appear in 10 CFR 37.81, substitute the words "North Dakota state department of health".
9. Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001. The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to 301-816-5151" appear in 10 CFR 37.77(a)(1), substitute the words "North Dakota state department of health".
10. Where the words "NRC's Director of Nuclear Security, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(1), substitute the words "North Dakota state department of health".

11. Where the words "NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.77(c)(2) and 37.77(d), substitute the words "North Dakota state department of health".
12. Where the words "Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001" appear in 10 CFR 37.81(g), substitute the words "North Dakota state department of health".
13. Requirements in 10 CFR part 37 that apply to "byproduct material" also apply to naturally occurring or accelerator-produced radioactive material.
14. "Act" includes North Dakota Century Code chapters 23-20 and 23-20.1.

History: Effective October 1, 2016.

General Authority: NDCC 23-20.1-04

Law Implemented: NDCC 23-20.1-03, 23-20.01-04

CHAPTER 33-15-14

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:

<u>Contaminant</u>	<u>Averaging Time (hours)</u>				
	Annual ($\mu\text{g}/\text{m}^3$)	24 ($\mu\text{g}/\text{m}^3$)	8 ($\mu\text{g}/\text{m}^3$)	3 ($\mu\text{g}/\text{m}^3$)	1 ($\mu\text{g}/\text{m}^3$)
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) 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.** Every permit to operate issued by the department after February 9, 1976, must have a maximum term of five years. Applications for renewal of such permits must be submitted ninety days prior to 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.
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

CHAPTER 33-15-15

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, 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) The following is deleted:
(a) 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) The words "the administrator or other reviewing authority" are replaced
(a) 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 CO₂ 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) "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.
- (a)
- 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

TITLE 43
INDUSTRIAL COMMISSION

OCTOBER 2016

CHAPTER 43-02-03 OIL AND GAS CONSERVATION

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43-02-03-01. Definitions.

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units in an allocated pool.
4. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
5. "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
6. "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
7. "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.
8. "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 commission.
9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
10. "Commercial injection well" means one that only receives fluids produced from wells operated by a person other than the principal on the bond.
11. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
- ~~11.~~12. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
- ~~12.~~13. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
- ~~13.~~14. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall 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 shall be considered complete when all provisions of plugging are complied with as set out in this chapter.

- ~~14-15.~~ "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.
- ~~15-16.~~ "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 seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
- ~~16-17.~~ "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
- ~~17-18.~~ "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:
- a. Aiding in the lifting of fluids in the well; or
 - b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
- ~~18-19.~~ "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
20. "Flow line" means a pipe or conduit of pipes used for the transportation, gathering, or conduct of a mineral from a wellhead to a separator, treater, dehydrator, tank battery, or surface reservoir.
- ~~19-21.~~ "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
- ~~20-22.~~ "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.
- ~~21-23.~~ "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
- ~~22-24.~~ "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
- ~~23-25.~~ "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
- ~~24-26.~~ "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
- ~~25-27.~~ "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
28. "Injection pipeline" means a pipe or conduit of pipes used for the transportation of fluids, typically via an injection pump, from a storage tank or tank battery directly to an injection well.

- ~~26-29.~~ "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.
- ~~27-30.~~ "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.
- ~~28-31.~~ "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
- ~~29-32.~~ "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
- ~~30-33.~~ "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
- ~~31-34.~~ "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
- ~~32-35.~~ "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
- ~~33-36.~~ "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
- ~~34-37.~~ "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.
- ~~35-38.~~ "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
- ~~36-39.~~ "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
- ~~37-40.~~ "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
- ~~38-41.~~ "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
- ~~39-42.~~ "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
- ~~40-43.~~ "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
- ~~41-44.~~ "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.

- ~~42-45.~~ "Recomplete" means the subsequent completion of a well in a different pool.
- ~~43-46.~~ "Reservoir" means pool or common source of supply.
- ~~44-47.~~ "Saltwater handling facility" means and includes any container ~~such as a pit, tank, or pool, whether covered or uncovered,~~ and site used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with ~~the drilling or operation of wells~~ oil and gas exploration, development, and production and can be a stand-alone site or an appurtenance to a well or treating plant.
- ~~45-48.~~ "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.
- ~~46-49.~~ "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
- ~~47-50.~~ "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.
- ~~48-51.~~ "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
- ~~49-52.~~ "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or recycling tank bottoms, waste oils, drilling mud, waste from drilling operations, produced water, and other wastes related to crude oil and natural gas exploration and production. This is not to be construed as to include saltwater handling and disposal operations which typically recover skim oil from their operations, treating mud or cuttings at a well site during drilling operations, or treating flowback water during completion operations at a well site.

History: Amended effective January 1, 1983; May 1, 1992; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; January 1, 2008; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-11. Organization reports.

Every person acting as principal or agent for another or independently engaged in the drilling of oil or gas wells, or in the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of crude oil or natural gas, engaged in the disposal of produced water, ~~or~~ engaged in treating plant operations, or engaged in pipeline operations in North Dakota shall immediately file with the director the name under which such business is being conducted or operated; and name and post-office address of such person, the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post-office addresses of any person acting as trustee, together with the names and post-office addresses of any officials thereof on an organization report (form 2). In each case where such business is conducted under an assumed name, such organization report shall show the names and post-office addresses of all owners in addition to the other information required. A new organization report shall be filed when and if there is a change in any of the information contained in the original report.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-14. Access to sites and records.

The commission, director, and their representatives shall have access to all ~~well~~-records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, producing, operation, or servicing oil and gas wells, pipelines, injection wells, or treating plants shall permit the commission, director, and their representatives to come upon any lease, property, pipeline right-of-way, well, or drilling rig operated or controlled by them, complying with state safety rules, and to inspect the records and operation ~~of such wells~~, and to have access at all times to any and all records ~~of wells~~. If requested, copies of such records must be filed with the commission. The confidentiality of any data submitted which is confidential pursuant to subsection 6 of North Dakota Century Code section 38-08-04 and section 43-02-03-31 must be maintained.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-15. Bond and transfer of wells.

1. **Bond requirements.** Prior to commencing drilling operations, any person who proposes to drill a well for oil, gas, ~~or injection~~, or source well for use in enhanced recovery operations, shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of such well shall be the principal on the bond covering the well. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.
2. **Bond amounts and limitations.** The bond shall be in the amount of fifty thousand dollars when applicable to one well only. Wells drilled to a total depth of less than two thousand feet [609.6 meters] may be bonded in a lesser amount if approved by the director. When the principal on the bond is drilling or operating a number of wells within the state or proposes to do so, the principal may submit a bond conditioned as provided by law. Wells utilized for commercial ~~disposal~~injection operations must be bonded in the amount of fifty thousand dollars. A blanket bond covering more than one well shall be in the amount of one hundred thousand dollars, provided the bond shall be limited to no more than six of the following in aggregate:
 - a. A well that is a dry hole and is not properly plugged;
 - b. A well that is plugged and the site is not properly reclaimed; and
 - c. A well that is abandoned pursuant to subsection 1 of North Dakota Century Code section 38-08-04 or section 43-02-03-55 and is not properly plugged and the site is not properly reclaimed.

If this aggregate of wells is reached, all well permits, for which drilling has not commenced, held by the principal of such bond are suspended. No rights may be exercised under the permits until the aggregate of wells drops below the required limit, or the operator files the appropriate bond to cover the permits, at which time the rights given by the drilling permits are reinstated. A well with an approved temporary abandoned status shall have the same status as an oil, gas, or injection well. The commission may, after notice and hearing, require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the well or wells and the expected cost of plugging and

well site reclamation, as determined by the commission. The commission may refuse to accept a bond or to add wells to a blanket bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

3. **Unit bond requirements.** Prior to commencing unit operations, the operator of any area under unitized management shall submit to the commission, and obtain its approval, a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The operator of the unit shall be the principal on the bond covering the unit. The amount of the bond shall be specified by the commission in the order approving the plan of unitization. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota.

Prior to transfer of a unit to a new operator, the commission, after notice and hearing, may revise the bond amount for a unit, or in the case when the unit was not previously bonded, the commission may require a bond and set a bond amount for the unit.

4. **Bond terms.** Bonds shall be conditioned upon full compliance with North Dakota Century Code chapter 38-08, and all administrative rules and orders of the commission. It shall be a plugging bond, as well as a drilling bond, and is to endure up to and including approved plugging of all oil, gas, and injection wells as well as dry holes. Approved plugging shall also include practical reclamation of the well site and appurtenances thereto. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
5. **Transfer of wells under bond.** Transfer of property does not release the bond. In case of transfer of property or other interest in the well and the principal desires to be released from the bond covering the well, such as producers, not ready for plugging, the principal must proceed as follows:

- a. The principal must notify the director, in writing, of all proposed transfers of wells at least thirty days before the closing date of the transfer. The director may, for good cause, waive this requirement.

The principal shall submit to the commission a form 15 reciting that a certain well, or wells, describing each well by quarter-quarter, section, township, and range, is to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form signed by a party duly authorized to sign on behalf of the principal.

On said transfer form the transferee shall recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such well under the transferee's one-well bond or, as the case may be, does accept the responsibility of such wells under the transferee's blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- b. When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor shall be released from the responsibility of plugging the well and site reclamation. If such wells include all the wells within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any well from a bond if the well is in violation of a statute, rule, or order.

- c. The transferee (new operator) of any oil, gas, or injection well shall be responsible for the plugging and site reclamation of any such well. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such well. The original or prior bond shall not be released as to the plugging and reclamation responsibility of any such transferor until the transferee shall submit to the commission an acceptable bond to cover such well. All liability on bonds shall continue until the plugging and site reclamation of such wells is completed and approved.
6. **Treating plant bond.** Prior to the commencement of operations, any person proposing to operate a treating plant must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the plant shall be the principal on the bond. Each surety bond shall be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-51.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, then the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.
7. **Saltwater handling facility bond.** Prior to the commencement of operations, any person proposing to operate a saltwater handling facility that is not already bonded as an appurtenance must submit to the commission and obtain its approval of a surety bond or cash bond. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the saltwater handling facility must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be as prescribed in section 43-02-03-53.3. It is to remain in force until the operations cease, all equipment is removed from the site, and the site and appurtenances thereto are reclaimed, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond. Transfer of property does not release the bond. The director may refuse to transfer any saltwater handling facility from a bond if the saltwater handling facility is in violation of a statute, rule, or order.
8. **Crude oil and produced water underground gathering pipeline bond.** The bonding requirements for crude oil and produced water underground gathering pipelines are not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.
- a. Any owner of an existing underground gathering pipeline transferring crude oil or produced water shall submit to the commission and obtain its approval of a surety bond or cash bond prior to July 1, 2017. Any owner of a proposed underground gathering pipeline to transfer crude oil or produced water shall submit to the commission and obtain its approval of a surety bond or cash bond prior to placing into service. An alternative form of security may be approved by the commission after notice and hearing, as provided by law. The person responsible for the operation of the crude oil or produced water underground gathering pipeline must be the principal on the bond. Each surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The bond must be in the amount of fifty thousand dollars when applicable to one crude oil or produced water underground gathering pipeline system only. Such underground gathering pipelines that are less than one mile [1609.34 meters] in length may be bonded in a lesser amount if approved by the director. When the

principal on the bond is operating multiple gathering pipeline systems within the state or proposes to do so, the principal may submit a blanket bond conditioned as provided by law. A blanket bond covering one or more underground gathering pipeline systems must be in the amount of one hundred thousand dollars. The owner shall file with the director, as prescribed by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines on the bond. Each layer must include at least the following information:

- (1) The name of the pipeline gathering system and other separately named portions thereof;
- (2) The type of fluid transported;
- (3) The pipeline composition;
- (4) Burial depth; and
- (5) Approximate in-service date.

b. The blanket bond covering more than one underground gathering pipeline system is limited to no more than six of the following instances of noncompliance in aggregate:

- (1) Any portion of an underground gathering pipeline system that has been removed from service for more than one year and is not properly abandoned pursuant to section 43-02-03-29.1; and
- (2) An underground gathering pipeline right-of-way, including associated above ground equipment, which has not been properly reclaimed pursuant to section 43-02-03-29.1.

If this aggregate of underground gathering pipeline systems is reached, the commission may refuse to accept additional pipeline systems on the bond until the aggregate is brought back into compliance. The commission, after notice and hearing, may require higher bond amounts than those referred to in this section. Such additional amounts for bonds must be related to the economic value of the underground gathering pipeline system and the expected cost of pipeline abandonment and right-of-way reclamation, as determined by the commission. The commission may refuse to accept a bond or to add underground gathering pipeline systems to a blanket bond if the owner or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of underground gathering pipelines; if a civil or administrative action brought by the commission is pending against the owner or surety company; if an underground gathering pipeline system has exhibited multiple failures; or for other good cause.

c. The underground gathering pipeline bond is to remain in force until the pipeline has been abandoned, as provided in section 43-02-03-29.1, and the right-of-way, including all associated above ground equipment, has been reclaimed as provided in section 43-02-03-29.1, or liability of the bond is transferred to another bond that provides the same degree of security. If the principal does not satisfy the bond's conditions, the surety shall satisfy the conditions or forfeit to the commission the face value of the bond.

d. Transfer of underground gathering pipelines under bond. Transfer of property does not release the bond. In case of transfer of property or other interest in the underground gathering pipeline and the principal desires to be released from the bond covering the underground gathering pipeline, the principal must proceed as follows:

- (1) The principal shall notify the director, in writing, of all proposed transfers of underground gathering pipelines at least thirty days before the closing date of the transfer. The director, for good cause, may waive this requirement.

Notice of underground gathering pipeline transfer. The principal shall submit, as provided by the director, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point of all underground gathering pipelines to be transferred to a certain transferee, naming such transferee, for the purpose of ownership or operation. The date of assignment or transfer must be stated and the form 15pl signed by a party duly authorized to sign on behalf of the principal.

The notice of underground gathering pipeline transfer must recite the following: "The transferee has read the foregoing statement and does accept such transfer and does accept the responsibility of such underground gathering pipelines under the transferee's pipeline bond or, as the case may be, does accept the responsibility of such underground gathering pipelines under the transferee's pipeline systems blanket bond, said bond being tendered to or on file with the commission." Such acceptance must likewise be signed by a party authorized to sign on behalf of the transferee and the transferee's surety.

- (2) When the commission has passed upon the transfer and acceptance and accepted it under the transferee's bond, the transferor must be released from the responsibility of abandoning the underground gathering pipelines and right-of-way reclamation. If such underground gathering pipelines include all underground gathering pipeline systems within the responsibility of the transferor's bond, such bond will be released by the commission upon written request. Such request must be signed by an officer of the transferor or a person authorized to sign for the transferor. The director may refuse to transfer any underground gathering pipeline from a bond if the underground gathering pipeline is in violation of a statute, rule, or order.

- (3) The transferee (new owner) of any underground gathering pipeline is responsible for the abandonment and right-of-way reclamation of any such underground gathering pipeline. For that purpose the transferee shall submit a new bond or, in the case of a surety bond, produce the written consent of the surety of the original or prior bond that the latter's responsibility shall continue and attach to such underground gathering pipeline. The original or prior bond may not be released as to the abandonment and right-of-way reclamation responsibility of any such transferor until the transferee submits to the commission an acceptable bond to cover such underground gathering pipeline. All liability on bonds continues until the abandonment and right-of-way reclamation of such underground gathering pipeline is completed and approved by the director.

7.9. Bond termination. The commission shall, in writing, advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be formally terminated upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

8.10. Director's authority. The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which may only be approved by the commission.

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; December 1, 1996; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2006; April 1, 2012; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16. Application for permit to drill and recomplete.

Before any person shall begin any well-site preparation for the drilling of any well other than surveying and staking, such person shall file an application for permit to drill (form 1) with the director, together with a permit fee of one hundred dollars. Verbal approval may be given for site preparation by the director in extenuating circumstances. No drilling activity shall commence until such application is approved and a permit to drill is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-03-15 or the applicant must have previously filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is completed.

The application for permit to drill shall be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section, the latitude and longitude of the proposed well location to the nearest tenth of a second, the ground elevation, ~~confirmation that a legal street address has been requested for the well site, and well facility if separate from the well site,~~ and the proposed road access to the nearest existing public road. Information to be included in such application shall be the proposed depth to which the well will be drilled, estimated depth to the top of important markers, estimated depth to the top of objective horizons, the proposed mud program, the proposed casing program, including size and weight thereof, the depth at which each casing string is to be set, the proposed pad layout, including cut and fill diagrams, and the proposed amount of cement to be used, including the estimated top of cement.

For wells permitted on new pads built after July 31, 2013, permit conditions imposed by the commission may include, upon request of the owner of a permanently occupied dwelling within one thousand feet of the proposed well, requiring the location of all flares, tanks, and treaters utilized in connection with the permitted well be located at a greater distance from the occupied dwelling than the ~~oil and gas~~ well head, if the location can be reasonably accommodated within the proposed pad location. If the facilities are proposed to be located farther from the dwelling than the well bore, the director can issue the permit without comment from the dwelling owner. The applicant shall give any such owners written notice of the proposed facilities personally or by certified mail, return receipt requested, and addressed to their last-known address listed with the county property tax department. The commission must receive written comments from such owner within five business days of the owner receiving said notice. An application for permit must include an affidavit from the applicant identifying each owner's name and address, and the date written notice was given to each owner. The owner's notice must include:

1. A copy of North Dakota Century Code section 38-08-05.
2. The name, telephone number, and if available the electronic mail address of the applicant's local representative.
3. A sketch of the area indicating the location of the owner's dwelling, the proposed well, and location of the proposed flare, tanks, and treaters.
4. A statement indicating that any such owner objecting to the location of the flare, tanks, or treaters, must notify the commission within five business days of receiving the notice.

Prior to the commencement of recompletion operations or drilling horizontally in the existing pool, an application for permit shall be filed with the director. Included in such application shall be the notice of intention (form 4) to reenter a well by drilling horizontally, deepening, or plugging back to any source

of supply other than the producing horizon in an existing well. Such notice shall include the name and file number and exact location of the well, the approximate date operations will begin, the proposed procedure, the estimated completed total depth, the anticipated hydrogen sulfide content in produced gas from the proposed source of supply, the weight and grade of all casing currently installed in the well unless waived by the director, the casing program to be followed, and the original total depth with a permit fee of fifty dollars. The director may deny any application if it is determined, in accordance with the latest version of ANSI/NACE MR0175/ISO 15156, that the casing currently installed in the well would be subject to sulfide stress cracking.

The applicant shall provide all information, in addition to that specifically required by this section, if requested by the director. The director may impose such terms and conditions on the permits issued under this section as the director deems necessary.

The director shall deny an application for a permit under this section if the proposal would cause, or tend to cause, waste or violate correlative rights. The director of oil and gas shall state in writing to the applicant the reason for the denial of the permit. The applicant may appeal the decision of the director to the commission.

A permit to drill automatically expires one year after the date it was issued, unless the well is drilling or has been drilled below surface casing. A permit to recomplete or to drill horizontally automatically expires one year after the date it was issued, unless such project has commenced.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; May 1, 1994; September 1, 2000; July 1, 2002; April 1, 2010; April 1, 2012; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-05

Law Implemented: NDCC 38-08-05

43-02-03-17. Sign on well or facility.

Every well or facility associated with the production, transportation, purchasing, [storage, treating,](#) or processing of oil ~~and~~ gas, [and water](#) except plugged wells shall be identified by a sign. The sign shall be of durable construction and the lettering thereon shall be kept in a legible condition. The wells on each lease or property shall be numbered in nonrepetitive sequence, unless some other system of numbering was adopted by the owner prior to the adoption of this chapter. Each sign must show the [facility name or](#) well name and number (which shall be different or distinctive for each well [or facility](#)), the name of the operator, file [or facility](#) number [\(if applicable\)](#), and the location by quarter-quarter, section, township, and range. ~~For all wells and associated facilities, the sign shall also include the legal street address, if available.~~

~~— Existing well identification signs that are otherwise in accord with this section except that well locations are shown by quarter section rather than quarter-quarter section or show the permit number rather than the file number shall be allowed to remain.~~

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19. Site construction.

In the construction of a [well site, saltwater handling facility, treating plant,](#) access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top ~~eight~~ [twelve](#) inches [~~20.32~~ [30.48](#) centimeters] of soil [or deeper than the depth of cultivation, whichever is greater](#). Soil stabilization ~~additives~~ [materials](#), liners, fabrics, and other materials to be used onsite, on access roads or associated

facilities, must be reported on a sundry notice (form 4) to the director within thirty days after application. The reclamation plan for such materials shall also be included.

When necessary to prevent pollution of the land surface and freshwaters, the director may require the site to be sloped and diked.

~~Well sites and associated facilities~~ Sites shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. Sites and associated facilities shall be designed to divert surface drainage from entering the site.

~~Well sites and associated facilities~~ Sites or appropriate parts thereof shall be fenced if required by the director.

Within six months after the completion of a well or construction of a saltwater handling facility or treating plant, the portion of the ~~well~~ site not used for ~~well~~ operations shall be reclaimed, unless waived by the director. ~~Well sites and all associated facilities~~ Operators shall file a sundry notice (form 4) detailing the work that was performed and a current site diagram, which identifies the stockpiled topsoil location and its volume. Sites shall be stabilized to prevent erosion.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-19.3. Earthen pits and open receptacles.

Except as otherwise provided in section 43-02-03-19, no saltwater, drilling mud, crude oil, waste oil, or other waste shall be stored in earthen pits or open receptacles except in an emergency and upon approval by the director.

A lined earthen pit or open receptacle may be temporarily used to retain oil, water, cement, solids, or fluids generated in well ~~completion, servicing, or~~ plugging operations. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of the oil, water, or fluids. The contents of the pit or receptacle must be removed within seventy-two hours after operations have ceased and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2. Within thirty days after operations have ceased, the earthen pit shall be reclaimed and the open receptacle shall be removed. The director may grant an extension of the thirty-day time period to no more than one year for good reason.

The director may permit pits or receptacles used solely for the purpose of flaring casinghead gas. A pit or receptacle used for this purpose must be sufficiently impermeable to provide adequate temporary containment of fluids. Permission for such pit or receptacle shall be conditioned on locating the pit not less than one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks and keeping it free of any saltwater, crude oil, waste oil, or other waste. Saltwater, drilling mud, crude oil, waste oil, or other waste shall be removed from the pit or receptacle within twenty-four hours after being discovered and must be disposed of at an authorized facility in accordance with section 43-02-03-19.2.

The director may permit pits used solely for storage of freshwater used in completion and well servicing operations. Permits for freshwater pits shall be valid for a period of one year but may be reauthorized upon application. Freshwater pits shall be lined and no pit constructed for this purpose shall be wholly or partially constructed in fill dirt unless approved by the director. The director may approve chemical treatment to municipal drinking water standards upon application.

 The freshwater pit shall have signage on all sides accessible to vehicular traffic clearly identifying the usage as freshwater only.

The director may permit portable-collapsible receptacles used solely for storage of fluids used in completion and well servicing operations, although no flowback fluids may be allowed. Permits for such receptacles are valid for a period of one year but may be reauthorized upon application. Such receptacles must utilize a sealed inner bladder, erected to conform to American petroleum institute standards, and may not be wholly or partially constructed on fill dirt unless approved by the director. Such receptacles must have signage on all sides accessible to vehicular traffic clearly identifying the fluid contained within.

History: Effective September 1, 2000; amended effective April 1, 2010; April 1, 2012; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation.

During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

All flowing oil wells must be produced through an approved oil and gas separator or emulsion treater of ample capacity and in good working order. No boiler, electric generator, or treater shall be placed nearer than one hundred fifty feet [45.72 meters] to any producing well or oil tank. Placement as close as one hundred twenty-five feet [38.10 meters] may be allowed if a spark or flame arrestor is utilized on the equipment. Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred fifty feet [45.72 meters] from the vicinity of wells and tanks. All waste shall be burned or disposed of in such manner as to avoid creating a fire hazard. All vegetation must be removed to a safe distance from any production or injection equipment to eliminate a fire hazard.

The director may require remote operated or automatic shutdown equipment to be installed on, or shut in for no more than forty days, any well that is likely to cause a serious threat of pollution or injury to the public health or safety.

No well shall be drilled nor production or injection equipment installed nor saltwater handling facility or treating plant constructed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

~~—The operator of any well approved after March 31, 2014, shall submit the legal street address of the well site, and well facility if separate from the well site, to the commission on a sundry notice (form 4) immediately upon receiving the legal street address.~~

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment. The operator conducting any well stimulation shall give prior written notice, up to seventen days and not less than threeseven business days, to any operator of a well completed in the same pool, if publicly available information indicates or if the operator is made aware, if the completion intervals are within one thousand three hundred twenty feet [402.34 meters] of one another.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008; April 1, 2012; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29. Well and lease equipment.

Wellhead and lease equipment with a working pressure at least equivalent to the calculated or known pressure to which the equipment may be subjected shall be installed and maintained. Equipment on producing wells shall be installed to facilitate gas-oil ratio tests, and static bottom hole or other pressure tests. Valves shall be installed and maintained in good working order to permit pressure readings to be obtained on both casing and tubing.

~~— All newly constructed underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, the possibility of damage to the pipe, and tracer wire shall be buried with any nonconductive pipes installed. When a trench for an oil and gas underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.~~

~~— 1. The operator of any underground gathering pipeline placed into service on August 1, 2011, to June 30, 2013, shall file with the director, by January 1, 2015, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. The operator of any underground gathering pipeline placed into service after June 30, 2013, shall file with the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Esri) shape file format showing the location of the pipeline centerline. An affidavit of completion shall accompany each layer containing the following information:~~

~~— a. A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.~~

~~— b. The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.~~

~~— c. The anticipated operating pressure of the pipeline.~~

~~— d. The type of fluid that will be transported in the pipeline and direction of flow.~~

~~— e. Pressure to which the pipeline was tested prior to placing into service.~~

~~— f. The minimum pipeline depth of burial.~~

~~— g. In-service date.~~

~~— h. Leak detection and monitoring methods that will be utilized after in-service date.~~

~~— i. Pipeline name.~~

~~— j. Accuracy of the geographical information system layer.~~

~~— 2. When an oil and gas underground gathering pipeline or any part of such pipeline is abandoned, the operator shall leave such pipeline in a safe condition by conducting the following:~~

~~— a. Disconnect and physically isolate the pipeline from any operating facility or other pipeline.~~

~~— b. Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.~~

~~— c. Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.~~

~~— d. Remove cathodic protection from the pipeline.~~

~~— e. Permanently plug or cap all open ends by mechanical means or welded means.~~

~~3. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the operator of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system (GCS) and in an environmental systems research institute (Ersi) shape file format showing the location of the pipeline centerline and an affidavit of completion containing the following information:~~

~~a. A statement that the pipeline was abandoned in compliance with section 43-02-03-29.~~

~~b. The type of fluid used to purge the pipeline.~~

~~The requirement to submit a geographical information system layer is not to be construed to be required on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.~~

History: Amended effective January 1, 1983; January 1, 2006; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-29.1. Underground gathering pipelines.

1. Application of section. This section is applicable to all underground gathering pipelines designed for or capable of transporting crude oil, natural gas, carbon dioxide, or produced water from an oil and gas production facility for the purpose of disposal, storage, or for sale purposes. If these rules differ from the pipeline manufacturer's prescribed installation and operation practices, the pipeline manufacturer's prescribed installation and operation practices take precedence.

The requirements in this section are not applicable to flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on piping utilized to connect wells, tanks, treaters, flares, or other equipment on the production facility.

2. Definitions. The terms used throughout this section apply to this section only.

a. "Crude oil or produced water underground gathering pipeline" means an underground gathering pipeline designed or intended to transfer crude oil or produced water from a production facility for disposal, storage, or sale purposes.

b. "Underground gas gathering pipeline" means an underground gathering pipeline designed or intended to transfer associated or nonassociated gas from a production facility to a gas processing facility; or an underground gathering pipeline designed or intended to transfer residue gas from a gas processing facility to an oil and gas production facility for artificial lift; or an underground gathering pipeline designed or intended to transfer carbon dioxide to or within an enhanced recovery project.

3. Notifications.

a. The underground gathering pipeline owner must notify the commission, as provided by the director, at least seven days prior to commencing new construction of any underground gathering pipeline.

(1) The notice of intent to construct a crude oil or produced water underground gathering pipeline must include the following:

(a) The proposed date construction is scheduled to begin.

(b) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research

institute shape file format showing the proposed route of the pipeline from the point of origin to the termination point.

(c) The proposed underground gathering pipeline design drawings, including all associated above ground equipment.

[1] The proposed pipeline composition, specifications (i.e. size, weight, grade, wall thickness, coating, and standard dimension ratio).

[2] The type of fluid to be transported.

[3] The method of testing pipeline integrity (e.g. hydrostatic or pneumatic test) prior to placing the pipeline into service.

[4] Proposed burial depth of the pipeline.

[5] The location and type of all road crossings (i.e. bored and cased or bored only).

[6] The location of all environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies that the pipeline may traverse, if applicable.

(2) The notice of intent to construct an underground gas gathering pipeline must include the following:

(a) The proposed date construction is scheduled to begin.

(b) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the proposed route of the pipeline from the point of origin to the termination point.

b. The underground gathering pipeline owner shall notify the commission of any underground gathering pipeline system or portion thereof that has been removed from service for more than one year.

c. If damage occurs to any underground gathering pipeline, flow line, or other underground equipment used to transport crude oil, natural gas, carbon dioxide, or water produced in association with oil and gas, during construction, repair, or abandonment of an underground gathering pipeline, the responsible party shall verbally notify the director immediately.

4. Design and construction.

All newly constructed underground gas gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids. All such pipelines installed in a trench must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe. Tracer wire must be buried with any nonconductive pipe installed. When a trench for an underground gas gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material.

The following applies to newly constructed crude oil and produced water underground gathering pipelines:

- a. Underground gathering pipelines must be devoid of leaks and constructed of materials resistant to external corrosion and to the effects of transported fluids.
- b. Underground gathering pipelines must be designed in a manner that allows for line maintenance, periodic line cleaning, and integrity testing.
- c. Installation crews must be trained in all installation practices for which they are tasked to perform.
- d. Underground gathering pipelines must be installed in a manner that minimizes interference with agriculture, road and utility construction, the introduction of secondary stresses, and the possibility of damage to the pipe. Tracer wire must be buried with any nonconductive pipe installed.
- e. Unless the manufacturer's installation procedures and practices provide guidance, pipeline trenches must be constructed to allow for the pipeline to rest on undisturbed native soil and provide continuous support along the length of the pipe. Trench bottoms must be free of rocks greater than two inches in diameter, debris, trash, and other foreign material not required for pipeline installation. If a trench bottom is over excavated, the trench bottom must be backfilled with appropriate material and compacted prior to installation of the pipe to provide continuous support along the length of the pipe.

The width of the trench must provide adequate clearance on each side of the pipe. Trench walls must be excavated to ensure minimal sluffing of sidewall material into the trench. Subsoil from the excavated trench must be stockpiled separately from previously stripped topsoil.
- f. Underground gathering pipelines that cross a township, county, or state graded road must be bored unless the responsible governing agency specifically permits the owner to open cut the road.
- g. No pipe or other component may be installed unless it has been visually inspected at the site of installation to ensure that it is not damaged in a manner that could impair its strength or reduce its serviceability.
- h. The pipe shall be handled in a manner that minimizes stress and avoids physical damage to the pipe during stringing, joining, or lowering in. During the lowering in process the pipe string must be properly supported so as not to induce excess stresses on the pipe or the pipe joints or cause weakening or damage to the outer surface of the pipe.
- i. When a trench for an underground gathering pipeline is backfilled, it must be backfilled in a manner that provides firm support under the pipe and prevents damage to the pipe and pipe coating from equipment or from the backfill material. Sufficient backfill material must be placed in the haunches of the pipe to provide long-term support for the pipe. Backfill material that will be within two feet of the pipe must be free of rocks greater than two inches in diameter and foreign debris. Backfilling material must be compacted as appropriate during placement in a manner that provides support for the pipe and reduces the potential for damage to the pipe and pipe joints.
- j. Cover depths must be a minimum of four feet [1.22 meters] from the top of the pipe to the finished grade. The cover depth for an undeveloped governmental section line must be a minimum of six feet [1.83 meters] from the top of the pipe to the finished grade.
- k. Underground gathering pipelines that traverse environmentally sensitive areas, such as wetlands, streams, or other surface waterbodies, must be installed in a manner that minimizes impacts to these areas. Any horizontal directional drilling plan prepared by the

owner or required by the director, must be filed with the commission, prior to the commencement of horizontal directional drilling.

5. Pipeline reclamation.

- a. When utilizing excavation for pipeline installation, repair, or abandonment, topsoil must be stripped, segregated from the subsoils, and stockpiled for use in reclamation. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater.
- b. The pipeline right-of-way must be reclaimed as closely as practicable to original condition. All stakes, temporary construction markers, cables, ropes, skids, and any other debris or material not native to the area must be removed from the right-of-way and lawfully disposed of.
- c. During right-of-way reclamation all subsoils and topsoils must be returned in proper order to as close to the original depths as practicable.
- d. The reclaimed right-of-way soils must be stabilized to prevent excessive settling, sluffing, cave-ins, or erosion.
- e. The underground gas gathering pipeline owner is responsible for their right-of-way reclamation and maintenance until the pipeline has been abandoned and the right-of-way, including all associated above ground equipment, has been reclaimed as provided in subsection 15 of this section.
- f. The crude oil and produced water underground gathering pipeline owner is responsible for their right-of-way reclamation and maintenance until such pipeline is released by the commission from the pipeline bond pursuant to section 43-02-03-15.

6. Inspection.

All newly constructed crude oil and produced water underground gathering pipelines must be inspected by third-party independent inspectors to ensure the pipeline is installed as prescribed by the manufacturer's specifications and in accordance with the requirements of this section. A list of all third-party independent inspectors and a description of each independent inspector's qualifications, certifications, experience, and specific training must be provided to the commission upon request. A person may not be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected.

7. Associated pipeline facility.

No associated above ground equipment may be installed less than five hundred feet [152.40 meters] from an occupied dwelling unless agreed to in writing by the owner of the dwelling or authorized by order of the commission.

All associated above ground equipment used to store crude oil or produced water must be devoid of leaks and constructed of materials resistant to the effects of crude oil, produced water, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and associated above ground equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

Dikes must be erected around all produced water or crude oil tanks at any new facility prior to placing the associated underground gathering pipeline into service. Dikes must be erected

and maintained around all crude oil or produced water tanks or above ground equipment, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged crude oil or produced water must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

The underground gathering pipeline owner shall take steps to minimize the amount of solids stored at the pipeline facility, although the remediation of such material may be allowed onsite, if approved by the director.

8. Underground gathering pipeline as built.

a. The owner of any underground gathering pipeline placed into service after July 31, 2011, shall file with the director, as prescribed by the director, within one hundred eighty days of placing into service, a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of all associated above ground equipment and the pipeline centerline from the point of origin to the termination point. The shape file must have a completed attribute table containing the required data. An affidavit of completion shall accompany each layer containing the following information:

- (1) A statement that the pipeline was constructed and installed in compliance with section 43-02-03-29.1.
- (2) The outside diameter, minimum wall thickness, composition, internal yield pressure, and maximum temperature rating of the pipeline, or any other specifications deemed necessary by the director.
- (3) The maximum allowable operating pressure of the pipeline.
- (4) The specified minimum yield strength of the pipeline.
- (5) The type of fluid that will be transported in the pipeline.
- (6) Pressure and duration to which the pipeline was tested prior to placing into service.
- (7) The minimum pipeline depth of burial from the top of the pipe to the finished grade.
- (8) In-service date.
- (9) Leak protection, detection, and monitoring methods that will be utilized after in-service date.
- (10) The name of the pipeline gathering system and any other separately named portions thereof.
- (11) Accuracy of the geographical information system layer.

b. The requirement to submit a geographical information system layer is not to be construed to be required on flow lines, injection pipelines, pipelines operated by an enhanced recovery unit for enhanced recovery unit operations, or on buried piping utilized to connect flares, tanks, treaters, or other equipment located entirely within the boundary of a well site or production facility.

9. Operating requirements.

The maximum operating pressure for all crude oil and produced water underground gathering pipelines may not exceed the manufacturer's specifications of the pipe or the manufacturer's specifications of any other component of the pipeline, whichever is less. The crude oil or produced water underground gathering pipeline must be equipped with adequate controls and protective equipment to prevent the pipeline from operating above the maximum operating pressure.

10. Leak protection, detection, and monitoring.

All crude oil and produced water underground gathering pipeline owners shall file with the commission any leak protection, detection, and monitoring plan prepared by the owner or required by the director, pursuant to North Dakota Century Code section 38-08-27.

All crude oil or produced water underground gathering pipeline owners shall develop and maintain a data sharing plan. The plan must provide for real-time sharing of data between the operator of the production facility, the crude oil or produced water underground gathering pipeline owner, and the operator at the point or points of disposal, storage, or sale. If a discrepancy in the shared data is observed, the party observing the data discrepancy shall notify all other parties and action must be taken to determine the cause. A record of all data discrepancies must be retained by the crude oil or produced water underground gathering pipeline owner. If requested, copies of such records must be filed with the commission.

11. Spill response.

All crude oil and produced water underground gathering pipeline owners shall maintain a spill response plan during the service life of any crude oil or produced water underground gathering pipeline. The plan should detail the necessary steps for an effective and timely response to a pipeline spill. The spill response plan should be tailored to the specific risks in the localized area. Response capabilities should address access to equipment and tools necessary to respond, as well as action steps to protect the health and property of impacted landowners, citizens, and the environment.

12. Corrosion control.

a. Underground gathering pipelines must be designed to withstand the effects of external corrosion and maintained in a manner that mitigates internal corrosion.

b. All metallic underground gathering pipelines installed must have sufficient corrosion control.

c. All coated pipe must be electronically inspected prior to placement using coating deficiency (i.e. holiday) detectors to check for any faults not observable by visual examination. The holiday detector must be operated in accordance with manufacturer's instructions and at a voltage level appropriate for the electrical characteristics of the pipeline system being tested. During installation all joints, fittings, and tie-ins must be coated with materials compatible with the coatings on the pipe. Coating materials must:

(1) Be designed to mitigate corrosion of the buried pipeline;

(2) Have sufficient adhesion to the metal surface to prevent under film migration of moisture;

(3) Be sufficiently ductile to resist cracking;

(4) Have enough strength to resist damage due to handling and soil stress;

(5) Support any supplemental cathodic protection; and

(6) If the coating is an insulating type, have low moisture absorption and provide high electrical resistance.

d. Cathodic protection systems must meet or exceed the minimum criteria set forth in the National Association of Corrosion Engineers standard practice Control of External Corrosion on Underground or Submerged Metallic Piping Systems.

e. If internal corrosion is anticipated or detected, the underground gathering pipeline owner shall take prompt remedial action to correct any deficiencies, such as increased pigging, use of corrosion inhibitors, internal coating of the pipeline (e.g. an epoxy paint or other plastic liner), or a combination of these methods. Corrosion inhibitors must be used in sufficient quantity to protect the entire part of the pipeline system that the inhibitors are designed to protect.

13. Pipeline integrity.

A crude oil or produced water underground gathering pipeline owner may not operate a pipeline unless it has been pressure tested and demonstrated integrity. In addition, an owner may not return to service a portion of pipeline which has been repaired, replaced, relocated, or otherwise changed until it has demonstrated integrity.

a. The crude oil and produced water underground gathering pipeline owner shall notify the commission at least forty-eight hours prior to commencement of any pipeline integrity test to allow a representative of the commission to witness the testing process and results.

b. An independent inspector's certificate of hydrostatic or pneumatic testing of a crude oil or produced water underground gathering pipeline must be submitted within sixty days of the underground gathering pipeline being placed into service and include the following:

(1) The name of the pipeline gathering system and any other separately named portions thereof;

(2) The date of the test;

(3) The duration of the test;

(4) The length of pipeline which was tested;

(5) The maximum and minimum test pressure;

(6) The starting and ending pressure;

(7) A copy of the chart recorder results; and

(8) A geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the centerline of the portion of the pipeline that was tested.

c. All crude oil and produced water underground gathering pipeline owners shall maintain a pipeline integrity demonstration plan during the service life of any crude oil or produced water underground gathering pipeline. The director, for good cause, may require a pipeline integrity demonstration on any crude oil or produced water underground gathering pipeline.

14. Pipeline repair.

Each owner, in repairing an underground gathering pipeline or pipeline system, shall ensure that the repairs are made in a manner that prevents damage to persons or property.

An owner may not use any pipe, valve, or fitting, for replacement or repair of an underground gathering pipeline, unless it is designed to meet the maximum operating pressure.

- a. At least forty-eight hours prior to any underground gathering pipeline repair or replacement, the underground gathering pipeline owner shall notify the commission, as provided by the director, except in an emergency.
- b. Within one hundred eighty days of repairing or replacing any underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the location of the centerline of the repaired or replaced pipeline and an affidavit of completion containing the following information:
 - (1) A statement that the pipeline was repaired in compliance with section 43-02-03-29.1.
 - (2) The reason for the repair or replacement.
 - (3) The length of pipeline that was repaired or replaced.
 - (4) Pressure and duration to which the pipeline was tested prior to returning to service.
- c. Clamping or squeezing as a method of repair for any produced water underground gathering pipeline is prohibited, except in an emergency. Any damaged portion of a produced water underground gathering pipeline that has been clamped or squeezed must be replaced before it is returned to service.

15. Pipeline abandonment.

- a. When an underground gathering pipeline or any part of such pipeline is abandoned as defined under subsection 1 of North Dakota Century Code section 38-08-02 after March 31, 2014, the owner shall leave such pipeline in a safe condition by conducting the following:
 - (1) Disconnect and physically isolate the pipeline from any operating facility, associated above ground equipment, or other pipeline.
 - (2) Cut off the pipeline or the part of the pipeline to be abandoned below surface at pipeline level.
 - (3) Purge the pipeline with fresh water, air, or inert gas in a manner that effectively removes all fluid.
 - (4) Remove cathodic protection from the pipeline.
 - (5) Permanently plug or cap all open ends by mechanical means or welded means.
 - (6) The site of all associated above ground equipment must be reclaimed pursuant to section 43-02-03-34.1.
- b. Within one hundred eighty days of completing the abandonment of an underground gathering pipeline the owner of the pipeline shall file with the director a geographical information system layer utilizing North American datum 83 geographic coordinate system and in an environmental systems research institute shape file format showing the

location of the pipeline centerline and an affidavit of completion containing the following information:

- (1) A statement that the pipeline was abandoned in compliance with section 43-02-03-29.1.
- (2) The type of fluid used to purge the pipeline.
- (3) The date of pipeline abandonment.
- (4) The length of pipeline abandoned.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts.

All persons controlling or operating any well, pipeline, receiving tank, storage tank, treating plant, or any other receptacle or production facility ~~into which~~ associated with oil, gas, or water ~~is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported,~~ production, injection, processing, or well servicing shall verbally notify the director immediately and follow up utilizing the online initial notification report within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The initial report must include the name of the reporting party, including telephone number and address, date and time of the incident, location of the incident, type and cause of the incident, estimated volume of release, containment status, waterways involved, immediate potential threat, and action taken. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility or to any leak or spill involving freshwater. The initial notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, root cause of the ~~accident~~ incident unless deemed unnecessary by the director, and action taken to prevent reoccurrence, and if applicable, any additional information pursuant to subdivision e of subsection 1 of North Dakota Century Code section 37-17.1-07.1. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification shall within a reasonable time also provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled.

The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30.1. Leak and spill cleanup.

At no time shall any spill or leak be allowed to flow over, pool, or rest on the surface of the land or infiltrate the soil. Discharged fluids must be properly removed and may not be allowed to remain standing within or outside of diked areas, although the remediation of such fluids may be allowed onsite

if approved by the director. Operators and responsible parties must respond with appropriate resources to contain and clean up spills.

History: Effective April 1, 2012; amended effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports.

After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. PriorWithin six months of reaching total depth and prior to completing the well, the operator shall cause to be run a log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived or postponed by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. All logs run shall be submitted to the director free of charge. Logs shall be submitted as one digital TIFF (tagged image file format) copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, geologic reports, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on ~~new~~ permits, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, central tank battery number, ~~and~~ any production runs, or volumes injected into an injection well, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded. The director may release such confidential completion and production data to health care professionals, emergency responders, and state, federal, or tribal environmental and public health regulators if the director deems it necessary to protect the public's health, safety, and welfare.

All information furnished to the director on recompletions or reentries, except the operator name, well name, location, permit date, confidentiality period, spacing or drilling unit description, spud date, rig contractor, ~~and~~ any production runs, or volumes injected into an injection well, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the well was approved for recompletion or reentry, whichever is earlier. Any information furnished to the director prior to approval of the recompletion or reentry shall remain public.

Approval must be obtained on a sundry notice (form 4) from the director prior to perforating or recompleting a well in a pool other than the pool in which the well is currently permitted.

After the completion of any remedial work, or attempted remedial work such as plugging back or drilling deeper, acidizing, shooting, formation fracturing, squeezing operations, setting liner, perforating, reperforating, or other similar operations not specifically covered herein, a report on the operation shall be filed on a sundry notice (form 4) with the director. The report shall present a detailed account of all work done and the date of such work; the daily production of oil, gas, and water both prior to and after the operation; the shots per foot, size, and depth of perforations; the quantity of sand, crude, chemical,

or other materials employed in the operation; and any other pertinent information or operations which affect the original status of the well and are not specifically covered herein.

Upon the installation of pumping equipment on a flowing well, or change in type of pumping equipment designed to increase productivity in a well, the operator shall submit a sundry notice (form 4) of such installation. The notice shall include all pertinent information on the pump and the operation thereof including the date of such installation, and the daily production of the well prior to and after the pump has been installed.

All forms, reports, logs, and other information required by this section shall be submitted within thirty days after the completion of such work, although a completion report shall be filed immediately after the completion or recompletion of a well in a pool or reservoir not then covered by an order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008; April 1, 2010; April 1, 2012; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34. Method of plugging.

All wells shall be plugged in a manner which will confine permanently all oil, gas, and water in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the director. All casing strings shall be cut off at least three feet [91.44 centimeters] below the final surface contour, and a cap [with file number](#) shall be welded thereon. Core or stratigraphic test holes drilled to or below sands containing freshwater shall be plugged in accordance with the applicable provisions recited above. After plugging, the site must be reclaimed pursuant to section 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; July 1, 2002; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-34.1. Reclamation of surface.

1. Within a reasonable time, but not more than one year, after a well is plugged, or if a permit expires, has been canceled or revoked, or a treating plant [or saltwater handling facility](#) is decommissioned, the site, access road, and other associated facilities constructed shall be reclaimed as closely as practicable to original condition. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. The operator or operator's agent shall provide a copy of the proposed reclamation plan to the surface owner at least ten days prior to commencing the work unless waived by the surface owner. Verbal approval to reclaim the site may be given. The notice shall include:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner and the date when a copy of the proposed reclamation plan was provided to the surface owner;
 - c. A description of the proposed work, including topsoil redistribution and reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

The commission will mail a copy of the approved notice to the surface owner.

All equipment, waste, and debris shall be removed from the site. Flow lines shall be purged ~~in a manner approved by the director~~ pursuant to section 43-02-03-29.1. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

2. Gravel or other surfacing material shall be removed, stabilized soil shall be remediated, and the well-site, access road, and other associated facilities constructed for the well, treating plant, or saltwater handling facility shall be reshaped as near as practicable to original contour.
3. The stockpiled topsoil shall be evenly distributed over the disturbed area and, where applicable, the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
4. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
5. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged or treating plant or saltwater handling facility is decommissioned and shall record documentation of the waiver with the recorder of the county in which the site or road is located.

History: Effective April 1, 2012; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-40. Gas-oil ratio test.

Each operator shall take a gas-oil ratio test within thirty days following the completion or recompletion of an oil well. Each test shall be conducted using standard industry practices unless otherwise specified by the director. The initial gas-oil ratio must be reported on the well completion or recompletion report (form 6). Subsequent gas-oil ratio tests must be performed on producing wells when the producing pool appears to have reached bubble point. After the discovery of a new pool, each operator shall make additional gas-oil ratio tests as directed by the director or provided for in field rules. During tests each well shall be produced at a maximum efficient rate. The director may shut in any well for failure to make such test until such time as a satisfactory test can be made, or satisfactory explanation given. The results of all gas-oil ratio tests shall be submitted to the director on form 9, which shall be accompanied by a statement that the data on form 9 is true and correct.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-48. Measurement of oil.

Oil production may not be transported from a well premises ~~or~~ central production facility, treating plant, or saltwater handling facility until its volume has been determined through the use of properly calibrated meter measurements or tank measurements. All meter and tank measurements, and volume determinations must conform to American petroleum institute standards and be corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

History: Amended effective April 30, 1981; March 1, 1982; January 1, 1983; May 1, 1992; May 1, 1994; July 1, 1996; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-49. Oil production equipment, dikes, and seals.

Storage of oil in underground or partially buried tanks or containers is prohibited. Surface oil tanks and production equipment must be devoid of leaks and ~~in good condition~~ constructed of materials resistant to the effects of produced fluids or chemicals that may be contained therein. Unused tanks and production equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year. ~~Dikes must be erected and maintained around oil tanks at any production facility built or rebuilt on or after July 1, 2000.~~

Dikes must be erected around oil tanks at any new production facility ~~within thirty days after the well has been completed~~ prior to completing any well. Dikes must be erected and maintained around oil tanks at production facilities ~~built prior to July 1, 2000, when deemed necessary~~ unless a waiver is granted by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction.

A perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around all storage facilities and production sites and to divert surface drainage away from the site. The director may consider an extension of time to implement these requirements if conditions prevent timely construction; or a modification of these requirements if the site is void of tankage, if the current daily throughput is less than one hundred barrels of fluid per day, if all production equipment and load lines are properly diked, or if other factors are present that provide sufficient protection from environmental impacts.

Numbered ~~metal~~ weather-resistant security seals shall be properly utilized on all oil access valves and access points to secure the tank or battery of tanks.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.1. Treating plant permit requirements.

1. The treating plant permit application shall be submitted on form 1tp and shall include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed treating plant and the center of the site with reference to true north and the nearest lines of a governmental section. The plat shall also include the latitude and longitude of the center of the proposed treating plant location to the nearest tenth of a second, and the ground elevation, ~~and the legal street address~~. The plat shall also depict the outside perimeter of the treating plant and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.
 - c. A schematic drawing of the proposed treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all ~~flowlines~~ flow lines, and the location of the topsoil stockpile. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.

- d. Cut and fill diagrams.
 - e. An affidavit of mailing identifying each owner of any permanently occupied dwelling within one-quarter mile of the proposed treating plant and certifying that such owner has been notified of the proposed treating plant.
 - f. Appropriate geological data on the surface geology.
 - g. Schematic drawings of the proposed diking and containment, including calculated containment volume and all areas underlain by a synthetic liner.
 - h. Monitoring plans and leak detection for all buried or partially buried structures.
 - i. The capacity and operational capacity of the treating plant.
2. Permits may contain such terms and conditions as the commission deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the commission, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 4. Permits are transferable only with approval of the commission.
 5. Permits may be modified by the commission.
 6. A permit shall automatically expire one year after the date it was issued, unless dirtwork operations have commenced to construct the site.
 7. If the treating plant is abandoned and reclaimed, the permit shall expire and be of no further force and effect.

History: Effective April 1, 2014; amended effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-51.3. Treating plant construction and operation requirements.

1. Before construction of a treating plant begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond amount shall be specified in the commission order authorizing the treating plant and shall be based upon the location, type, and capacity of the plant, processing method, and plan of operation for all plant waste approved in the commission order and shall be payable to the industrial commission. In no case shall the bond amount be set lower than fifty thousand dollars.
2. Treating plant sites and associated facilities or appropriate parts thereof shall be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All storage tanks shall be kept free of leaks and in good condition. Storage tanks for saltwater shall be constructed of, or lined with, materials resistant to the effects of saltwater.
4. All waste, recovered solids, and recovered fluids shall be stored and handled in such a manner to prevent runoff or migration offsite.
5. Dikes of sufficient dimension to contain the total capacity of the maximum volume stored must be erected and maintained around all storage and processing tanks. Dikes as well as the base

material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. All processing equipment shall be underlain by a synthetic impermeable material, unless waived by the director. ~~A perimeter dike of sufficiently impermeable material shall be erected and maintained around the treating plant site.~~ The site shall be sloped and diked to divert surface drainage away from the site. The operations of the treating plant shall be conducted in such a manner as to prevent leaks, spills, and fires. All accidentally discharged fluids and wastes shall be promptly and properly removed and shall not be allowed to remain standing within the diked area or on the treating plant premises. All such incidents shall be properly cleaned up, subject to approval by the director. All such incidents shall be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.

6. A perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the treating plant and to divert surface drainage away from the site. The director may consider an extension of time to implement these requirements if conditions prevent timely construction or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts.

7. Immediately upon the commencement of treatment operations, the operator shall notify the commission in writing of such date.

~~7-8.~~ The operator of a treating plant shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.

~~8-9.~~ Storage pits, waste pits, or other earthen storage areas shall be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.

~~9-10.~~ Burial of waste at any treating plant site shall be prohibited. All residual water and waste, fluid or solid, shall be disposed of in an authorized facility.

~~40-11.~~ The operator shall take steps to minimize the amount of residual waste generated and the amount of residual waste temporarily stored onsite. Solid waste shall not be stockpiled onsite unless authorized by an appropriate regulatory agency. A copy of said authorization shall be filed with the commission.

~~41-12.~~ If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis shall be performed by a certified laboratory and shall adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.

~~42-13.~~ Treating plants shall be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and shall comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.

~~43-14.~~ The beginning of month inventory, the amount of waste received and the source of such waste, the volume of oil sold, the amount and disposition of water, the amount and disposition of residue waste, fluid or solid, and the end of month inventory for each treating plant shall be reported monthly on form 5p with the director on or before the first day of the second succeeding month, regardless of the status of operations.

~~44-15.~~ Records necessary to validate information submitted on form 5p shall be maintained in North Dakota.

~~15.~~ An annual report for each treating plant shall be submitted to the commission, due on June first of each year. The report shall include at least the following:

~~a. A schematic drawing or drawings of the treating plant site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, all areas underlain by a synthetic liner, the location of all flowlines, and the location of the topsoil stockpile. It shall also include the road access to the nearest existing public road.~~

~~b. Present inventory of fluids and solids on location.~~

~~c. Future plans for the next year.~~

~~d. Any other information requested by the director.~~

16. All proposed changes to any treating plant are subject to approval by the commission. Updated schematics shall be furnished to the commission within thirty days following any changes to the treating plant.

17. The operator shall comply with all applicable rules and orders of the commission. All rules in this chapter governing oil well sites shall also apply to any treating plant site.

History: Effective April 1, 2014; amended effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-52. Report of oil production.

The operator of each well ~~in every~~completed in any pool shall, on or before the first day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of production made by each such well upon form 5 or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said first day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any oil produced during such shut-in period shall be deemed illegal oil and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; December 1, 1997; September 1, 2000; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-52.1. Report of gas produced in association with oil.

The operator of each well ~~in every~~completed in any pool shall, on or before the fifth day of the second month succeeding the month in which production occurs or could occur, file with the director the amount of gas produced by each such well upon form 5b or approved computer sheets no larger than eight and one-half by eleven inches [21.59 by 27.94 centimeters]. The report shall be signed by both the person responsible for the report and the person witnessing the signature. The printed name and title of both the person signing the report and the person witnessing the signature shall be included. Wells for which reports of production are not received by the close of business on said fifth day of the month may be shut in for a period not to exceed thirty days. The director shall notify, by certified mail, the operator and authorized transporter of the shut-in period for such wells. Any gas produced during such shut-in period must be deemed illegal gas and subject to the provisions of North Dakota Century Code section 38-08-15.

History: Effective May 1, 1992; amended effective December 1, 1997; September 1, 2000; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53. Saltwater handling facilities.

1. A saltwater handling facility may not be constructed without obtaining a permit from the commission. Saltwater handling facilities in existence prior to October 1, 2016, which are not currently bonded as an appurtenance to a well or treating plant, have ninety days from the date notified by the commission that a permit is required to submit the required information in order for the commission to approve such facility.

2. All saltwater liquids or brines produced with oil and natural gas shall be processed, stored, and disposed of without pollution of freshwater supplies.

~~2:3.~~ Underground injection of saltwater liquids and brines shall be in accordance with chapter 43-02-05.

~~3.~~ Surface facilities are acceptable provided that:

~~a.~~ They are devoid of leaks and constructed of materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above-materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and injection equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.

~~b.~~ Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility built or rebuilt on or after July 1, 2000. Dikes must be erected around saltwater tanks at any new facility within thirty days after the well has been completed. Dikes must be erected and maintained around saltwater tanks at saltwater handling facilities built prior to July 1, 2000, when deemed necessary by the director. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid production. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. Discharged saltwater liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas.

~~4.~~ The operator shall take steps to minimize the amount of solids stored at the facility.

~~5.~~ Any salable crude oil recovered from a saltwater handling facility shall be reported on a form 5 SWD.

4. The permitting and bonding requirements for a saltwater handling facility set forth in sections 43-02-03-53, 43-02-03-53.1, and 43-02-03-53.3 are not to be construed to be required if the facility is bonded as a well or treating plant appurtenance. Such facilities will be considered in the permit application for the well or treating plant.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; April 1, 2010; April 1, 2012; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.1. Saltwater handling facility permit requirements.

1. A permit for construction of a saltwater handling facility must be approved by the commission prior to construction. The saltwater handling facility permit application must be submitted on a sundry notice (form 4) and include at least the following information:
 - a. The name and address of the operator.
 - b. An accurate plat certified by a registered surveyor showing the location of the proposed saltwater handling facility and the center of the site with reference to true north and the nearest lines of a governmental section. The plat also must include the latitude and longitude of the center of the proposed saltwater handling facility location to the nearest tenth of a second and the ground elevation. The plat also must depict the outside perimeter of the saltwater handling facility and verification that the site is at least five hundred feet [152.4 meters] from an occupied dwelling.
 - c. A schematic drawing of the proposed saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes, the location of all flow lines, and the location and thickness of the stockpiled topsoil. The schematic drawing also must include the proposed road access to the nearest existing public road and the authority to build such access.
 - d. Cut and fill diagrams.
 - e. Schematic drawings of the proposed diking and containment, including calculated containment volume and all areas underlain by a synthetic liner, as well as a description of all containment construction material.
 - f. The anticipated daily throughput of the saltwater handling facility.
2. Permits may contain such terms and conditions as the commission deems necessary.
3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit, any directive of the commission, or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
4. Permits are transferable only with approval of the commission.
5. Permits may be modified by the commission.
6. A permit automatically expires one year after the date it was issued, unless dirtwork operations have commenced to construct the site.
7. If the saltwater handling facility is abandoned and reclaimed, the permit expires and is of no further force and effect.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.2. Saltwater handling facility siting.

All saltwater handling facilities must be sited in such a fashion that they are not located in a geologically or hydrologically sensitive area.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.3. Saltwater handling facility construction and operation requirements.

1. Bond requirement. Before construction of a saltwater handling facility begins, the operator shall file with the commission a surety bond or cash bond conditioned upon compliance with all laws, rules and regulations, and orders of the commission. The bond must be in the amount of fifty thousand dollars and must be payable to the industrial commission. The commission, after notice and hearing, may require a higher bond amount. Such additional amounts for bonds must be related to the economic value of the facility and the expected cost of decommissioning and site reclamation, as determined by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with all laws, rules and regulations, and orders of the commission; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.
2. Saltwater handling facility sites or appropriate parts thereof must be fenced if required by the director. All fences installed within or around any facility must be constructed in a manner that promotes emergency ingress and egress.
3. All waste, recovered solids, and fluids must be stored and handled in such a manner to prevent runoff or migration offsite.
4. Surface tanks may not be underground or partially buried, must be devoid of leaks, and constructed of, or lined with, materials resistant to the effects of produced saltwater liquids, brines, or chemicals that may be contained therein. The above materials requirement may be waived by the director for tanks presently in service and in good condition. Unused tanks and equipment must be removed from the site or placed into service, within a reasonable time period, not to exceed one year.
5. Dikes must be erected and maintained around saltwater tanks at any saltwater handling facility. Dikes must be erected around saltwater tanks at any new facility prior to introducing fluids. Dikes as well as the base material under the dikes and within the diked area must be constructed of sufficiently impermeable material to provide emergency containment. Dikes must be of sufficient dimension to contain the total capacity of the largest tank plus one day's fluid throughput. The required capacity of the dike may be lowered by the director if the necessity therefor can be demonstrated to the director's satisfaction. The operations of the saltwater handling facility must be conducted in such a manner as to prevent leaks, spills, and fires. Discharged liquids or brines must be properly removed and may not be allowed to remain standing within or outside of any diked areas. All such incidents must be properly cleaned up, subject to approval by the director. All such incidents must be promptly reported to the director and a detailed account of any such incident must be filed with the director in accordance with section 43-02-03-30.
6. A perimeter berm, at least six inches [15.24 centimeters] in height, must be constructed of sufficiently impermeable material to provide emergency containment around the facility and to divert surface drainage away from the site. The director may consider an extension of time to implement these requirements if conditions prevent timely construction or a modification of these requirements if other factors are present that provide sufficient protection from environmental impacts.
7. The operator shall take steps to minimize the amount of solids stored at the facility.
8. Immediately upon the commissioning of the saltwater handling facility, the operator shall notify the commission in writing of such date.

9. The operator of a saltwater handling facility shall provide continuing surveillance and conduct such monitoring and sampling as the commission may require.
10. Storage pits, waste pits, or other earthen storage areas must be prohibited unless authorized by an appropriate regulatory agency. A copy of said authorization must be filed with the commission.
11. Burial of waste at any saltwater handling facility site is prohibited. All residual water and waste, fluid or solid, must be disposed of in an authorized facility.
12. If deemed necessary by the director, the operator shall cause to be analyzed any waste substance contained onsite. Such chemical analysis must be performed by a certified laboratory and must adequately determine if chemical constituents exist which would categorize the waste as hazardous by state department of health standards.
13. Saltwater handling facilities must be constructed and operated so as not to endanger surface or subsurface water supplies or cause degradation to surrounding lands and must comply with section 43-02-03-28 concerning fire hazards and proximity to occupied dwellings.
14. All proposed changes to any saltwater handling facility are subject to prior approval by the director.
15. Upon completion of any saltwater handling facility modification, the operator shall file a report of the modification on a sundry notice (form 4) with the director within thirty days. The report must include details of the modification and include a schematic drawing of the saltwater handling facility site, drawn to scale, detailing all facilities and equipment, including the size, location, and purpose of all tanks, the height and location of all dikes as well as a calculated containment volume, and the location of all flow lines.
16. Any salable crude oil recovered from a saltwater handling facility must be reported on a form 5 SWD.
17. The operator shall comply with all laws, rules and regulations, and orders of the commission. All rules in this chapter governing oil well sites also apply to any saltwater handling facility site.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-53.4. Saltwater handling facility abandonment and reclamation requirements.

1. Notice of intention to abandon. The operator or the operator's agent shall file a notice of intention (form 4) to abandon and obtain the approval of the director, prior to the commencement of abandonment operations. The notice must state the name of the operator, the name and location of the saltwater handling facility, and a detailed account of proposed work. Within thirty days after the abandonment of any saltwater handling facility has been accomplished, the owner or operator thereof shall file a detailed account of the abandonment procedures on a sundry notice (form 4), and if requested, a copy of any job record setting forth in detail the method and operations used in abandoning the saltwater handling facility.
2. After abandonment the site must be reclaimed pursuant to section 43-02-03-34.1.

History: Effective October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells ~~or~~, treating plants, or saltwater handling facilities - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas, or the removal of production equipment or the failure to produce water from a source well, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. The failure to plug a stratigraphic test hole within one year of reaching total depth constitutes abandonment of the well. The removal of treating plant equipment or the failure to use a treating plant for one year constitutes abandonment of the treating plant. The removal of saltwater handling facility equipment or the failure to use a saltwater handling facility for one year constitutes abandonment of the saltwater handling facility. An abandoned well must be plugged and its site must be reclaimed ~~and~~, an abandoned treating plant must be removed and its site must be reclaimed, and an abandoned saltwater handling facility must be removed and its site must be reclaimed, pursuant to sections 43-02-03-34 and 43-02-03-34.1. A well not producing oil or natural gas in paying quantities for one year may be placed in abandoned-well status pursuant to subsection 1 of North Dakota Century Code section 38-08-04.
2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status and each extension may be approved for up to one year. A fee of one hundred dollars shall be submitted for each application to extend the temporary abandonment status of any well. A surface owner may request a review of a well temporarily abandoned for at least seven years pursuant to subsection 1 of North Dakota Century Code section 38-08-04.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-34.1.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008; April 1, 2010; April 1, 2012; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-80. Reports of purchasers and transporters of crude oil.

On or before the first day of the second month succeeding that in which oil is removed, purchasers and transporters, including truckers, shall file with the director the appropriate monthly reporting forms. The purchaser shall file on form 10 and the transporter on form 10a the amount of all crude oil removed and purchased by them from each well ~~or~~, central production facility, treating plant, or saltwater handling facility during the reported month. The transporter shall report the disposition of such crude oil on form 10b. All meter and tank measurements, and volume determinations of crude oil removed and purchased from a well or central production facility must conform to American petroleum institute standards and corrected to a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]

and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].

Prior to removing any oil ~~from a well or central production facility~~, purchasers and transporters shall obtain an approved copy of a producer's authorization to purchase and transport oil ~~from a well or central production facility~~ (form 8) from either the producer or the director.

The operator of any oil rail facility shall report the amount of oil received and shipped out of such facility on form 10rr.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-81. Authorization to transport oil from a well, treating plant, ~~or~~ central production facility, [or saltwater handling facility](#).

Before any crude oil is transported from a well, treating plant, ~~or~~ central production facility, [or saltwater handling facility](#), the operator shall file with the director, and obtain the director's approval, an authorization to purchase and transport oil (form 8).

Oil transported before the authorization is obtained or if such authorization has been revoked shall be considered illegal oil.

The director may revoke the authorization to purchase and transport oil for failure to comply with any rule, regulation, or order of the commission.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; September 1, 2000; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-90. Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.
2. For proceedings that do not involve a complaint and a specific-named respondent the commission shall give at least fifteen days' notice (except in emergency) of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication shall prevail. The notice shall issue in the name of the commission and shall conform to the other requirements provided by law.
3. In case an emergency is found to exist by the commission which in its judgment requires the making of a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing with respect to the same had been held after notice. The emergency rule or order permitted by this section shall remain in force no longer than forty days from its effective date, and in any event, it shall expire when the rule or order made after due notice and hearing with respect to the subject matter of such emergency rule or order becomes effective.

Any person moving for a continuance of a hearing, and who is granted a continuance, shall submit a twenty-five dollar fee to the commission, or if the cost of republication exceeds fifty dollars the commission may bill the applicant, to pay the cost of republication of notice of the hearing.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; July 1, 2002; October 1, 2016.

General Authority: NDCC 38-08-11

Law Implemented: NDCC 28-32-05, 38-08-11

43-02-03-90.2. Official record.

The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys, and all oil, water, and gas production records, and all injection records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner. Settlement negotiations between parties to a contested case are only admissible as governed by North Dakota Century Code section 28-32-24, although the hearing officer may strike such testimony from the record for good cause.

History: Effective May 1, 1992; amended effective April 1, 2010; April 1, 2012; October 1, 2016.

General Authority: NDCC 28-32-06

Law Implemented: NDCC 28-32-06

CHAPTER 43-02-05

43-02-05-04. Permit requirements.

1. No underground injection may be conducted without obtaining a permit from the commission after notice and hearing. The application shall be on a form 14 provided by the commission and shall include at least the following information:
 - a. The name and address of the operator of the injection well.
 - b. The surface and bottom hole location.
 - c. Appropriate geological data on the injection zone and the top and bottom confining zones including geologic names, lithologic descriptions, thicknesses, and depths.
 - d. The estimated bottom hole fracture pressure of the top confining zone.
 - e. Average and maximum daily rate of fluids to be injected.
 - f. Average and maximum requested surface injection pressure.
 - g. Geologic name and depth to base of the lowermost underground sources of drinking water which may be affected by the injection.
 - h. Existing or proposed casing, tubing, and packer data.
 - i. A plat depicting the area of review, (one-quarter-mile [402.34-meter] radius) and detailing the location, well name, and operator of all wells in the area of review. The plat should include all injection wells, producing wells, plugged wells, abandoned wells, drilling wells, dry holes, and water wells. The plat should also depict faults, if known or suspected.
 - j. The need for corrective action on wells penetrating the injection zone in the area of review.
 - k. Proposed injection program.
 - l. Quantitative analysis from a state-certified laboratory of freshwater from the two nearest freshwater wells within a one-mile [1.61-kilometer] radius. Location of the wells by quarter-quarter, section, township, and range must also be submitted. This requirement may be waived by the director in certain instances.
 - m. Quantitative analysis from a state-certified laboratory of a representative sample of water to be injected. A compatibility analysis with the receiving formation may also be required.
 - n. List identifying all source wells or sources of injectate.
 - o. A legal description of the land ownership within the area of review.
 - p. An affidavit of mailing certifying that all landowners within the area of review have been notified of the proposed injection well. If the proposed injection well is within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that comments or objections may be submitted to the commission within thirty days. If the proposed injection well is not within an area permit authorized by a commission order, the notice shall inform the landowners within the area of review that a hearing will be held at which comments or objections may be directed to the commission. A copy of the letter sent to each landowner must be attached to the affidavit.
 - q. All logging and testing data on the well which has not been previously submitted.

- r. Schematic drawings of the injection system, including current and proposed well bore construction, surface facility construction, including the size, location, and purpose of all tanks, the height and location of all dikes and containment, including a calculated containment volume, all areas underlain by a synthetic liner, and the location of all ~~flowlines~~flow lines. It shall also include the proposed road access to the nearest existing public road and the authority to build such access.
 - s. Traffic flow diagram of the site, depicting sufficient area to contain all anticipated traffic.
 - t. A review of the surficial aquifers within one mile of the proposed injection well site or surface facilities.
 - u. Sundry notice detailing the proposed procedure.
2. Permits may contain such terms and conditions as the commission deems necessary.
 3. Any permit issued under this section may be revoked by the commission after notice and hearing if the permittee fails to comply with the terms and conditions of the permit or any applicable rule or statute. Any permit issued under this section may be suspended by the director for good cause.
 4. Before a permit for underground injection will be issued, the applicant must satisfy the commission that the proposed injection well will not endanger any underground source of drinking water.
 5. No person shall commence construction of an underground injection well or site without prior approval of the director.
 6. Permits are transferable only with approval of the commission.
 7. Permits may be modified by the commission.
 8. Before injection commences in an underground injection well, the applicant must complete any needed corrective action on wells penetrating the injection zone in the area of review.
 9. All injection wells permitted before November 1, 1982, shall be deemed to have a permit for purposes of this section; however, all such prior permitted wells are subject to all other requirements of this chapter.
 10. A permit shall automatically expire one year after the date it was issued, unless operations have commenced to complete the well as an injection well.
 11. If the permitted injection zone is plugged and abandoned, the permit shall expire and be of no further force and effect.

History: Effective November 1, 1982; amended effective May 1, 1992; May 1, 1994; July 1, 1996; May 1, 2004; January 1, 2006; April 1, 2014; October 1, 2016.

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-07. Mechanical integrity.

1. Prior to commencing operations, the operator of a new injection well must demonstrate the mechanical integrity of the well. Prior to performing any workover project on an existing well, during which the packer or other means of annular isolation could be affected, the operator shall obtain approval from the director. All existing injection wells must demonstrate continual mechanical integrity and be tested at least once every five years. An injection well has mechanical integrity if:

- a. There is no significant leak in the casing, tubing, or packer; and
 - b. There is no significant fluid movement into an underground source of drinking water or an unauthorized zone through vertical channels adjacent to the injection bore.
2. One of the following methods must be used to evaluate the absence of significant leaks:
- a. Pressure test with liquid or gas.
 - b. Monitoring of positive annulus pressure following a valid pressure test.
 - c. Radioactive tracer survey.
3. One of the following methods must be used to establish the absence of significant fluid movement:
- a. A log from which cement can be determined or well records demonstrating the presence of adequate cement to prevent such migration.
 - b. Radioactive tracer survey, temperature log, or noise log.

History: Effective November 1, 1982; amended effective May 1, 1990; July 1, 1996; May 1, 2004; [October 1, 2016](#).

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

43-02-05-11. Bonding requirements.

All injection wells, ~~except commercial injection wells,~~ must be bonded as provided in section 43-02-03-15. A commercial injection well is one that only receives fluids produced from wells operated by a person other than the principal on the bond. ~~Each commercial injection well must be bonded at the single well bond rate as provided in section 43-02-03-15.~~

History: Effective November 1, 1982; amended effective May 1, 1992; July 1, 2002; [October 1, 2016](#).

General Authority: NDCC 38-08-04(2)

Law Implemented: NDCC 38-08-04(2)

CHAPTER 43-02-08

43-02-08-02.1. Property determination.

The director recognizes the following as properties:

1. A unit.
2. A spacing unit.
3. Contiguous tracts within a lease.
4. A single well drilled and completed prior to July 1, 2013, is considered a single well stripper well property. A single well drilled and completed after June 30, 2013, is considered a single well stripper well.

Any well or portion of a property previously qualified as a stripper well property may not be redesignated to be included in another property unless approved by the commission after notice and hearing or unless such property lies within a unitized common source of supply.

~~—If a well that has previously qualified as a stripper well property is reentered and recompleted as a horizontal well, the stripper well property status on that well will terminate.~~

All wells on the property must have been completed prior to July 1, 2013. A well completed after July 1, 2013, cannot be added to an existing property.

History: Effective September 1, 1987; amended effective May 1, 1992; May 1, 2004; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

43-02-08-03. Director shall determine stripper well or stripper well property status.

1. Upon receipt of an application for stripper well or stripper well property determination, the director shall review the application, information, or comments submitted by any interested person and all relevant information contained in the books, files, and records of the commission.
2. Stripper well or stripper well property status will be determined on the basis of the qualified maximum total production of oil from the well or property. In order to qualify production from a well or property as maximum total production, the oil-producing well or each oil-producing well on the property must have been maintained at the maximum efficient rate of production or is not capable of exceeding the production thresholds below if the well or property had been maintained at the maximum efficient rate of production throughout the twelve-month qualifying period.
 - a. A property meets the requirements of a stripper well property if the qualified maximum total production of oil from the property excluding condensate did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day; or

- (3) Production from a well with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day.
- b. A well meets the requirements of a stripper well if the qualified maximum total production of oil from the well, excluding condensate, did not exceed the following:
 - (1) Production from a well with a well depth of six thousand feet [1828.8 meters] or less did not exceed an average of ten barrels per day;
 - (2) Production from a well with a well depth of more than six thousand feet [1828.8 meters] but not more than ten thousand feet [3048.0 meters] did not exceed an average of fifteen barrels per day;
 - (3) Production from a well outside the Bakken and Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty barrels per day; or
 - (4) Production from a well in the Bakken or Three Forks formations with a well depth of more than ten thousand feet [3048.0 meters] did not exceed an average of thirty-five barrels per day.
3. Within thirty days of the receipt of a complete application for stripper well or stripper well property status, or a reasonable time thereafter, the director shall either grant or deny the application.
4. If an application for stripper well or stripper well property status is denied, the director shall enter a written determination denying the application and specify the basis for the denial. If an application for stripper well or stripper well property status is granted, the director shall enter a written determination granting the application. A copy of the determination either granting or denying the application must be forwarded by the director by mail to the applicant and all other persons submitting comments. It is the obligation of the applicant to notify and advise the state tax commissioner, all other operators in the well or property, and the purchaser of the crude oil of the determination of the director.

History: Effective August 1, 1986; amended effective September 1, 1987; May 1, 1992; July 1, 1996; May 1, 2004; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 38-08-04(5)

Law Implemented: NDCC 38-08-04(4), 57-51.1-01

TITLE 54
BOARD OF NURSING

OCTOBER 2016

CHAPTER 54-01-03

54-01-03-01. Definitions.

The terms used in this title have the same meaning as in North Dakota Century Code chapter 43-12.1 and apply to North Dakota Administrative Code title 54 unless the context indicates otherwise.

1. "Abandonment" means accepting the client assignment and disengaging the nurse and client relationship without giving notice to a qualified person.
2. "Abuse" means any behavior that is designed to harass, intimidate, or injure another human being through the use of verbal, sexual, emotional, or physical harm.
3. "Accreditation" means the official authorization or status granted by a nationally recognized agency other than a state board of nursing.
4. "Activities of daily living" includes interventions associated with nutrition and hydration, elimination, maintaining mobility, assistance with self-administration of routine regularly scheduled medications, and personal cares. Personal care includes bathing, hair care, nail care, shaving, dressing, oral care, and supporting a safe and healthy environment.
5. "Acts or omissions" means patterns of unsafe behavior, nursing practice deficits, failure to comply with acceptable standards of nursing practice, or grounds for discipline identified in North Dakota Century Code chapter 43-12.1 or these rules.
6. "Advanced assessment" means the collection of the history, physical and psychological assessment data of a client's signs, symptoms, pathophysiologic status, and psychosocial variation in the determination of differential diagnoses and treatment by the advanced practice registered nurse.
7. "Applicant" means an individual seeking official action by the board.
8. "Approved" means that the standards established by the board are met.
9. "Assign" means a licensed nurse designates the responsibility for performance of nursing interventions to another licensed nurse.
10. "Assignment" means the distribution of work that each staff member is to accomplish.
11. "Assisting with self-administration of routine, regularly scheduled medications" means helping the client with one or more steps in the process of taking medications. Examples of "assisting"

include opening the medication container or reminding the client of the proper time to take the medication. Assisting with the administration of medication may be a delegated intervention.

12. "Authority" means legal authority to provide nursing care granted through licensure as a registered nurse, licensure as a practical nurse, or through delegation of nursing interventions from the licensed nurse.
13. "Certification" means a process of voluntary recognition by a national nursing organization or other entity of the person's specialty knowledge, skills, and abilities in a defined area of nursing practice. The certification process measures the theoretical and clinical content denoted in the specialty areas or scope of practice and is developed in accordance with generally accepted standards of validity and reliability.
14. "Client" means the recipient of nursing care, which may include an individual, family, group, or a community.
15. "Clinical learning experiences" means the planned, faculty-guided learning experiences that involve direct or indirect contact with clients.
16. "Competence" means the application and integration of knowledge, skills, ability, and judgment necessary to meet standards.
17. "Comprehensive nursing assessment" means analysis and synthesis of data collected by a registered nurse, which is used to establish a health status baseline, establish a plan of care, and address changes in a client's condition.
18. "Consultative nurse" means a licensed nurse who provides guidance and information related to nursing procedures and interventions to the facility or agency but is not individually responsible to direct the plan of care for the client.
19. "Continuing education" means planned, organized learning experiences designed to augment the knowledge, skills, and abilities for the delivery of safe and effective nursing care for the citizens of North Dakota which meets the criteria and reporting requirements established by the board.
20. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set forth in North Dakota Century Code chapter 19-03.1 and any other drugs required by law to be monitored by the prescription drug monitoring program.
21. "Criminal history record information" shall have the same meaning as the phrase is defined in North Dakota Century Code section 12-60-16.1.
- ~~21-22.~~ "Delegation" means the authorization for the performance of selected nursing interventions from a licensed nurse to an unlicensed assistive person.
- ~~22-23.~~ "Denial" means the board's refusal to issue or renew a current license or registration.
- ~~23-24.~~ "Direction" means the provision of written or verbal guidance, or both, and supervision by a licensed nurse who is responsible to manage the provision of nursing interventions by another person.
- ~~24-25.~~ "Distance nursing education program" means a program that is approved by the board of nursing of the jurisdiction in which the program is headquartered, and is equivalent to an "instate nursing program".
- ~~25-26.~~ "Diversion" means illegal use, distribution, or abuse of controlled substances or use of prescription drugs for purposes not intended by the prescriber.

- ~~27.~~ "Emergency suspension" means action by the board when there are reasonable grounds to believe the licensee, registrant, applicant, or any individual with authority to practice nursing under any privilege has violated a statute or rule the board is empowered to enforce and continued practice would constitute a continuing and imminent threat to the public welfare.
- ~~26-28.~~ "Encumber" means to place on probation.
- ~~27-29.~~ "Evidence-based practice" means integration of research findings with clinical expertise and client values for optimum care.
- ~~28-30.~~ "Focused nursing assessment" means the collection and recording of baseline assessment data by a licensed practical nurse, which is used to observe, monitor, and report signs, symptoms, and changes in client condition in an ongoing manner. The licensed practical nurse reports to the supervising registered nurse or licensed practitioner.
- ~~29-31.~~ "Impaired" means the ability to practice nursing safely has been affected by the use or abuse of alcohol or other drugs, psychiatric or physical disorders, or practice deficiencies.
- ~~30-32.~~ "Inactive license or registration" means a license or registration which is not renewed.
- ~~31-33.~~ "Incompetence" means conduct that deviates from either standards of nursing practice approved by the board or the definition of competence in this section.
- ~~32-34.~~ "Instate nursing program", "nursing program", or "nursing education program" means a nurse program with faculty or facilities located in North Dakota and approved by the board.
- ~~33-35.~~ "Interdisciplinary team" means a group of health care professionals currently licensed under North Dakota Century Code title 43.
- ~~34-36.~~ "Internationally educated" means educated outside the United States.
- ~~35-37.~~ "Jurisdiction" means a province, state, or territory that administers the national council licensure examination for the purpose of licensure.
- ~~36-38.~~ "Licensed nurse" means a person licensed pursuant to North Dakota Century Code chapter 43-12.1 and North Dakota Administrative Code title 54.
- ~~37-39.~~ "Licensed practitioner" means a person lawfully authorized to prescribe medications or treatments under North Dakota Century Code title 43.
- ~~38-40.~~ "Licensee" means a person who has met all the requirements to practice as a licensed nurse pursuant to North Dakota Century Code chapter 43-12.1 and has been issued a license to practice nursing.
- ~~39-41.~~ "Licensure" means the process by which the board grants legal authority privilege to an individual to engage in the practice of nursing as a licensed practical nurse, registered nurse, advanced practice registered nurse, or specialty practice registered nurse upon finding that the individual has attained the essential degree of education and competence necessary to ensure that the public health, safety, and welfare will be protected.
- ~~40-42.~~ "Limit" means to restrict, qualify, or otherwise modify the license or registration.
- ~~41-43.~~ "Major incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a high risk of harm to the client or another person.
- ~~42-44.~~ "Medication administration" means the delivery of medication by a licensed nurse or an individual delegated to and supervised by a licensed nurse, to a client whose use of that

medication must be monitored and evaluated applying specialized knowledge, skills, and abilities possessed by a licensed nurse.

- | ~~43.45.~~ "Medication assistant III" means an individual who has a current registration as an unlicensed assistive person, has had additional training in administration of medication, and possesses a current registration from the board.
- | ~~44.46.~~ "Medical assistant student" means an individual who is currently enrolled in an approved medical assistant program.
- | ~~45.47.~~ "Minor incident" means an act or omission in violation of North Dakota Century Code chapter 43-12.1 or this title which indicates an applicant licensee's or registrant's continuing to practice poses a low risk of harm to the client or another person.
- | ~~46.48.~~ "Misappropriation of property" means the patterned or knowing, willful, or intentional misplacement, exploitation, taking, or wrongful, temporary, or permanent use of a client's, employer's, or any other person's or entity's belongings, money, assets, or property without consent.
- | ~~47.49.~~ "NCLEX-PN®" means the national council licensure examination for practical nurses.
- | ~~48.50.~~ "NCLEX-RN®" means the national council licensure examination for registered nurses.
- | ~~49.51.~~ "Neglect" means a disregard for and departure from the standards of care which has or could have resulted in harm to the client.
- | ~~50.52.~~ "Nurse administrator" means a person responsible for organized nursing services and who manages from the perspective of the organization as a whole.
- | ~~51.53.~~ "Nurse faculty" means individuals employed by an academic institution who are responsible for developing, implementing, teaching, evaluating, and updating nursing program curricula.
- | ~~52.54.~~ "Nursing intervention" means the initiation and completion of client-focused actions necessary to accomplish the goals defined in the plan of care which may include activities of daily living.
- | ~~53.55.~~ "Practice deficiency" means a practice activity that does not meet the standards of nursing practice.
- | ~~54.56.~~ "Practice site" means a facility that signs a written agreement with the nursing education program to provide practice experiences for students.
- | ~~55.57.~~ "Preceptor" means an individual at or above the level of licensure that an assigned student is seeking who may serve as a teacher, mentor, role model, or supervisor for the assigned student in a clinical setting.
- | ~~56.58.~~ "Prelicensure program" means a board-approved program of study that meets the requirements for nursing licensure.
- | ~~57.59.~~ "Probation" means restrictions, requirements, or limitations placed against a licensee or registrant through monitoring for a prescribed period of time.
- | ~~58.60.~~ "Professional-boundary crossing" means a deviation from an appropriate boundary for a specific therapeutic purpose with a return to establish limits of the professional relationship.
- | ~~59.61.~~ "Professional-boundary violation" means a failure of a licensee or registrant to maintain appropriate boundaries with a client, client family member, or other health care provider.

- ~~60~~.62. "Professional boundaries" means the provision of nursing services within the limits of the nurse and client relationship which promote the client's dignity, independence, and best interests and refrain from inappropriate involvement in the client's or client's family personal relationships.
- ~~61~~.63. "Professional misconduct" means any practice or behavior that violates the applicable standards governing the individual's practice necessary for the protection of the public health, safety, and welfare.
- ~~62~~.64. "Reactivation" means issuance of a previously active license or registration in the absence of disciplinary action.
- ~~63~~.65. "Registrant" means an unlicensed assistive person as defined in North Dakota Century Code section 43-12.1-02.
- ~~64~~.66. "Reinstatement" means activation of a board-sanctioned license or registration from a surrendered, suspended, or revoked status.
- ~~65~~.67. "Reissuance" means issuance of a license from probationary status to full licensure status.
- ~~66~~.68. "Relicensure" means renewal, reinstatement, reactivation, or reissuance of a license or registration.
- ~~67~~.69. "Reprimand" means action of the board stating the board's concerns regarding the professional conduct of the licensee or registrant.
- ~~68~~.70. "Revocation" means the withdrawal by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified length of time of no less than one year. If no specified length of time is identified by the board, revocation is permanent.
- ~~69~~.71. "Scope of practice" means the delineation of the nature and extent of practice.
- ~~70~~.72. "Sponsor institution" means the governing organization that provides necessary administrative and fiscal resources for a nursing program.
- ~~71~~.73. "Stable" means a situation in which the client's clinical and behavioral status and nursing care needs are determined by the registered nurse or licensed practitioner to be predictable, nonfluctuating, and consistent or in which the fluctuations are expected and the interventions are planned.
- ~~72~~.74. "Stay" means the action of the board that does not immediately take place and may not take place if other conditions, such as probation terms, are met. Violations of the terms and conditions may result in lifting of the stay and imposition of the sanction.
- ~~73~~.75. "Supervision" means maintaining accountability to determine whether or not nursing care is adequate and delivered appropriately. Supervision includes the assessment and evaluation of the client's condition and responses to the nursing plan of care and evaluation of the competence of the person providing nursing care.
- a. "Condition of supervision" means the method of supervision as direct or indirect, the identification of the persons to be supervised as well as the nursing interventions being provided, and the stability or predictability, or both, of the client's condition.
 - b. "Direct supervision" means that the responsible licensed nurse or licensed practitioner is physically present in the client care area and is available to assess, evaluate, and respond immediately. Direct supervision does not mean that the responsible licensed

nurse or licensed practitioner must be in the same room or "looking over the shoulder" of the persons providing nursing care.

- c. "Indirect supervision" means that the responsible licensed nurse or licensed practitioner is available through periodic inspection and evaluation or by telecommunication, or both, for direction, consultation, and collaboration.

- | ~~74.76.~~ "Surrender" means an agreement by a licensee or registrant, approved by the board, to relinquish the license or registration to the board.
- | ~~75.77.~~ "Survey" means an onsite visit or a paper review of a program approved by the board of nursing.
- | ~~76.78.~~ "Suspension" means withholding by the board of the license or registration of the right to practice nursing or assist in the practice of nursing for a specified or indefinite period of time.
- | ~~77.79.~~ "Technician" means an unlicensed assistive person who may perform limited nursing functions within the ordinary, customary, and usual roles in the person's field. Examples may include surgical and dialysis technicians and medical assistants.
- | ~~78.80.~~ "Temporary permit" means the authority to practice nursing for a limited time period.
- | ~~79.81.~~ "Unlicensed assistive person registry" means a listing of all persons who are authorized by the board or included on another state registry, which has been recognized by the board to perform nursing interventions delegated and supervised by a licensed nurse.
- | ~~80.82.~~ "Work authorization" means the issuance of an authorization to practice nursing between the dates of graduation and notification of the results of the licensure examination.

History: Effective June 1, 2002; amended effective April 1, 2004; August 1, 2005; July 1, 2008; April 1, 2011; October 1, 2011; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 43-12.1-08(2)

Law Implemented: NDCC 43-12.1-08

CHAPTER 54-05-03.1

54-05-03.1-10. Authority to prescribe.

The advanced practice registered nurse plans and initiates a therapeutic regimen that includes ordering and prescribing medical devices and equipment, nutrition, diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

1. A permanent advanced practice registered nurse license with the addition of prescriptive authority shall be issued upon meeting all requirements.
2. The advanced practice registered nurse with prescriptive authority may prescribe drugs as defined by chapter 43-15-01 pursuant to applicable state and federal laws.
3. A prescriptive authority advanced practice registered nurse license does not include drug enforcement administration authority for prescribing controlled substances. Each licensee must apply for and receive a drug enforcement administration number before writing prescriptions for ~~scheduled drugs~~ controlled substances.
4. An advanced practice registered nurse with prescriptive authority who prescribes controlled substances has access to the North Dakota prescription drug monitoring program and shall utilize the prescription drug monitoring program in the following manner:
 - a. Shall evaluate a prescription drug monitoring program report for a client in the following situations:
 - (1) New or unestablished client requiring prescription for controlled substance;
 - (2) Every six months during treatment of client with a controlled substance;
 - (3) Client requests early refills or engages in a pattern of taking more than prescribed dosage; and
 - (4) Upon suspicion or known drug overuse, diversion, or abuse by client.
 - b. Shall document evaluation of the prescription drug monitoring program reports made under this rule.
 - c. May evaluate the prescription drug monitoring program report in the following situations:
 - (1) Long-term care settings;
 - (2) Controlled settings in which controlled substances are locked and administered to client;
 - (3) Treatment of client with terminal illness, cancer, or cancer-related disorders; and
 - (4) Hospice or palliative care settings.
5. The licensee may prescribe, administer, sign for, dispense over-the-counter, legend, and controlled substances, and procure pharmaceuticals, including samples following state and federal regulations.
- ~~5.6.~~ The signature on documents related to prescriptive practices must clearly indicate that the licensee is an advanced practice registered nurse.

- | ~~6.7.~~ The advanced practice registered nurse with prescriptive authority may not prescribe, sell, administer, distribute, or give to oneself or to one's spouse or child any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.
- | ~~7.8.~~ Notwithstanding any other provision, a practitioner who diagnoses a sexually transmitted disease, such as chlamydia, gonorrhea, or any other sexually transmitted infection, in an individual patient may prescribe or dispense, and a pharmacist may dispense, prescription antibiotic drugs to that patient's sexual partner or partners, without there having been an examination of that patient's sexual partner or partners.

History: Effective March 1, 1992; amended effective November 1, 1996; April 1, 2004; January 1, 2009; April 1, 2011; April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-08(1)

TITLE 67
PUBLIC INSTRUCTION, SUPERINTENDENT OF

OCTOBER 2016

CHAPTER 67-19-01 ACCREDITATION: PROCEDURES, STANDARDS, AND CRITERIA

Section

67-19-01-01	Definitions [Repealed]
67-19-01-02	Accreditation Status [Repealed]
67-19-01-03	Loss of Accreditation Status - Penalties [Repealed]
67-19-01-04	Nonclassified [Repealed]
67-19-01-05	Identification of Accreditation Status [Repealed]
67-19-01-06	Classification by School Grade Description and Authority
67-19-01-07	Enrollment Categories [Repealed]
67-19-01-08	Qualifications and Time Assignments for Administrators, Counselors, and Library Media Specialists [Repealed]
67-19-01-09	Types of Standards and Criteria - Penalties [Repealed]
67-19-01-10	Review Cycle [Repealed]
67-19-01-11	Appeals Procedure [Repealed]
67-19-01-12	Alternative Formats and Procedures [Repealed]
67-19-01-13	Calculation Tables for Secondary, Middle Level, and Junior High Schools [Repealed]
67-19-01-14	Calculation Tables for Elementary Schools [Repealed]
67-19-01-15	Education Improvement Process [Repealed]
67-19-01-16	Administration - Superintendent Qualifications and Time Assignments [Repealed]
67-19-01-17	Qualifications of an Administrative Assistant or Assistant Superintendent [Repealed]
67-19-01-18	Administration - Secondary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-19	Administration - Middle Level and Junior High School Principal and Assistant Principal - Qualifications and Time Assignments [Repealed]
67-19-01-20	Administration - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-21	Administration - Shared Elementary School Principal - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-22	Administration - Assistant Elementary School Principal - Elementary School Principal Qualifications and Time Assignments [Repealed]
67-19-01-23	Instructional Personnel - Curriculum or Instructional Area Director [Repealed]
67-19-01-24	Instructional Personnel - Secondary School Teacher Qualifications [Repealed]
67-19-01-25	Instructional Personnel - Secondary School Teacher Qualifications - Specific Subject Area Preparation [Repealed]
67-19-01-26	Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - General Preparation [Repealed]
67-19-01-27	Instructional Personnel - Middle Level or Junior High School Teacher Qualifications - Specific Subject Area Preparation [Repealed]

67-19-01-28	Instructional Personnel - Elementary School Teacher Qualifications - General Preparation [Repealed]
67-19-01-29	Instructional Personnel - Elementary School Teacher Qualifications - Specific Subject Preparation [Repealed]
67-19-01-29.1	Instructional Personnel - Specialized Credential Preparation
67-19-01-30	Professional Development Plan [Repealed]
67-19-01-31	Written Curriculum Plan for Kindergarten Through Grade Twelve [Repealed]
67-19-01-32	Instructional Program - Enrollments in Grades Nine Through Twelve [Repealed]
67-19-01-33	Middle Level or Junior High School - Enrollment in Grade Nine [Repealed]
67-19-01-34	Instructional Program - Enrollments in Grades Seven and Eight [Repealed]
67-19-01-35	Instructional Program - Enrollments in Prekindergarten Through Grade Six [Repealed]
67-19-01-36	Class Size [Repealed]
67-19-01-37	Teacher Preparation Time - Prekindergarten Through Grade Twelve [Repealed]
67-19-01-38	Student Evaluation [Repealed]
67-19-01-39	Pupil Personnel Services [Repealed]
67-19-01-40	Counseling and Guidance Services - Prekindergarten Through Grade Six [Repealed]
67-19-01-40.1	Counseling and Guidance Services - Grades Seven Through Twelve for the 2009-10 School Year [Repealed]
67-19-01-40.2	Counseling and Guidance Services - Grades Seven Through Twelve after After the 2009-10 school year School Year [Repealed]
67-19-01-41	Library Media Services [Repealed]
67-19-01-42	School Policies - Handbooks [Repealed]
67-19-01-43	Driver's Education Program - Administrative Requirements [Repealed]
67-19-01-44	Approval of Public Schools - Review Process

67-19-01-01. Definitions.

[Repealed effective October 1, 2016.](#)

~~As used in this chapter:~~

~~1. "Accredited warned status" means the status of a school that is cited on:~~

~~a. A required criterion;~~

~~b. An accrual of less than eighty five percent of the total points assigned to the point value standards and criteria; or~~

~~c. An accrual of less than fifty percent of the point values assigned in any one section.~~

~~2. "Not accredited status" means a school does not meet the qualifying standards and criteria by enrollment categories.~~

~~3. "Unit of credit" means a minimum of one hundred twenty clock-hours of instruction for all courses except the natural sciences and career and technical courses which require one hundred fifty clock-hours of instruction.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-02. Accreditation status.

[Repealed effective October 1, 2016.](#)

~~A school earning the status of accredited must:~~

- ~~1. Meet all the required standards and criteria;~~
- ~~2. Accrue at least eighty-five percent of the total point values assigned to the point-value standards and criteria that apply to the school; and~~
- ~~3. Accrue at least fifty percent of the point values assigned under sections 67-19-01-13 and 67-19-01-14.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-04~~

67-19-01-03. Loss of accreditation status - Penalties.

~~Repealed effective October 1, 2016.~~

- ~~1. A school failing to meet the required and minimum point-value standards and criteria in section 67-19-01-02 will be classified accredited warned.~~
- ~~2. A school must remove the accredited warned status from the previous year or the school will be classified not accredited.~~
- ~~3. A school that is not accredited is not entitled to the amounts resulting from applying the weighting factor as provided by the foundation aid payment formula.~~
- ~~4. Penalties for loss of accreditation status are provided by statute in North Dakota Century Code sections 15.1-27-08 and 15.1-27-09.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11, 15.1-27-06, 15.1-27-07, 15.1-27-08, 15.1-27-09~~

67-19-01-04. Nonclassified.

~~Repealed effective October 1, 2016.~~

- ~~A school not seeking accreditation will be declared nonclassified.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-05. Identification of accreditation status.

~~Repealed effective October 1, 2016.~~

- ~~The accreditation status of all schools must be provided in the educational directory and listed on the annual accreditation reports issued to the schools.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-06. Classification by school grade description and authority.

1. A school must be classified as a secondary school, middle level or junior high school, or an elementary school dependent upon the grade organization in that school. ~~Accreditation standards and criteria must be applied according to the declared organization of a school. A~~

school district retains the discretion to organize grades in the configurations that are most appropriate for that district.

2. Configurations for school organizations are:
 - a. A secondary school may include any consecutive combination of grades from seven through twelve.
 - b. A middle level or junior high school may include any consecutive combination of grades from five through nine.
 - c. An elementary school may include any consecutive combination of grades from prekindergarten through grade eight.

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010; [October 1, 2016](#).

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-07. Enrollment categories.

[Repealed effective October 1, 2016.](#)

- ~~1. For organizations listed in subsection 2 of section 67-19-01-06, the enrollment categories are as follows:~~
 - ~~a. Secondary:~~
 - ~~(1) One hundred or fewer;~~
 - ~~(2) One hundred one through two hundred fifty; and~~
 - ~~(3) Two hundred fifty one or more.~~
 - ~~b. Middle level or junior high school:~~
 - ~~(1) One hundred or fewer;~~
 - ~~(2) One hundred one through two hundred fifty; and~~
 - ~~(3) Two hundred fifty one or more.~~
 - ~~c. Elementary:~~
 - ~~(1) Twenty four or fewer;~~
 - ~~(2) Twenty five through one hundred;~~
 - ~~(3) One hundred one through two hundred fifty; and~~
 - ~~(4) Two hundred fifty one or more.~~
- ~~2. A school may request a waiver of an accreditation standard for the following school year as provided in North Dakota Century Code section 15.1-06-08.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-08. Qualifications and time assignments for administrators, counselors, and library media specialists.

Repealed effective October 1, 2016.

~~The qualifications and time assignments for administrators, counselors, and library media specialists must be based upon the total number of students being served. Specific sections of the accreditation standards that address this are sections 67-19-01-16, 67-19-01-18, 67-19-01-19, 67-19-01-20, 67-19-01-21, 67-19-01-22, 67-19-01-40, and 67-19-01-41.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-10. Review cycle.

Repealed effective October 1, 2016.

- ~~1. Before September fifteenth of each year, each school must submit required accreditation information;~~
- ~~2. A school will be reviewed on all standards and criteria in section 67-19-01-13 or 67-19-01-14 annually;~~
- ~~3. The accreditation status as provided in section 67-19-01-02 will be reported to each school by March thirty-first of each school year; and~~
- ~~4. Corrections must be received by the department no later than June thirtieth or the reported school status will be continued.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-13. Calculation tables for secondary, middle level, or junior high schools.

Repealed effective October 1, 2016.

- ~~1. The calculation tables outline the standards for secondary schools and middle level and junior high schools. The tables identify the required standards and the point value standards and criteria that apply to the school.~~
- ~~2. The accreditation standards and criteria that are identified by the letter R are those which are required of all schools.~~
- ~~3. The point value standards and criteria are designed to provide some flexibility to schools.~~
- ~~4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.~~
- ~~5. Schools accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.~~
- ~~6. Calculation tables for secondary, middle level, or junior high are:~~

Points

a. Education improvement process	R
b. Administration:	
(1) Superintendent:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(2) Assistant superintendent qualifications	2
(Accrual of 2 points only if employed and qualified)	
(3) Principal:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(4) Assistant principal:	
(a) Qualifications	2
(Accrual of 2 points only if employed and qualified)	
(b) Time assignment	2
(Accrual of 2 points only if employed and qualified)	
(5) Special education director qualifications:	2
(Accrual of 2 points only if employed and qualified)	
e. Instructional personnel:	
(1) Teacher preparation	R
(2) Professional development plan	R
d. Instructional program:	
(1) Written curriculum plan	R
(2) Curriculum:	
(a) Two-year course offerings (high school only)	R
(b) Curriculum subjects and time allotment (middle level or junior high only)	R
(3) Class size:	
Maximum accrual for enrollment category:	
0-100	10
101-250	15
251+	20
(Loss of 1 point per teacher)	
e. Student evaluation plan	R
f. (Effective for the 2009-10 school year) Pupil personnel services:	
(1) Pupil personnel services plan	R
(2) Coordinator	R

(3) Counseling and guidance services:	
(a) Counselor qualifications	3
(b) Counselor time assignment	3
(Accrual of 3 points only if qualified)	
g. (Effective after the 2009-10 school year) Pupil personnel services:	
(1) Pupil personnel services plan	R
(2) Coordinator	R
(3) Counseling and guidance services:	
(a) Counselor qualifications	R
(b) Counselor time assignment	3
(Accrual of 3 points only if qualified)	
(4) Career advisor qualifications	R
When counselor and guidance services are provided by a career advisor for grades seven through twelve, a career advisor can satisfy up to one-third of the counseling requirement.	
h. Library media services:	
(1) Library media services plan	R
(2) Librarian:	
(a) Qualifications	3
(b) Time assignment	3
(Accrual of 3 points only if qualified)	
i. School policies – handbooks:	
(1) Teacher handbook	2
(2) Student and parent handbook	2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-14. Calculation tables for elementary schools.

Repealed effective October 1, 2016.

- 1. — The following calculation tables outline the standards for elementary schools. The table identifies the required standards and the point-value standards and criteria that apply to the school.
- 2. — The accreditation standards and criteria which are identified by the letter R are those which are required of all schools within the timelines established.
- 3. — The point-value standards and criteria are designed to provide some flexibility to schools.

- ~~4. A school must accrue at least eighty-five percent of the overall points that apply to the school and accrue at least fifty percent of the points assigned to each section.~~
- ~~5. Schools must accrue points for the standards that apply directly to them. For example, a school employing an assistant superintendent is eligible for the two points assigned to that standard if the person holding the position is qualified for the position.~~
- ~~6. Calculation tables for elementary schools are:~~

	Points
a. Education improvement process	R
b. Administration:	
(1) Superintendent (if employed):	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(2) Assistant superintendent qualifications	2
(Accrual of 2 points only if employed and qualified)	
(3) Principal:	
(a) Qualifications	R
(b) Time assignment	5
(Accrual of 5 points only if qualified)	
(4) Assistant principal:	
(a) Qualifications	2
(Accrual of 2 points only if employed and qualified)	
(b) Time assignment	2
(Accrual of 2 points only if employed and qualified)	
(5) Special education director qualifications:	2
(Accrual of 2 points only if employed and qualified)	
c. Instructional personnel:	
(1) Teacher preparation	R
(2) Professional development plan	R
d. Instructional program:	
(1) Written curriculum plan	R
(2) Curriculum subjects and time allotment	R
(3) Class size:	
Maximum accrual for enrollment category:	
0-100	10
101-250	15
251+	20

(Loss of 1 point per teacher)

- e. Student evaluation:
 - (1) Student evaluation plan R
 - (2) Readiness—kindergarten and first grade 2
- f. (Effective for the 2009-10 school year) Pupil personnel services:
 - (1) Pupil personnel services plan R
 - (2) Coordinator R
 - (3) Counseling and guidance services:
 - (a) Counselor qualifications 3
 - (b) Counselor time assignment 3

(Accrual of 3 points only if qualified)
- g. (Effective after the 2009-10 school year) Pupil personnel services:
 - (1) Pupil personnel services plan R
 - (2) Coordinator R
 - (3) Counseling and guidance services:
 - (a) Counselor qualifications R
 - (b) Counselor time assignment 3

(Accrual of 3 points only if qualified)
 - (4) Career advisor qualifications R

When counselor and guidance services are provided by a career advisor for grades seven and eight, a career advisor can satisfy up to one-third of the counseling requirement.
- h. Library media services:
 - (1) Library media services plan R
 - (2) Librarian:
 - (a) Qualifications 3
 - (b) Time assignment 3

(Accrual of 3 points only if qualified)
- i. (Effective after the 2009-10 school year)
Student performance strategist (kindergarten through grade three)
 - (1) Qualifications R
 - (2) Time—One full-time equivalent for each four hundred students 3
- j. School policies—handbooks:
 - (1) Teacher handbook 2
 - (2) Student and parent handbook 2

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

~~Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-07-32~~

67-19-01-15. Education improvement process.

~~Repealed effective October 1, 2016.~~

~~All schools must implement an education improvement process that meets the needs of all students in the school. Schools may choose to follow the state education improvement process or an alternative process that at least meets the requirements of the state process. Schools that follow the state education improvement process must establish their plans as a result of assessments and must describe how the plan will lead to improved student achievement at the school as follows:~~

- ~~1. The continuous cycle of education improvement is conducted over a five-year period with reports submitted to the department annually by June thirtieth.~~
- ~~2. The five-year continuous cycle includes peer visitation and consultation.~~
- ~~3. The cycle results in three reports from peer reviewers external to the school: an initial team chair report, a team visitation report, and a final team chair report. The continuous cycle results in the following:
 - ~~a. An initial team chair report submitted by the external team chair during the first year;~~
 - ~~b. The action plan for education improvement submitted by the school's education improvement committee;~~
 - ~~c. An annual report of the education improvement activities submitted by the school's education improvement committee;~~
 - ~~d. An external team report provided by the external team chair following the team visit during the second or third year of the continuous cycle; and~~
 - ~~e. A final team chair report submitted by the external team chair at the end of the cycle.~~~~
- ~~4. The annual accreditation review is based on the school maintaining progress in its continuous cycle by submitting the required reports.~~

~~History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~General Authority: NDCC 15.1-02-11~~

~~Law Implemented: NDCC 15.1-02-11~~

67-19-01-16. Administration - Superintendent qualifications and time assignments.

~~Repealed effective October 1, 2016.~~

- ~~1. Qualifications:
 - ~~a. A public high school district, parochial or private high school must employ a superintendent who has a superintendent's credential, AD01 or ADP2.~~
 - ~~b. A graded elementary district, parochial or private elementary school may employ a superintendent. If so employed, the superintendent must have a superintendent's credential, AD01 or ADP2.~~~~
- ~~2. Time assignments for superintendents based on school enrollment for all grades.
 - ~~a. Enrollment two hundred fifty or fewer. A superintendent must devote a minimum of one-half of the instructional day to functions of the superintendency (180 minutes per day or 900 minutes per week).~~~~

- ~~b. Enrollment two hundred fifty one through four hundred. A superintendent must devote a minimum of two thirds of the instructional day to functions of the superintendency (240 minutes per day or 1200 minutes per week).~~
- ~~c. Enrollment four hundred one or more. A superintendent must devote full time to functions of the superintendency (360 minutes per day or 1800 minutes per week), of which a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~
- ~~3. Two or more school districts or a consortium of schools may share a superintendent if:~~
 - ~~a. The superintendent is assigned to full-time administration and supervision; and~~
 - ~~b. The superintendent has a superintendent's credential, AD01 or ADP2.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-17. Qualifications of an assistant superintendent.

Repealed effective October 1, 2016.

~~An assistant superintendent must have a superintendent's credential, AD01 or ADP2.~~

History: Effective January 1, 2000; amended July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 115.1-02-11

67-19-01-18. Administration - Secondary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~1. A secondary school principal administering a school with enrollments as described in section 67-19-01-06 must have the following qualifications within the person's enrollment classification:~~
 - ~~a. Enrollment one hundred or fewer. A secondary school principal must have a secondary principal's credential, SP01, SP02, SP03, or SPP2. An individual holding an SP03 credential may continue to renew the credential only while the individual serves in the same school. The SP03 is no longer issued as an initial credential.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.~~
 - ~~c. Enrollment two hundred fifty one or more. A secondary school principal must have a secondary principal's credential, SP01 or SPP2.~~
- ~~2. The time assignment for the secondary school principal within the person's enrollment classification must be as follows:-~~
 - ~~a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship,~~

~~of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

~~3. Time assignments for shared secondary school principal. The time assignments for a secondary principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:~~

~~a. Enrollment one hundred or fewer. A secondary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~b. Enrollment one hundred one through two hundred fifty. A secondary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~c. Enrollment two hundred fifty-one or more. A secondary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~4. An assistant secondary school principal administering a school with enrollments as described in section 67-19-01-06 must meet the following qualifications and time:~~

~~a. An assistant secondary school principal must have a secondary principal's credential, SP01, SP02, or SPP2.~~

~~b. The time assignment for the assistant secondary school principal within the person's enrollment classification must be as follows:-~~

~~(1) Enrollment five hundred one through seven hundred fifty. A secondary school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the assistant principalship.~~

~~(2) Enrollment seven hundred fifty-one or more. A secondary school assistant principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-19. Administration - Middle level or junior high school principal and assistant principal - Qualifications and time assignments.

Repealed effective October 1, 2016.

~~1. Qualifications by enrollment categories are as follows:-~~

- ~~a. Enrollment one hundred or fewer. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2. An individual holding an EP03 or SP03 may continue to renew the credential only while the individual serves in the same school. The EP03 or SP03 is no longer issued as an initial credential.~~
- ~~b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, EP03, SP01, SP02, SP03, or SPP2.~~
- ~~c. Enrollment two hundred fifty one or more. A middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EPP2, SP01, or SPP2.~~
- ~~2. Time assignments by enrollment categories are as follows:~~
 - ~~a. Enrollment one hundred or fewer. A middle level or junior high school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment one hundred one through two hundred fifty. A middle level or junior high school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~c. Enrollment two hundred fifty one or more. A middle level or junior high school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~
- ~~3. An assistant middle level or junior high school principal must have an elementary or a secondary principal's credential, EP01, EP02, EPP2, SP01, SP02, or SPP2.~~
- ~~4. Time assignments by enrollment categories are as follows:~~
 - ~~a. Enrollment five hundred through seven hundred fifty. A middle level or junior high school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~b. Enrollment seven hundred fifty one or more. A middle level or junior high school assistant principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the assistant principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership. A maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-20. Administration - Elementary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~1. Qualifications by enrollment categories are as follows:
 - ~~a. Enrollment twenty four or fewer. An elementary school principal must have a North Dakota educator's professional license with a major, minor, or an endorsement in elementary education.~~
 - ~~b. Enrollment twenty five through one hundred. An elementary school principal must have an elementary principal's credential, EP01, EP02, EP03, or EPP2. An individual holding an EP03 may continue to renew the credential only while the individual serves in the same school. The EP03 is no longer issued as an initial credential.~~
 - ~~c. Enrollment one hundred one through two hundred fifty. An elementary school principal must have an elementary principal's credential, EP01, EP02, or EPP2.~~
 - ~~d. Enrollment two hundred fifty one or more. An elementary school principal must have an elementary principal's credential, EP01 or EPP2.~~~~
- ~~2. The time assignment for the elementary school principal within the person's enrollment classification must be as follows:
 - ~~a. Enrollment twenty four or fewer. Time should be provided for the performance of administrative duties.~~
 - ~~b. Enrollment twenty five through one hundred. An elementary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~c. Enrollment one hundred one through two hundred fifty. An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~
 - ~~d. Enrollment two hundred fifty one or more. An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-21. Administration - Shared elementary school principal - Elementary school principal qualifications and time assignments.

Repealed effective October 1, 2016.

- ~~The time assignments for the elementary school principal serving two schools or employed in a school that has a shared superintendent must be as follows according to enrollment category:~~
- ~~1. **Enrollment twenty four or fewer.** Time should be provided for the performance of administrative duties.~~
 - ~~2. **Enrollment twenty five through one hundred.** An elementary school principal must devote a minimum of 120 minutes per day or 600 minutes per week to the principalship, of which at~~

~~least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~3. **Enrollment one hundred one through two hundred fifty.** An elementary school principal must devote a minimum of 240 minutes per day or 1200 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

~~4. **Enrollment two hundred fifty-one or more.** An elementary school principal must devote a minimum of 360 minutes per day or 1800 minutes per week to the principalship. At least one-half of that time must include activities related to providing building-level instructional leadership and a maximum of one-sixth of the instructional day may be devoted to instructional activities.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-22. Administration - Assistant elementary school principal - Elementary school principal qualifications and time assignments.

~~Repealed effective October 1, 2016.~~

~~1. An assistant elementary school principal must have an elementary principal's credential at least applicable to the next lower enrollment category.~~

~~2. Time assignments are as follows:~~

~~a. If a principal serves in more than one building or has another assignment other than teaching, there must be an assistant principal assigned in that building. Time devoted to the functions of the assistant principal is not regulated but must be commensurate with the assigned duties and documented to correspond to assigned duties.~~

~~b. For a school with an enrollment of six hundred or more, an elementary school assistant principal must devote a minimum of 180 minutes per day or 900 minutes per week to the principalship, of which at least one-half of that time must include activities related to providing building-level instructional leadership.~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-30. Professional development plan.

~~Repealed effective October 1, 2016.~~

~~A written school district plan must be adopted which describes a program for professional development. The plan must include a description of the procedures, the activities, and the timeline for completion of activities. The plan must be reviewed at least once every five years and submitted to the department each time it is amended.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-32. Instructional program - Enrollments in grades nine through twelve.

~~Repealed effective October 1, 2016.~~

- ~~1. A curriculum for all students in grades nine through twelve must assure each student access to a minimum of five units of credit per year.~~
- ~~2. The minimum units of credit listed for each course are set out in North Dakota Century Code section 15.1-21-02.~~
- ~~3. A secondary school must provide additional units of credit in each school over a two-year period. The number of units is determined by the enrollment categories as follows:
 - ~~a. Eighty or fewer seven units from two course areas;~~
 - ~~b. Eighty one through one hundred fifty nine units from two course areas;~~
 - ~~c. One hundred fifty one through three hundred fifty eleven units from three course areas; and~~
 - ~~d. Three hundred fifty one or more thirteen units from four course areas.~~~~
- ~~4. Schools must count for purposes of the minimum two-year course offering those courses in which students are enrolled which are provided through cooperative arrangements between or among schools and approved by the department.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-21-02

67-19-01-33. Middle level or junior high school - Enrollment in grade nine.

Repealed effective October 1, 2016.

~~If grade nine is included in the middle level or junior high school organizational unit, the curriculum for secondary school grades nine through twelve, under section 67-19-01-32, must be provided for grade nine students.~~

History: Effective January 1, 2000.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-34. Instructional program - Enrollments in grades seven and eight.

Repealed effective October 1, 2016.

- ~~1. Grades seven and eight required courses. A student must be enrolled for a minimum time of instruction per week in the following areas:
 - ~~a. English language arts two hundred minutes.~~
 - ~~b. Mathematics two hundred minutes.~~
 - ~~c. Science two hundred minutes.~~
 - ~~d. Social studies two hundred minutes (Social studies in grade eight must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.).~~
 - ~~e. Physical education eighty minutes.~~
 - ~~f. Health fifty minutes.~~~~

- ~~2. Grades seven and eight additional courses:~~
 - ~~a. Music must be available to all students:~~
 - ~~(1) For a minimum of one hundred minutes per week in grade seven;~~
 - ~~(2) For a minimum of one hundred minutes per week in grade eight; or~~
 - ~~(3) For a minimum of fifty minutes per week in grade seven and for a minimum of fifty minutes per week in grade eight.~~
 - ~~b. A minimum of two hundred minutes per week of instruction in courses from one or a combination of the following must be available:~~
 - ~~(1) Art;~~
 - ~~(2) Agribusiness;~~
 - ~~(3) Business education;~~
 - ~~(4) Computer education;~~
 - ~~(5) Modern languages;~~
 - ~~(6) Family and consumer sciences;~~
 - ~~(7) Technology education; and~~
 - ~~(8) Other additional courses as approved by the department.~~
 - ~~c. A middle level or junior high school student must not be assigned to a study hall for more than one period a day.~~

History: Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-21-01

67-19-01-35. Instructional program - Enrollments in prekindergarten through grade six.

Repealed effective October 1, 2016.

~~Specific requirements regarding the length of the minimum instructional time per week for all subject areas are:~~

1. Prekindergarten and kindergarten (two and three quarters hours per day or 825 minutes per week, equivalent);			
2. Primary (grades one through three)			
Language arts	650	650	650
Mathematics	200	200	200
Social studies	100	100	100
Science	60	60	60
Health	40	40	40
Music	90	90	90

Physical education	90	90	90
Art	45	45	45
Unallocated time	375	375	375

Unallocated time may be used for:

- ~~a. Planning and guided learning;~~
- ~~b. Initiating or expanding a subject area;~~
- ~~c. Providing elective offerings; and~~
- ~~d. Providing pupil personnel services.~~

3. Intermediate (grades four through six)	4th	5th	6th
Language arts	460	420	420
Mathematics	200	200	200
Social studies (Social studies in grade four must include North Dakota studies. The North Dakota studies course code must be used when reporting on the MIS03.)	200	200	200
Science	160	200	200
Health	80	80	80
Music	90	90	90
Physical education	90	90	90
Art	45	45	45
Unallocated time	325	325	325

~~Unallocated time may be used for:~~

- ~~a. Planning and guided learning;~~
- ~~b. Initiating or expanding a subject area;~~
- ~~c. Providing elective offerings; and~~
- ~~d. Providing pupil personnel services.~~

~~4. Thirty minutes of supervised recess may be counted as part of the ninety minutes of physical education for grades one through three.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCG 15.1-02-11~~

~~**Law Implemented:** NDCG 15.1-02-11, 15.1-21-01~~

67-19-01-36. Class size.

~~Repealed effective October 1, 2016.~~

~~1. Secondary and middle level or junior high school:~~

- ~~a. Class size is recommended to be twenty-five students but may not exceed thirty students.~~
 - ~~b. A school unit is allowed three percent of the total number of classes taught to exceed thirty students to a maximum of thirty-four students per class without citation.~~
 - ~~c. Science and career and technical education classes must not exceed the capacity of the learning stations provided.~~
 - ~~d. Instrumental and vocal music classes are exempt from the class-size standard.~~
- ~~2. Elementary school:~~
- ~~a. Classroom enrollment, one grade level per teacher:
 - ~~(1) Prekindergarten through grade three is recommended to be twenty students but may not exceed twenty-five; and~~
 - ~~(2) Grades four through eight is recommended to be twenty-five students but may not exceed thirty.~~~~
 - ~~b. Maximum classroom enrollment, two grade levels per teacher:
 - ~~(1) Prekindergarten through grade three, twenty students; and~~
 - ~~(2) Grades four through eight, twenty-five students.~~~~
 - ~~c. Maximum classroom enrollment, three grade levels per teacher, prekindergarten through grade eight, is fifteen students.~~
 - ~~d. Maximum classroom enrollment, four grade levels per teacher, prekindergarten through grade eight, is ten students.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-37. Teacher preparation time - Prekindergarten through grade twelve.

~~Repealed effective October 1, 2016.~~

~~A teacher's schedule must include preparation time during the teacher's working day.~~

~~**History:** Effective January 1, 2000; amended effective January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-38. Student evaluation.

~~Repealed effective October 1, 2016.~~

- ~~1. A school district shall develop a plan for use of standardized test scores and other available data to enable instructional personnel and supervisors to plan curriculum, to improve the instructional program, to enhance student performance, to provide for special needs of students, and to report student progress to parents and the community. The plan must be reviewed at least once every five years and be kept on file for onsite review.~~
- ~~2. Kindergarten or grade one. A standardized readiness test must be administered in either kindergarten or grade one, whichever is the initial point of formal education. The most recent~~

~~copyright date of the standardized readiness test administered may not be more than ten years prior to the administration of the test.~~

~~**History:** Effective January 1, 2000; amended effective July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15.1-02-11~~

67-19-01-39. Pupil personnel services.

~~Repealed effective October 1, 2016.~~

- ~~1. Each district must provide a pupil personnel services plan, which ensures students' needs are being met in counseling and guidance services, career planning, social and psychological services, and health services.~~
- ~~2. A district must have a written description of the pupil personnel services plan which is developed and reviewed periodically in cooperation with the staff members from counseling and guidance, social and psychological, and health services. The written plan must be on file with the pupil personnel services coordinator, must be reviewed at least once every five years, and kept on file for onsite review. In school districts with enrollments of one through twenty-four students, a copy of the written plan must be on file with the department of public instruction. The written plan must include the scope of services, personnel, and resources; schedule and time assignments of services that will be provided; and health and immunization records.~~
- ~~3. The pupil personnel services must be coordinated by a credentialed school counselor, superintendent, principal, or special education unit director. The classroom teacher may coordinate the services in elementary school districts with enrollments of one through twenty-four students.~~

~~**History:** Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.~~

~~**General Authority:** NDCC 15.1-02-11~~

~~**Law Implemented:** NDCC 15-20.1-24, 15-20.1-25, 15.1-02-11, 15.1-06-20~~

67-19-01-40. Counseling and guidance services - Prekindergarten through grade six.

~~Repealed effective October 1, 2016.~~

- ~~1. Counseling and guidance services provided to students in prekindergarten through grade six must be provided by credentialed counselors at the required time assignments.~~
- ~~2. a. Qualifications for school counseling and guidance personnel serving students in prekindergarten through grade six are based on the total number of students in the schools served:
 - ~~(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.~~
 - ~~(2) Enrollment of twenty five through two hundred fifty. A counselor must have a counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.~~
 - ~~(3) Enrollment of two hundred fifty one or more. A counselor must have a school counselor credential. Services may also be provided in accordance with North~~~~

~~Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.~~

- ~~b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04 school counselor credentials.~~
- ~~3. The time assignment for counseling and guidance personnel serving students in prekindergarten through grade six based on the total number of students served:
 - ~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.~~
 - ~~b. A school district with enrollment of one through twenty-four must submit annually a copy of its written plan as described in subsection 2 of section 67-19-01-39 to the department of public instruction, which includes classroom guidance activities based on the same time assignment.~~
 - ~~c. In an elementary school, a qualified elementary school counselor or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.~~~~

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19

67-19-01-40.1. Counseling and guidance services - Grades seven through twelve for the 2009-10 school year.

Repealed effective October 1, 2016.

~~During the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve as follows:~~

- ~~1. Counseling and guidance services must be provided by credentialed counselors.~~
- ~~2. a. Qualifications for school counseling and guidance personnel serving students in grades seven through twelve are based on the total number of students in the schools served:
 - ~~(1) School district enrollment of one through twenty-four. A credentialed counselor is not required. However, the written plan as provided for in subsection 2 of section 67-19-01-39 must state what access the student has to counseling services by credentialed or licensed mental health professionals.~~
 - ~~(2) Enrollment of twenty-five through two hundred fifty. A counselor must have a counselor designate credential or an approved written plan of study on file with the department of public instruction as provided for in subdivision b.~~
 - ~~(3) Enrollment of two hundred fifty-one or more. A counselor must have a school counselor credential. Services may also be provided in accordance with North~~~~

~~Dakota Century Code section 15.1-13-23 and North Dakota Administrative Code chapter 67-11-05 and section 67.1-02-04-03.~~

~~b. If a school is unable to employ a credentialed counselor, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the counselor. A written plan of study to become a credentialed counselor must be submitted to the department of public instruction and must be approved as described in section 67-11-05-04.~~

~~3. The time assignment for counseling and guidance personnel serving students in grades seven through twelve is based on the total number of students served:~~

~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full-time credentialed school counselor must be provided for each four hundred fifty students.~~

~~b. A school district with enrollment of one through twenty-four must annually submit a copy of its written plan to the department of public instruction, including classroom guidance activities based on the same time assignment, as described in subsection 2 of section 67-19-01-39.~~

~~c. In an elementary school, a qualified elementary school counselor or counselor designate must provide at least fifty percent of the required counselor time assignment. Other licensed counselors or licensed social workers may be used to meet the remaining fifty percent required counselor time assignment. Time in excess of the accreditation standard may be provided by either a licensed counselor or a licensed social worker included in the school's written plan as described in subsection 2 of section 67-19-01-39.~~

History: Effective January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-40.2. Counseling and guidance services - Grades seven through twelve after the 2009-10 school year.

Repealed effective October 1, 2016.

~~After the 2009-10 school year, all schools must provide counseling and guidance services to students in grades seven through twelve.~~

~~1. Each school must have a minimum of one full-time equivalent counselor available for every three hundred students in grades seven through twelve. Proportionate time allowances may be calculated for fractions thereof.~~

~~2. All counseling and guidance services must be provided by credentialed counselors, except a school may fulfill up to one-third of the counseling staffing level requirement with a qualified career advisor working under the direction of qualified counseling staff.~~

History: Effective January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11, 15.1-06-19, 15.1-06-20

67-19-01-41. Library media services.

Repealed effective October 1, 2016.

- ~~1. Each school must provide a library media services plan which ensures that students and staff are effective users of ideas and information.~~
- ~~2. A school must have a written description of the library media services plan, developed and reviewed periodically in cooperation with the library and instructional staff and maintained at the school district level, which includes scope of services, personnel, resources, and equipment, and schedule and time assignments of services that will be provided. The library media services written plan must be reviewed at least once every five years and remain on file for onsite review.~~
- ~~3. Qualifications for school library media personnel employed in a secondary, middle level or junior high, elementary, or centralized (prekindergarten through grade twelve) library:
 - ~~a. The qualifications for librarians are determined by the total number of students in the schools served:
 - ~~(1) Enrollment of one through twenty four. A librarian is not required; however, the library media services plan as provided in subsection 1 of section 67-19-01-41 must state what access students have to library materials and services.~~
 - ~~(2) Enrollment of twenty five through two hundred fifty. A librarian must be a licensed teacher and must have an LM03, LM02, LM01, or an approved plan of study librarian credential.~~
 - ~~(3) Enrollment of two hundred fifty one or more. A librarian must be a licensed teacher and must have an LM01 or LM02 library media credential or an approved plan of study.~~~~
 - ~~b. If a school is unable to employ a credentialed librarian, as required by the enrollment of students served, the school may employ a licensed teacher to serve as the librarian. A written library plan of study to become a credentialed librarian must be submitted to the department of public instruction and must be approved as described in section 67-11-04-04 school library media credentials.~~~~
- ~~4. The time assignment must be provided by a qualified librarian and is determined by the total number of students served.
 - ~~a. The time requirement is calculated at sixty minutes per day or three hundred minutes per week for each eighty students. Proportionate time allowances may be calculated for fractions thereof. One full time credentialed school librarian must be provided for each four hundred fifty students.~~
 - ~~b. A school with enrollment of one to twenty four must make library media materials and services available to all students as indicated in the district's library media services plan. The school must annually submit a copy of its written library media services plan as described in subsection 2 to the department of public instruction.~~
 - ~~c. In any school library with a full time librarian, library media aide time assignments may be used to fulfill time requirements in excess of one full time librarian.~~
 - ~~d. In an elementary school, a qualified elementary school librarian must provide at least fifty percent of the total library program time assignment for organization, curriculum, service, coordination, and supervision responsibilities. Library media aide time assignments may be used to meet the total library time assignments in excess of the fifty percent librarian serving in a prekindergarten through grade six or prekindergarten through grade eight library.~~~~

History: Effective January 1, 2000; amended effective May 16, 2000; July 1, 2007; January 1, 2010.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-42. School policies - Handbooks.

Repealed effective October 1, 2016.

- ~~1. Each district must develop a teacher handbook and a student-parent handbook. The handbooks must be reviewed at least once every five years and kept on file for onsite review.~~
- ~~2. Handbooks, kindergarten through grade twelve:
 - ~~a. Teacher handbook. A school must provide to each teacher a current handbook containing the rules and regulations that pertain to the duties and responsibilities of the teacher. The handbook may include policies for the general operation of the school.~~
 - ~~b. A school must provide to each student a current student and parent handbook that includes the school mission or philosophy, goals, objectives, student rights and responsibilities, and policies on parent and student issues that include attendance, discipline, promotion and retention, and graduation requirements.~~~~

History: Effective January 1, 2000; amended effective July 1, 2007.

General Authority: NDCC 15.1-02-11

Law Implemented: NDCC 15.1-02-11

67-19-01-44. Approval of public schools - Review process.

1. To be certified as an approved public school, a school must participate and meet the requirements of a school improvement review process.
2. To meet approval requirements, the review process must be:
 - a. Designed to improve student achievement;
 - b. Designed as a continuous cycle of improvement; and
 - c. Approved by the superintendent of public instruction.

History: Effective October 1, 2016.

General Authority: NDCC 15.1-02-04(1), 15.1-02-11

Law Implemented: NDCC 15.1-06-06(1)(d)

TITLE 69
PUBLIC SERVICE COMMISSION

OCTOBER 2016

CHAPTER 69-09-03

69-09-03-02. Adoption of regulations.

The following parts of title 49, Code of Federal Regulations in effect as of ~~November 6, 2014~~December 31, 2015, are adopted by reference:

1. Part 190 - Pipeline Safety Programs and Rulemaking Procedures.
2. Part 191 - Transportation of Natural Gas and Other Gas by Pipeline, Annual Reports, Incident Reports, and Safety-Related Condition Reports.
3. Part 192 - Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards.
4. Part 194 - Response Plans for Onshore Oil Pipelines
- ~~4.5.~~ Part 195 - Transportation of Hazardous Liquids by Pipeline.
- ~~5.6.~~ Part 199 - Drug and Alcohol Testing.

Copies of these regulations may be obtained from:

Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

History: Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003; May 1, 2005; July 1, 2006; April 1, 2008; January 1, 2010; April 1, 2012; April 1, 2015; October 1, 2016.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-02-01.2

TITLE 75
DEPARTMENT OF HUMAN SERVICES

OCTOBER 2016

CHAPTER 75-02-01.3 CHILD CARE ASSISTANCE

Section

75-02-01.3-01	Definitions
75-02-01.3-02	Decision and Notice
75-02-01.3-03	Closing a Case
75-02-01.3-04	Available Benefits
75-02-01.3-05	Approved Relative Provider's Background Check Information
75-02-01.3-06	Payments to Providers - Child Care Certificate
75-02-01.3-07	Treatment of Income
75-02-01.3-08	Disregarded Income
75-02-01.3-09	Deduction for Child Support and Spousal Support
75-02-01.3-10	Caretaker Choice - Contract Between Caretaker and Provider
75-02-01.3-11	Limitations
75-02-01.3-12	Intentional Program Violation - Disqualification Penalties
75-02-01.3-13	Reconsideration and Appeal Requests <u>Appeals</u>

75-02-01.3-02. Decision and notice.

1. The county agency shall notify the applicant or recipient in writing of the approval, denial, or termination. If an applicant's applications is denied or a recipient's eligibility is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or recipient's right to request ~~reconsideration or an~~ appeal, or both.
2. The effective date a case is closed or suspended is the last calendar day of the month identified in the notice.
3. Errors made by public officials and delays caused by the actions of public officials do not create eligibility or additional benefits for an applicant or recipient who is adversely affected.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-03. Closing a case.

A case must be closed when:

1. ~~The caretaker is not participating in an allowable activity.~~
- ~~2.~~ The child care assistance unit includes no eligible child.
- ~~3.~~2. The review form:
 - a. Is not submitted timely; or
 - b. Is incomplete so further eligibility cannot be determined; ~~or~~
 - ~~c.~~ ~~Indicates the family's income exceeds the upper income limit for the family size.~~
3. The household income exceeds the upper income limit for the household size.
4. The family moves out of state.
5. The recipient requests that the case be closed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-04. Available benefits.

- ~~1.~~ ~~The child care assistance program shall pay child care costs related to allowable activities of the eligible caretaker in a temporary assistance for needy families household or diversion assistance household.~~
- ~~2.~~ The child care assistance program shall pay a portion of child care costs related to allowable activities of the caretaker based on family size and countable income by applying a sliding fee schedule established by the department which is based on household size and income.

History: Effective April 1, 2010; amended effective October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-05. Approved relative provider's background check information.

1. Before approving an individual as an approved relative provider, the department shall review available public records and the child abuse information index.
2. The department periodically may review available public records and the child abuse information index on an approved relative provider.
3. Based on information from public records, a relative provider applicant's request ~~will~~shall be ~~approved or~~ denied; and an approved relative provider ~~will~~shall be terminated at the end of the month written notification is given; if he or she has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or ~~12.1-40, human trafficking~~12.1-41, Uniform Act on Prevention of and Remedies for Human Trafficking; or in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12,

assault or homicide while fleeing peace officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-21-01, arson; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse ~~or neglect~~ of a child; or 14-09-22.1, neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in subdivision a; or
 - c. An offense other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivisions a and b of subsection 3 have a direct bearing on the relative provider applicant's or approved relative provider's ability to serve as an approved relative provider.
 5. In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
 6. If a services required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that a child has been abused or neglected by the applicant or relative provider, that decision has a direct bearing on the applicant's or relative provider's ability to serve as an approved relative provider and the application or certificate may be denied or revoked. If a services required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or relative provider, the applicant or relative provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or relative provider's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability to the applicant or relative provider for consideration and action on the application or relative provider's certificate.
 7. The department shall notify the relative provider applicant and approved relative provider in writing of the approval, denial, or termination. If a relative provider applicant's request is denied or an approved relative provider's certificate is terminated, the written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and
 - c. An explanation of the applicant's or provider's right to ~~request reconsideration or an~~ appeal, or both.

History: Effective April 1, 2010; amended effective April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-06. Payments to providers - Child care certificate.

1. Unless a provider otherwise elects in a signed and dated writing, all payments of child care assistance must be made to a provider.
2. No payment may be made except on presentation of a claim in a form and manner required by the department for periods during which all caretakers in the child care assistance unit were engaged in an allowable activity.
3. No payment to a provider may be made at a rate in excess of that charged by the provider for services to individuals who do not receive child care assistance.
4. The department ~~will~~shall issue to the eligible caretaker a child care certificate.

~~5. When a caretaker fails to pay the provider, the family is ineligible for child care assistance until:~~

~~a. The payment is made; or~~

~~b. The family reaches an agreement for payment with the provider and the family continues to comply with the payment agreement.~~

History: Effective April 1, 2010; amended effective April 1, 2014; [October 1, 2016](#).

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-06-06.1, 50-09-02, 50-33

75-02-01.3-08. Disregarded income.

The following types of income must be disregarded in determining child care assistance eligibility and benefits.

1. Money payments made by the department in connection with foster care, subsidized guardianship, family subsidy, or the subsidized adoption program;
2. Temporary assistance for needy families benefits and support services payments;
3. Benefits received through the low-income home energy assistance program;
4. County general assistance;

~~5. Bureau of Indian affairs general assistance;~~

~~6. Irregular cash gifts received by a child care assistance unit;~~

~~7.6.~~ 7.6. A loan from any source that is subject to a written agreement requiring repayment by the child care assistance unit;

~~8.7.~~ 8.7. A child care assistance unit's income tax refunds and earned income credits;

~~9. A child care assistance unit's educational loans, scholarships, grants, and awards; educational assistance provided under the Montgomery GI Bill, Public Law No. 95-525 [98 Stat. 2553; 38 U.S.C. 101 et seq.]; and vocational rehabilitation payments;~~

~~10. Any fellowship or gift or portion of a gift used to pay the cost of a child care assistance unit's tuition and fees at any educational institution;~~

- ~~11.~~ Training funds received by a child care assistance unit from vocational rehabilitation;
- ~~12.~~8. Training allowances of up to thirty dollars per week provided to a child care assistance unit member through a tribal native employment works program;
- ~~13.~~ Needs-based payments, support services, and relocation expenses provided to a child care assistance unit through programs established under the Workforce Investment Act of 1998 [Pub. L. 105-220, August 7, 1998; 112 Stat. 936];-
- ~~14.~~9. Training stipends provided by private, charitable organizations to a child care assistance unit member who is a victim of domestic violence for the member of the child care assistance unit to attend educational programs;
- ~~15.~~10. The first two thousand dollars per year of lease payments deposited in an individual Indian monies account for a child care assistance unit member;
- ~~16.~~11. Any income required by federal law to be disregarded;
- ~~17.~~12. Earned income of all children in the child care assistance unit;
- ~~18.~~13. A one-time bonus incentive payment or commission to a child care assistance unit member;
- ~~19.~~14. Vendor payments or other payments made to a third party on behalf of the child care assistance unit;
- ~~20.~~15. Stipend payments to a child care assistance unit that do not require work as a condition of receipt;
- ~~21.~~16. Nonrecurring lump sum payments to a child care assistance unit;
- ~~22.~~17. Irregular income from sale of craft items and rummage sales;
- ~~23.~~18. Payments made by cafeteria or flex compensation plans to a child care assistance unit member;
- ~~24.~~19. Funds raised on behalf of the child care assistance unit, or any member of that unit, if the child care assistance unit does not have access to the funds; and
- ~~25.~~20. Income from contracts for deed.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-12. Intentional program violation - Disqualification penalties.

1. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court is subject to the penalties provided in this section. An individual who waives the individual's right to appear at an intentional program violation hearing is subject to the penalties provided in this section.
2. The county agency shall notify an individual in writing of an intentional program violation. The written notice must include:
 - a. A statement of the proposed action;
 - b. The reason for the proposed action, including the rule, regulation, or statute upon which the action is based; and

- c. An explanation of the individual's right to request an administrative hearing under chapter 75-01-03.
3. During any period of disqualification, if a disqualified individual:
 - a. Is a provider, the individual may not receive any child care assistance payment;
 - b. Is employed by a provider, that provider may not receive any child care assistance payment; and
 - c. Is a member of a child care assistance unit, that child care assistance unit is ineligible for child care assistance benefits.
4. The duration of the penalty described in this section is:
 - a. ~~Six months~~One year for the first offense;
 - b. ~~One year~~Two years for the second offense; and
 - c. Permanently for the third offense.
5. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until a court of appropriate jurisdiction subsequently reverses the finding upon which the penalty was based.
6. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
7. The department shall issue a written notice informing the individual of the period of disqualification.
8. Overpayments may be recovered from:
 - a. The child care assistance unit that includes the disqualified individual;
 - b. Any child care assistance unit of which the disqualified individual subsequently becomes a member;
 - c. Any individual members of the child care assistance unit that included the disqualified individual;
 - d. The provider who was disqualified; and
 - e. The provider who employed the disqualified individual.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

75-02-01.3-13. ~~Reconsideration and appeal requests~~Appeals.

1. An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a determination made under this chapter may ~~request reconsideration of appeal~~ that decision by the department, ~~and must request reconsideration before appealing that decision unless the decision is based on an intentional program violation~~. An applicant, recipient, relative provider applicant, or approved relative provider of child care assistance aggrieved by a decision ~~issued after a request for reconsideration~~ must appeal in writing and include documentation of all of the following information:

- a. A copy of the letter received from the department advising of the department's decision ~~on the request for reconsideration~~;
 - b. A statement of disputed facts, if any;
 - c. The authority in statute or rule upon which the applicant for, recipient of relative provider applicant, or approved relative provider of child care assistance relies for each disputed item; and
 - d. The name, address, and telephone number of the individual to whom the department will send all notices and information regarding the appeal.
2. ~~A request for reconsideration must be made within thirty days after notice of a determination made under this chapter.~~ An appeal must be filed within thirty days after the date of mailing of a decision ~~issued pursuant to a request for reconsideration~~.
 3. A hearing request may be denied or dismissed when the sole issue is one of state or federal law requiring automatic benefit adjustments for classes of recipients.
 4. Chapter 75-01-03 governs an appeal made under this chapter.

History: Effective April 1, 2010; amended effective April 1, 2014; October 1, 2016.

General Authority: NDCC 50-33-02

Law Implemented: NDCC 50-33-02

CHAPTER 75-03-21 LICENSING OF FOSTER HOMES FOR ADULTS

Section

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75-03-21-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Abuse" means ~~the~~[any](#) willful act or omission of a caregiver or any other individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation to or of a resident.
2. "Agency" means an organization which monitors the facility.
3. "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide care.
4. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the facility.
5. "County agency" means the county social service board in the county where the facility is located and monitored.
6. "Department" means the North Dakota department of human services.
7. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, entertainment, or gratification.

8. "Facility" means a foster care home for adults.
9. "Home- and community-based setting experience interview" means an instrument used to record information about a resident's experiences in the facility.
10. "License" means a document issued by the department authorizing an applicant to operate a facility.
- ~~10.~~11. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.
- ~~11.~~12. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to care and the resident's rights related to the facility.
- ~~12.~~13. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.
- ~~13.~~14. "Person-centered service plan" means a plan that describes the medicaid waiver recipient resident's assessed needs, outcomes, and goals and how the services and natural supports provided will assist the resident in achieving their outcomes and live safely and successfully in the community.
15. "Provider" means a primary caregiver in active charge of a facility who has documented qualifications in providing care and is enrolled as a qualified service provider.
- ~~14.~~16. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.
- ~~15.~~17. "Resident" means any adult who is receiving care in a facility for compensation on a twenty-four-hour basis, but does not mean any other individual who lives or stays in the facility.
- ~~16.~~18. "Respite care" means care provided by a respite care provider or substitute caregiver to a resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.
- ~~17.~~19. "Respite care provider" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the county or state, in the absence of the provider.
- ~~18.~~20. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2 and North Dakota Century Code chapter 12.1-41.
- ~~19.~~21. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay residents in the absence of the provider.

History: Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-02. Application.

1. An application for a license to operate a facility must be made to the county agency in the county where the applicant proposes to provide care.

2. An application must be made in the form and manner prescribed by the department.
3. A fee of fifty dollars must accompany the application for an initial license to operate a facility. A fee of twenty-five dollars must accompany the application to renew a license to operate a facility. The fees will be retained by the county agency and used for training and education of the county agency staff who administer the license program.
4. An application for a license must be filed immediately upon change of provider or location.
5. An application is not complete until all required information and verifications are submitted to the department, including:
 - a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;
 - b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;
 - c. A report of psychological examinations, when requested by the department;
 - d. Proof of age and relationship, when requested by the department;
 - e. Sanitation and safety inspection reports, when requested by the department;
 - f. Completed application form;
 - g. Drug and alcohol evaluation report, when requested by the department;
 - h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;
 - i. Documentation of completion of a course related to fire prevention and safety;
 - j. Fire safety self-declaration form;
 - k. Evidence that all caregivers are properly qualified to provide care as provided in section 75-03-21-08;
 - l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;
 - m. Examples of service logs to be used to account for service time and tasks performed for each resident;
 - n. An evacuation disaster plan; and
 - o. A sample menu plan compliant with dietary guidelines outlined in subsection [34](#) of section 75-03-21-11.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; [October 1, 2016](#).

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-01-09(6), 50-11-03

75-03-21-04. Facility.

1. The facility must be:

- a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of an adult residing in the facility;
- b. Maintained free of offensive odors, vermin, and dampness;
- c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];
- d. Maintained so as to prevent crawling and flying pests from entering the facility through windows;
- e. Equipped with handrails in all stairways;
- f. Equipped with nonporous surfaces for shower enclosures; ~~and~~
- g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers; and
- h. Physically accessible for the resident.

2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.

3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.

4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space and provide for privacy in the sleeping area.

5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.

6. No more than two residents may be assigned to one bedroom and residents sharing a bedroom must have a choice of roommates in that facility.

7. Bedroom and bathroom doors must be lockable by the resident for privacy, with only the resident and appropriate staff having keys to the bedroom doors. Any restrictions on having a lockable bedroom or bathroom door must be documented and justified in the person-centered service plan or service and rental agreement.

8. Bedrooms occupied by residents may not be located in a level of the facility below grade level unless there are two means of egress, one of which leads to the outside of the facility.

~~8.9.~~ At least one full bathroom must be available on the same floor as any bedroom occupied by a resident.

~~9.10.~~ The facility must have a telecommunication device on the main floor available for use by residents.

~~10.11.~~ Use of video surveillance equipment in the resident's bedroom and bathroom is prohibited.

~~11.12.~~ Mobile home units used as a facility must:

- a. Have been constructed since 1976;
- b. Have been designed for use as a dwelling, rather than as a travel trailer;

- c. Meet the flame spread rate requirements; and
- d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; [October 1, 2016](#).

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-05. Sanitation.

1. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter ~~62-03-16, state plumbing code~~ [62-03.1-03, private sewage disposal systems](#).
2. Rubbish, garbage, and other refuse must be stored in readily cleanable containers and removed from the facility at least every second day. Rubbish, garbage, and other refuse kept outside of the facility must be stored in readily cleanable, rodent-proof containers and disposed of weekly.
3. The facility must be kept reasonably free of animal feces, urine, and hair.
4. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the state department of health. A copy of the test report must be submitted to the county agency. The water and wastewater plumbing systems must comply with article ~~62-03, state plumbing code~~ [62-03.1, plumbing installation standards](#).
5. Milk must be obtained from an approved commercial source.

History: Effective May 1, 1992; amended effective September 1, 2004; October 1, 2012; [October 1, 2016](#).

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-09. General practices.

The provider:

1. Shall permit a representative of the department, county agency, or other individual or organization serving a resident entry into the facility without prior notice;
2. Shall provide information about the residents to the department, county agency, or other individual or organization serving a resident with reasonable promptness;
3. Shall report illness, hospitalization, or unusual behavior of a resident to the individual or organization serving the resident, or to the resident's representative, whichever is appropriate;
4. Shall assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;
5. May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;

6. Shall accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other individual or organization serving a resident;
7. Shall assure that residents receiving care are not subjected to abuse, sexual abuse, neglect, or exploitation;
8. Shall undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary;
9. Shall authorize the release of a report of any examination or evaluation, required under subsection 8, to the department or county agency;
10. ~~Immediately shall~~ Shall immediately report changes in the identity or number of individuals living in the facility to the department or county agency;
11. ~~Immediately shall~~ Shall immediately report an inability to provide care to the resident to the county agency;
12. Shall allow a representative of the department, or county agency, to enter the premises, examine the facility and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;
13. Shall cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized individuals to the facility and its residents;
14. May not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;
15. Shall meet criteria established by the department for employment outside of the facility;
16. Must be free of influence, control, and direction in the operation of the facility by the landlord if the private residence is being rented;
17. May not use a transfer of ownership of a resident's possessions or property as payments;
18. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;
19. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the licensed provider;
20. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider exceeding more than two times in a calendar year;
21. For the purpose of this section, fair market value means:
 - a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
 - b. In the case of real or personal property that is subject to reasonable dispute concerning its value:

- (1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
- (2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and

c. In the case of income, one hundred percent of apparent fair market value;

22. Shall notify the ~~department~~county agency if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence.;

23. Shall notify the resident or the resident's legal representative of their right to manage the resident's finances. The provider shall notify the county agency in writing if the resident, or the resident's legal representative, requests the provider to act as representative payee;

~~24.~~ Shall provide the ~~department~~county agency, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds;~~and~~

~~24.25.~~ Shall provide twenty-four-hour care and supervision of all residents residing in the facility. unless otherwise documented and justified in the person-centered service plan or service and rental agreement; and

~~26.~~ Use of a respite care provider or a substitute caregiver is required in the absence of the provider if the resident cannot safely be left alone as documented and justified in the person-centered service plan or service and rental agreement. Resident or the resident's legal representative shall be allowed to choose their respite care provider.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03, 50-11-04

75-03-21-09.1. Criminal conviction - Effect on licensure and operation of a facility.

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the facility or act as a caregiver in the facility if the individual has been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-11, incest; 12.1-20-12.1, indecent exposure; 12.1-20-12.2, surreptitious intrusion, 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; ~~or~~ North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; or 12.1-31-07.1, exploitation of a vulnerable adult; North Dakota Century Code chapter 12.1-41, Uniform Act on Prevention of and Remedies for

Human Trafficking; or North Dakota Century Code sections 14-09-22, abuse of child; or 14-09-22.1, neglect of child; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

- b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.
2. For purposes of subdivision b of subsection 1, the department shall treat completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on an individual's ability to serve the public in any capacity involving the provision of foster care to adults.

History: Effective April 1, 1999; amended effective September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11

75-03-21-10. Substitute caregiver and respite care provider qualifications.

1. A substitute caregiver or respite care provider:
 - a. Must be eighteen years of age or older;
 - b. Must not be a resident;
 - c. Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and
 - d. Successfully shall complete criminal background check requirements specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the substitute caregiver's or respite care provider's enrollment as a qualified service provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider subsequent to the lapse.
2. The provider is responsible for the care of residents at all times, even though the duties or tasks of furnishing care have been delegated to a substitute caregiver or respite care provider.
3. Respite care providers are limited to the respite care service funding cap. Residents whose care is being paid by the county or state can only receive respite care from a respite care provider. Respite care providers shall bill the department for time spent caring for residents in their care.
4. Substitute caregivers who are providing care to private pay residents may not ~~be left in charge of the~~provide resident care on behalf of a facility for more than one hundred ninety-two calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ninety-six days during the twelve-month period immediately following the date of the issuance of the initial license.
5. For purposes of this section, whenever a substitute caregiver or respite care provider ~~is left in charge~~provides resident care on behalf of a facility for more than eight hours during a calendar day, the calendar day will be counted toward the one hundred ninety-two calendar day or ninety-six calendar day limit a substitute caregiver may ~~be in charge~~provide resident

care on behalf of a facility or toward the respite care service funding cap to which a respite care provider ~~is limited~~ established by the department for each qualifying resident.

6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to a resident is prohibited.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-11. Meals and nutrition.

1. Three meals must be served daily.
2. Residents must be allowed access to food at any time and meal choices must be provided. Any restrictions on access to or choice of food because of health and safety concerns must be documented and justified in the person-centered service plan or service and rental agreement.
3. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.
- ~~3.4.~~ Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.
- ~~4.5.~~ Adequate amounts of food must be available at all meals.
- ~~5.6.~~ The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.
- ~~6.7.~~ Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.
- ~~7.8.~~ Meals must be regularly and routinely prepared in the facility where the residents live.
- ~~8.9.~~ Charges imposed for resident meals provided by individuals or businesses other than the provider must be paid by the provider unless the provider made a meal available at the facility.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-12. ~~Preadmission packet~~Service and rental agreement.

The provider shall furnish each prospective resident, or the resident's ~~conservator, guardian, or other individual legally responsible for placement~~ legal representative, and the county agency with a signed copy of the provider's ~~preadmission packets~~ service and rental agreement prior to the resident entering the facility. A ~~signed copy~~ signed by the resident or legal representative and the provider must be kept in the resident's record.

1. The ~~preadmission packets~~ service and rental agreement must include all of the following information:

- ~~1.a.~~ ~~Any restrictions and limitations on the use of alcohol and tobacco~~ Landlord tenant eviction and appeals process;

- 2.b. Any restrictions and limitations on the use of the Resident's rights to unrestricted telephone access, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
 - 3.c. A statement of other Any relevant house rules expectations with which the resident will be expected to comply, including restrictions on the use of alcohol or tobacco in the facility;
 - 4.d. Sample menu plan of meals served;
 - 5.e. Procedure concerning the use and management of resident funds;
 - 6.f. Procedure used for billing, collecting, and reimbursing the charge for board, room, and care;
 - 7.g. Policies concerning the furnishing of nonemergency resident transportation by the provider;
 - 8.h. A statement of other relevant house rules with which the resident will be expected to comply; and Resident's right to furnish and decorate their bedroom;
 - i. Resident's right to control their own schedules and activities, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
 - j. Resident's right to have visitors of their choosing at any time, unless otherwise documented and justified in the person-centered service plan or service and rental agreement;
 - 9.k. Accurate and complete information regarding the extent and nature of the care available from and to be provided by the provider, including whether or not the client requires twenty-four-hour supervision or the appropriate length of time the resident may be safely left alone; and
 - l. Resident's right to be free from coercion and restraint.
2. All agreement modifications must be supported by a specific assessed need and documented and justified in the person-centered service plan or service and rental agreement.
 3. All agreement modifications made after the date the initial agreement was signed must be in writing and signed by the resident or the resident's legal representative and the provider. The provider shall furnish the resident, or the resident's legal representative, and the county agency with a signed copy of the modifications. A copy of the modifications must be kept in the resident's records.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-13. Termination of care.

1. The provider shall terminate care of a resident when care is no longer required or when the provider is no longer qualified to provide the care needed by the resident.
2. The provider who anticipates the termination of care to a resident shall provide the resident, or the resident's legal representative, ~~if any~~, and the county agency with at least thirty days' written notice of the termination. The provider shall assist with the transfer of the resident to a

setting more appropriate to the resident's needs. The provider also shall comply with the provider's service and rental agreement and landlord tenant eviction laws.

3. If an emergency placement outside of the facility is needed or a resident is hospitalized and the resident's condition has changed to the extent that the provider is no longer able to provide the resident's care, consideration will be given to waiving the thirty-day written notice required under subsection 2 provided keeping the resident or returning the resident to the facility would negatively impact the health and well-being of the resident, other residents living in the facility, or the provider. The department staff responsible for ~~care~~-licensing must be contacted by the ~~regional human service center care representative~~county agency prior to the department making the decision to waive the thirty-day requirement.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-19. Provisional license.

The department may issue a provisional license to an applicant who has previously held an unrestricted license.

1. Any provisional license issued must be accompanied by a written statement identifying in what respect the applicant or the facility does not comply with North Dakota Century Code chapter 50-11 and rules governing the provision of care, signed by the ~~regional director of the human service center, or the director's~~department or its designee, and, in writing, be acknowledged by the provider.
2. The applicant shall comply with North Dakota Century Code chapter 50-11 and the rules of the department within the period of time the provisional license is in effect.
3. A provisional license must:
 - a. Prominently state that the facility has failed to comply with all applicable laws and rules of the department;
 - b. State that the items of noncompliance are set forth in a written statement available upon request made to the licensed provider;
 - c. Expire on a set date, not to exceed six months from the date of issuance; and
 - d. Be replaced by an unrestricted license, if the applicant demonstrates compliance satisfactory to the department with all applicable laws and rules within the period of time the provisional license is in effect.
4. A provisional license must be issued only to an applicant who has, in writing, waived:
 - a. The right of a written statement of changes as to the reasons for the denial of an unrestricted license; and
 - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the denial of an unrestricted license either at the time of application or during the period of operation under a provisional license.
5. Subject to the exceptions contained in this section, a provisional license is equivalent to an unrestricted license.

History: Effective May 1, 1995; amended effective October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-21. Penalties.

A licensed provider, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, ~~7~~8, and ~~9~~10 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; subsection 4 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections ~~3~~4 and ~~4~~5 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.
2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6 and ~~8~~9 of section 75-03-21-04; ~~subsection~~subsections 10, 11, 13, 14, and 17 of section 75-03-21-09; and section 75-03-21-12.
3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed provider to a fiscal sanction of five dollars per day.

History: Effective May 1, 1995; amended effective April 1, 1999; September 1, 2004; October 1, 2012; October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03

75-03-21-23. Monitoring.

County agency shall conduct facility visits at time of licensure, licensure renewal, or upon evidence of noncompliance. Monitoring visits at the time of licensure renewal or upon evidence of noncompliance must include home- and community-based setting experience interviews with all residents.

1. Interviews must be completed in the form and manner described by the department; and
2. Interview results must be provided to the department at time of licensure renewal or upon evidence of noncompliance.

History: Effective October 1, 2016.

General Authority: NDCC 50-06-16, 50-11

Law Implemented: NDCC 50-11-03