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DEPARTMENT OF FINANCIAL INSTITUTIONS

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CHAPTER 13-03-02

13-03-02-02. Requirements for advancement of money on security of real property.

No state-chartered credit union may advance money on security of real property until the following requirements are met:

1. The mortgage has been properly signed and recorded in the office of the county recorder where the real property is located.

2. The credit union must verify that the mortgagor is the owner of the real property in fee simple and the credit union must determine the order of priority of the lien established by the mortgage.

3. ~~For real estate loans equaling two hundred fifty thousand dollars or more, a written appraisal must be obtained from the credit union's designated appraiser. The credit union's designated appraiser must be independent of the transaction and be state-certified or licensed, or if the loan is one million dollars or more, be state-certified. The written appraisal must comply with the uniform standards of professional appraisal practices and be filed with the loan documents. For real estate loans less than two hundred fifty thousand dollars, an evaluation of the property value must be well-documented, reasonably support the value assigned, and be included with the loan documents; the person performing the evaluation must be qualified to perform the evaluation and be independent of the transaction. However, this subsection does not apply to real estate loans subject to title 12, Code of Federal Regulations, part 722, promulgated by the national credit union administration board. For these loans, the credit union must comply with the federal requirements for transactions requiring a state-certified or licensed appraiser.~~For real estate loans equal to or more than two hundred fifty thousand dollars, an appraisal must be conducted by a licensed or certified appraiser if required under 12 Code of Federal Regulations part 722.

4. For real estate loans that do not meet the requirements of subsection 3, a credit union must obtain an appropriate evaluation of real property collateral for transactions if an appraisal by a licensed or certified appraiser is not obtained.

5. Regardless of the value of a real estate loan, the commissioner may issue an order requiring an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns.

6. Adequate casualty fire and tornado insurance has been obtained and is maintained throughout the life of the loan with a mortgage clause for the benefit of the credit union.

~~5.~~7. A note for the amount of the loan has been signed by the mortgagor or mortgagors consistent with the terms of the mortgage.

8. The credit union may make exceptions to subsections 2, 3, and 6 of this section if the mortgage is taken as an abundance of caution as set forth in 12 CFR 722.3, and the value of the real property security is not used as part of the analysis of the borrower's credit worthiness.

History: Amended effective May 1, 1982; November 1, 1985; October 1, 1994; August 1, 1998; December 1, 2002; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-04

13-03-04-01. Maximum investment in fixed assets to be determined by state credit union board.

No credit union organized and operating under the laws of North Dakota shall invest more than the greater of six percent of assets or fifty percent of net worth, but not to exceed ten percent of assets, in a credit union office building, including the lot, piece, or parcel of land on which the same is located, furniture, fixtures, and equipment, without first applying for and obtaining approval from the state credit union board.

History: Amended effective June 1, 1984; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-05

13-03-05-01. Procedure.

Any state-chartered credit union planning to merge shall follow and comply with the following procedure:

1. The board of directors of each state-chartered credit union shall pass a resolution by a majority of the directors, in favor of the merger, stating specific terms, if any.

2. The resolution shall be submitted to the entire membership of the affected credit unions at the time of and accompanying the notice of a regular or special meeting, and must be approved by a majority of the membership of each affected credit union present at the meeting. The state credit union board, in the exercise of the board's discretion, may suspend this subsection when such suspension is in the best interests of the affected credit unions and their members. Alternatively, the commissioner, in the exercise of the commissioner's discretion, may temporarily suspend this subsection until after approval is obtained from the state credit union board, if the merging credit union is federally chartered.

3. An application to merge must be filed with the state credit union board to approve the merger by the proper officials of each of the credit unions.

4. ~~Prior to action on the proposed merger by the~~At least thirty days prior to the date of consideration of the application by the state credit union board, the secretary ~~or~~of the board shall notify all credit unions ~~in the field of membership, or within a fifty-mile [80.47 kilometers] radius of a closed field of membership credit union's office, of the merging credit union of the proposed merger~~within a seventy-five-mile [120.7-kilometer] radius of the continuing credit union's home office and each county in which the merging credit union maintains its principal office or a branch. The notice must specify the names and locations of both the merging credit union and the continuing credit union, and the time and place of the board meeting at which the proposed merger will be considered. Interested credit unions will be given an opportunity to comment on the proposed merger in writing and at the meeting at which the proposal is considered. The board may, when it believes it to be in the public interest, request a hearing be held. Notice of hearing on an application will, if requested, be at least thirty days prior to the hearing. Notice of the proposed merger does not have to be given or a hearing held when the continuing credit union is to receive assistance from the national credit union administration.

5. All laws and regulations of the national credit union share insurance fund applicable to merging insured credit unions must be complied with before the merger is consummated.

6. Upon approval of the merger, the continuing credit union may apply to assume the field of membership of the merging credit union, pursuant to the requirements of chapter 13-03-14.

History: Amended effective February 1, 1981; August 1, 1993; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-36, 6-06-37

CHAPTER 13-03-06
CREDIT UNION RESERVE FUNDS AND PROMPT CORRECTIVE ACTION

13-03-06-01. Definitions.

1. "Commercial loan" means any loan, line of credit, or letter of credit, including any unfunded commitments, and any interest a credit union obtains in such loans made by another lender, to individuals, sole proprietorships, partnerships, corporations, or other business enterprises for commercial, industrial, agricultural, or professional purposes, but not for personal expenditure purposes. Excluded from this definition are loans made by a corporate credit union; loans made by a credit union to another credit union; loans made by a federally insured credit union to a credit union service organization; loans secured by a one-to-four family residential property, unless meeting the definition of an improved property loan; loans fully secured by shares in the credit union making the extension of credit or deposits in other financial institutions; loans secured by a vehicle manufactured for household use; and loans that would otherwise meet the definition of commercial loan and which, when the aggregate outstanding balances plus unfunded commitments less any portion secured by shares in the credit union to a borrower or an associated borrower, are equal to less than fifty thousand dollars.

2. "Credit grading system" means the same as credit risk rating system.

3. "Credit risk rating system" means a formal process that identifies and assigns a relative credit risk score to each commercial loan in a credit union's portfolio, using ordinal ratings to represent the degree of risk. The credit risk score is determined through an evaluation of quantitative factors based on financial performance and qualitative factors based on management, operational, market, and business environmental factors.

4. "Improved property loan" means an extension of credit secured by one of the following types of real property:

   a. Farmland, ranchland, or timberland committed to ongoing management and agricultural production;

   b. One-to-four family residential property that is not owner-occupied;

   c. Residential property containing five or more individual dwelling units;

   d. Completed commercial property; or

   e. Other income-producing property that has been completed and is available for occupancy and use, except income-producing owner-occupied one-to-four family residential property.

5. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. Net worth does not include the allowance for loan and lease loss account or other comprehensive income/loss account. Additionally:

a. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund~~. For any credit union, net worth does not include the allowance for loan and lease loss account.~~;

b. For a credit union that acquires another credit union in a mutual combination, net worth includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero; the acquired retained earnings must be determined at the point of acquisition under generally accepted accounting principles; and a mutual combination is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union; and

c. The term "net worth" also includes loans to and accounts in an insured credit union established under section 208 of the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1788), provided such loans and accounts:

(1) Have a remaining maturity of more than five years;

(2) Are subordinate to all other claims including those of shareholders, creditors, and the national credit union share insurance fund;

(3) Are not pledged as security on a loan to, or other obligation of, any party;

(4) Are not insured by the national credit union share insurance fund;

(5) Have noncumulative dividends;

(6) Are transferable; and

(7) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

~~2.~~6. "Net worth ratio" means the ratio of net worth of the credit union to the total assets of the credit union.

~~3.~~7. "Net worth restoration plan" means a plan submitted by the credit union and approved by the commissioner outlining the actions the credit union will take and time frames for improving the credit union's capital position and becoming well-capitalized. The plan must comply with part 702 of the national credit union administration's rules and regulations.

~~4.~~8. "Quarterly reserve requirement" means a transfer from current quarter earnings into the regular reserve account equal to one-tenth of one percent of assets.

~~5.~~9. "Risk-based net worth requirement" means the level of net worth necessary given the risk level of the credit union as defined in part 702 of the national credit union administration's rules and regulations.

~~6.~~10. "Total assets" means quarter end asset balance, average daily balance over the calendar quarter, average month-end balances over the three calendar months in the calendar quarter, or the average of quarter end balances of the current and preceding calendar quarters.

11. "Total reserves" means, for the purpose of this chapter, the sum of the following:

a. The retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles;

b. The allowance for loan and lease loss account;

c. Other comprehensive income or loss;

d. Unrealized gain or loss on available for sale securities; and

e. Secondary capital.

12. "Retained earnings" means undivided earnings, regular reserves, and any other appropriations designated by regulatory authorities.

History: Amended effective January 1, 1981; August 1, 1984; June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-02. Maintaining an allowance for loan and lease loss account.

~~1.~~ All credit unions operating under a charter issued by the state of North Dakota shall be required to maintain an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union administration. ~~When the amounts calculated under section 13-03-06-03 exceed those required pursuant to North Dakota Century Code section 6-06-21, the allowance for loan and lease loss account will be considered inadequate, and the excess will be transferred to the allowance for loan and lease loss account through the provision for loan and lease loss expense account within thirty days as directed by the commissioner.~~

~~2. Upon application by a credit union to the state credit union board, and upon the showing of extraordinary hardship, the state credit union board may alter the allowance for loan and lease loss requirements as set forth in this chapter when in its opinion, such an alteration is necessary or desirable.~~

History: Amended effective June 1, 1979; January 1, 1981; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-03. Calculation.

The adequacy of the allowance for loan and lease loss account as required under North Dakota Century Code section 6-06-21 will be based upon ~~an individual loan classification at each examination of the credit union performed by the commissioner under authority granted the commissioner under North Dakota Century Code section 6-06-08~~generally accepted accounting principles and incorporate the credit union's credit risk rating system as outlined in section 13-03-06-05. The commissioner may require a credit union to put aside additional reserves ~~on loans according to the following classification formula:~~

~~1. Substandard loans - up to ten percent of the loan balance.~~

~~2. Doubtful loans - the net exposure to loss after collateral values are considered.~~

~~3. Loss loans - the net exposure to loss after collateral values are considered~~when funding levels are deemed to be unsafe or unsound as set forth in North Dakota Century Code section 6-06-08.4.

History: Effective January 1, 1981; amended effective June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-04. Prompt corrective action.

When the credit union's net worth ratio falls below seven percent after allowing for full and fair disclosure in the allowance for loan and lease loss account, or fails to meet the risk-based net worth requirements of part 702 of the national credit union administration's rules and regulations, the credit union is required to meet the prompt corrective action requirements under North Dakota Century Code section 6-06-08.4 and part 702 of the national credit union administration's rules and regulations. Any required reserves to be made under prompt corrective action will be made to the regular reserve account.

History: Effective January 1, 1981; amended effective May 1, 1981; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-08.4, 6-06-21

13-03-06-05. Requirements.

The board of directors shall develop a policy requiring risk monitoring and a credit grading system, and management shall establish a process to implement a credit grading system and monitoring to effectively measure and monitor the level of risk in relation to total reserves. The system must:

1. Assign credit risk ratings to commercial loans at inception and reviewed as frequently as necessary to satisfy the credit union's risk monitoring and reporting policies;
2. Ensure adequate allowance for loan and lease loss funding as required by generally accepted accounting principles;
3. Include the loan classification categories of watch or special mention, substandard, doubtful, and loss;
4. Accurately identify loan risk ratings and classifications in accordance with accepted industry and regulatory guidance and as assigned during examinations;
5. Establish a process for the board of directors to oversee the performance of the loan portfolio, including periodic reporting to the board of directors aggregate loan portfolio credit risk rating levels, trends, loan classifications as a percentage of the credit union's total reserves or net worth, and loan concentration levels to net worth in relation to established policy limits;
6. Include board of director review of the need for independent review and validation of the accuracy of the commercial loan credit risk rating system and frequency of such action; and
7. Assess the impact of current market conditions and the potential impact of changing market conditions in a stressed environment to include:
    a. For commercial loans, the impact of the changes on the borrower, associated borrowers, and credit union's earnings and net worth;
    b. Portfolio concentrations greater than one hundred percent of credit union net worth in consumer loans with similar characteristics, assess the impact of changes on credit union's earnings and net worth; and
    c. Portfolio concentrations greater than one hundred percent of credit union net worth in investments with similar characteristics, assess the impact of changes on credit union's earnings and net worth.

History: Effective January 1, 2019.

General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-08-03. Credit applications and overdrafts.

Consistent with policies established by the board of directors, the credit committee or loan officer shall ensure that a credit application is kept on file for each borrower supporting the decision to make a loan or establish a line of credit. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has a written overdraft policy. The policy must set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses, establish a time limit not to exceed ~~forty-five~~sixty calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft, limit the dollar amount of overdrafts the credit union will honor per member, and establish the fee ~~and interest rate~~, if any, that the credit union will charge members for honoring overdrafts. All overdrafts will be reported on the credit union's financial statements in accordance with generally accepted accounting principles, and will be treated as a loan in determining compliance with subdivision g of subsection 1 of North Dakota Century Code section 6-06-12 and North Dakota Administrative Code chapter 13-03-06.

History: Effective January 1, 2013; amended effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-14

13-03-14-03. Application to expand field of membership.

A credit union wishing to expand its field of membership shall comply with the following:

1. Approval to expand the field of membership must be given by the board of directors of the credit union by a majority of that board;

2. After approval by the credit union's board of directors, application must be made to the state credit union board to expand its field of membership. The necessary forms for "application for field of membership expansion", including the business plan and the financial impact to the credit union and as required in subsection 3, may be secured from the department of financial institutions;

3. The application to expand the field of membership must be accompanied by the necessary documents for amendment of bylaws as required by North Dakota Century Code section 6-06-04;

4. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of an open charter application, cause a notice of the proposed field of membership expansion to be published in the official newspaper of the county ~~or counties affected by the~~of the credit union's home office and each county which is proposed ~~charter expansion~~to be included in the expanded field of membership. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board of a closed charter application, cause a notice of the proposed field of membership expansion to be published in the eight major newspapers in the state set forth in subdivisions a through h of subsection 1 of section 13-01.1-04-01. However, if a closed charter credit union intends to limit its expansion into specified geographical areas within the state, the notice must only be published in the official newspaper of the county or counties affected by the proposed expansion; and

5. The notice must specify the time and place of the meeting of the state credit union board at which the application for the charter expansion will be acted upon. Comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

History: Effective April 1, 1988; amended effective October 1, 1997; June 1, 2002; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06, 6-06-07

CHAPTER 13-03-15

13-03-15-04. Application to establish a branch.

1. A credit union wishing to establish a branch shall comply with the following:

   a. Approval to establish the branch must be given by the board of directors of the credit union by a majority of that board;

   b. After approval by the credit union's board of directors, application must be made to the state credit union board to establish the branch. The necessary forms for "application to establish a branch", including the business plan and the financial impact to the credit union, may be secured from the department of financial institutions;

   c. The credit union shall, at least thirty days prior to the date of consideration by the state credit union board, cause to be published a notice in the official newspaper of the county ~~or counties affected by~~of the credit union's home office and the county in which the proposed branch expansion is to be located. The notice must specify the field of membership, and, if an open charter, the geographical boundaries; and

   d. The notice must specify the time and place of the meeting of the state credit union board at which the application for establishing the branch will be acted upon. Written comments may be submitted to the board concerning the application, or a written request for an opportunity to be heard before the board may be submitted. The board may, when it believes it to be in the public interest, order a hearing to be held.

2. The state credit union board, when considering the branching of a credit union, shall consider the following:

   a. If the branch is for an open charter, and if the application to establish the branch is accompanied by an application to expand the field of membership, the exact geographical boundaries, expressed by city, county, township, or highway boundaries, or a stated radius from the branch office, must be clearly spelled out;

   b. Whether serious injury would result to any other state or federally chartered credit union in North Dakota;

   c. Whether the credit union has demonstrated the ability to succeed with the branch; and

   d. Any other factor that the state credit union board deems pertinent.

History: Effective April 1, 1988; amended effective June 1, 2002; January 1, 2007; January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-16
MEMBER BUSINESS LOAN LIMITS

[Repealed effective January 1, 2019]

~~Section~~
~~13-03-16-01 Definitions~~
~~13-03-16-02 Requirements~~
~~13-03-16-03 Loan Limits~~
~~13-03-16-04 Allowance for Loan Losses~~
~~13-03-16-05 Construction and Development Lending~~
~~13-03-16-06 Prohibitions~~
~~13-03-16-07 Recordkeeping~~
~~13-03-16-08 Aggregate Loan Limit~~
~~13-03-16-09 Exceptions to the Aggregate Loan Limit~~

CHAPTER 13-03-20
PARTICIPATION LOANS

13-03-20-01. Definitions.

For purposes of this section:

1. "Associated borrower" means any other person or entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower. This means any person or entity named as a borrower or debtor in a loan or extension of credit, or any other person or entity, such as a drawer, endorser, or guarantor, engaged in a common enterprise with the borrower, or deriving a direct benefit from the loan to the borrower. Exceptions to this definition for partnerships, joint ventures, and associations are as follows:

    a. If the borrower is a partnership, joint venture, or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower, is a member or partner of the borrower, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.

    b. If the borrower is a member or partner of a partnership, joint venture, or association, and the other entity with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is the partnership, joint venture, or association and the borrower is a limited partner of that other entity, and by the terms of a partnership or membership agreement valid under applicable law, the borrower is not held generally liable for the debts or actions of that other entity, such other entity is not an associated borrower.

    c. If the borrower is a member or partner of a partnership, joint venture, or association, and the other person with a shared ownership, investment, or other pecuniary interest in a business or commercial endeavor with the borrower is another member or partner of the partnership, joint venture, or association, and neither a direct benefit nor a common enterprise exists, such other person is not an associated borrower.

2. "Common enterprise" means:

    a. The expected source of repayment for each loan or extension of credit is the same for each borrower and no individual borrower has another source of income from which the loan, together with the borrower's other obligations, may be fully repaid. An employer may not be treated as a source of repayment because of wages and salaries paid to an employee, unless the standards described in subdivision b of this definition are met;

    b. Loans or extensions of credit are made to borrowers who are related directly or indirectly through common control, including if one borrower is directly or indirectly controlled by another borrower and:

        (1) Substantial financial interdependence exists between or among the borrowers. Substantial financial interdependence means fifty percent or more of one borrower's gross receipts or gross expenditures, on an annual basis, are derived from transactions with another borrower. Gross receipts and expenditures include gross revenues or expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments; or

(2) Separate borrowers obtain loans or extensions of credit to acquire a business enterprise of which those borrowers will own more than fifty percent of the voting securities or voting interests.

3. "Control" means a person or entity directly or indirectly, or acting through or together with one or more persons or entities:

a. Owns, controls, or has the power to vote twenty-five percent or more of any class of voting securities of another person or entity;

b. Controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person or entity; or

c. Has the power to exercise a controlling influence over the management or policies of another person or entity.

4. "Credit union" means any state-chartered ~~or federal-chartered~~ credit union.

~~2.~~5. "Credit union organization" means any organization as determined by the state credit union board established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations, or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operations of credit unions.

~~3.~~6. "Direct benefit" means the proceeds of a loan or extension of credit to a borrower, or assets purchased with those proceeds, which are transferred to another person or entity, other than in a bona fide arm's-length transaction where the proceeds are used to acquire property, goods, or services.

7. "Eligible organization" means a credit union, credit union organization, or financial organization.

~~4.~~8. "Financial organization" means any federally chartered or federally insured financial institution and any state or federal government agency, or its subdivisions, including the Bank of North Dakota.

~~5.~~9. "Loan participation" means a loan where one or more eligible organizations participate pursuant to a written agreement with the originating lender, and the written agreement requires the originating lender's continuing participation throughout the life of the loan. It does not include a loan interest into a pool of loans.

10. "Originating lender" means the participant with which the ~~member contracts~~borrower initially or originally contracts for a loan and who, thereafter or concurrently with the funding of the loan, sells participations to other lenders.

~~6. "Participation loan" means a loan in which one or more eligible organizations participate pursuant to a written agreement with the originating lender.~~

History: Effective January 1, 2007; amended effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-20-02. Authorization.

1. Subject to the provisions of this section, any state-chartered credit union may participate in making loans with eligible organizations within the limitations of the board of directors' written participation loan policies, provided~~:~~ it meets the requirements of this subsection.

   a. The purchase complies with all regulatory requirements to the same extent as if the purchasing credit union had originated the loan, including the loans to one borrower provisions in 12 CFR 723.

   b. A written master participation agreement shall be properly executed, acted upon by the state-chartered credit union's board of directors, or if the board has so delegated in its policy, the investment committee, loan committee, or senior management officials and retained in the state-chartered credit union's office. The master agreement shall ~~include provisions for identifying, either through a document which is incorporated by reference into the master agreement, or directly in the master agreement, the participation loan or loans prior to their sale.~~:

      (1) Be properly executed by authorized representatives of all parties under applicable law;

      (2) Be properly authorized by the credit union's board of directors or, if the board has so delegated in its policy, a designated committee or senior management official, under the federally insured credit union's bylaws and applicable law; and

      (3) The original and copies be retained in the credit union's office.

   c. Prior to purchase, the identification of the specific loan participation being purchased, either directly in the agreement or through a document that is incorporated by reference into the agreement, shall state:

      (1) The interest the originating lender will retain in the loan to be participated. The retained interest must be at least ten percent of the outstanding balance of the loan through the life of the loan;

      (2) The location and custodian for original loan documents;

      (3) An explanation of the conditions under which parties to the agreement can gain access to financial and other performance information about a loan, the borrower, and the servicer so the parties can monitor the loan;

      (4) An explanation of the duties and responsibilities of the originating lender, servicer, and participants with respect to all aspects of the participation, including servicing, default, foreclosure, collection, and other matters involving the ongoing administration of the loan; and

      (5) Circumstances and conditions under which participants may replace the servicer.

   d. The board establishes a limit on the aggregate amount of loan participations that may be purchased from any one originating lender.

   e. The board establishes limits on the amount of loan participations that may be purchased by each loan type, not to exceed a specified percentage of the credit union's net worth;

   f. The board establish a limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower, or group of associated borrowers, not to

exceed fifteen percent of the credit union's net worth, unless this amount is waived by the state credit union board and the national credit union administration; and

~~b.~~g. A state-chartered credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

2. An originating lender which is a state-chartered credit union shall:

   a. Originate loans only to its members;

   b. Retain an interest of at least ten percent of the face amount of each loan;

   c. Retain the original or copies of the loan documents; and

   d. Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. If a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from nonparticipation loan underwriting standards.

3. A participant state-chartered credit union that is not an originating lender shall:

   a. Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

   b. Participate in participation loans only if made to its own members or members of another participating credit union, or loans made to persons located within the purchasing credt union's field of membership by eligible ~~organization~~organizations, or financial ~~organization~~organizations;

   c. Retain the original or a copy of the written participation loan agreement and a schedule of loans covered by the agreement; and

   d. Obtain the approval of the board of directors or investment committee, loan committee, or credit manager of the disbursement of proceeds to the originating lender.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-20-03. Waivers.

A credit union may seek a waiver from any of the limitations in subdivision f of subsection 1 of section 13-03-20-02. A credit union shall submit a written request to the commissioner containing an explanation for the purpose of the waiver. The commissioner may request the credit union provide documentation in support of its request. Upon receipt of the written request and all supporting documentation the request must be brought before the state credit union board for consideration. The board shall consider all relevant information related to the request including the safety and soundness of the credit union. If approved, the waiver application must be forwarded to the national credit union administration for consideration. Approval by the state credit union board is contingent on approval by the national credit union administration.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-23
CREDIT UNION SERVICE ORGANIZATIONS

13-03-23-01. Authority to invest in credit union service organizations or subsidiary credit union service organizations.

State credit unions may invest in credit union service organizations or subsidiary credit union service organizations, subject to the limitation provided for in this chapter and subject to approval by order of the board.

History: Effective January 1, 2007; amended effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-23-02. Definitions.

Unless the context otherwise requires, terms in this chapter have the following meanings:

1. "Affiliated" means those credit unions that have either invested in or made loans to a credit union service organization.

2. "Credit union service organization" means a financial service organization created by a credit union or group of credit unions or a league service organization to provide services not available from credit unions themselves.

3. "Immediate family member" means a spouse or other family member living in the same household.

4. "Net worth" means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles. Retained earnings consist of undivided earnings, regular reserves, and any other appropriations designated by management or regulatory authorities. For low income-designated credit unions, net worth also includes secondary capital accounts that are uninsured and subordinate to all other claims, including claims of creditors, shareholders, and the national credit union share insurance fund. For any credit union, net worth does not include the allowance for loan and lease loss account.

5. "Officials or senior management employees" means members of the board of directors, supervisory committee, or credit committee; chief executive officer (typically this individual holds the title of president or treasurer or manager); any assistant chief executive officers, e.g., assistant president, vice president, or assistant treasurer or manager; and the chief financial officer or comptroller.

6. "Subsidiary credit union service organization" means any entity in which a credit union service organization has an ownership interest of any amount, if that entity is engaged primarily in providing products or services to credit unions or credit union members or credit union service organizations.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-23-05. Permissible services and activities.

1. A state credit union, upon being granted authority under section 13-03-23-03, and complying with all applicable state licensing requirements, may invest in those credit union service organizations or subsidiary credit union service organizaitons that provide one or more of the following services and activities:

   a. Checking and currency services:

      (1) Check cashing;

      (2) Coin and currency services;

      (3) Money order, savings bonds, travelers checks; and purchase and sale of United States mint commemorative coins services; and

      (4) Stored value products;

   b. Clerical, professional, and management services:

      (1) Accounting services;

      (2) Courier services;

      (3) Credit analysis;

      (4) Facsimile transmissions and copying services;

      (5) Internal audits for credit unions;

      (6) Locator services;

      (7) Management and personnel training and support;

      (8) Marketing services;

      (9) Research services;

      (10) Supervisory committee audits; and

      (11) Employee leasing services;

   c. Business loan origination, including the authority to buy and sell participation interests in such loans;

   d. Consumer mortgage loan origination, including the authority to buy and sell participation interests in such loans;

   e. Electronic transaction services:

(1) Automated teller machine services;

(2) Credit card and debit card services;

(3) Data processing;

(4) Electronic fund transfer services;

(5) Electronic income tax filing;

(6) Payment item processing;

(7) Wire transfer services; and

(8) Cyber financial services;

f. Financial counseling services:

(1) Developing and administering individual retirement accounts and Keogh, deferred compensation, and other personnel benefit plans;

(2) Estate planning;

(3) Financial planning and counseling;

(4) Income tax preparation;

(5) Investment counseling;

(6) Retirement counseling; and

(7) Business counseling and consultant services;

g. Fixed asset services:

(1) Management, development, sale, or lease of fixed assets; and

(2) Sale, lease, or servicing of computer hardware or software;

h. Insurance brokerage or agency:

(1) Agency for sale of insurance;

(2) Provision of vehicle warranty programs;

(3) Provision of group purchasing programs; and

(4) Real estate settlement services;

i. Leasing:

(1) Personal property; and

(2) Real estate leasing of excess credit union service organizations property;

j. Loan support services:

(1) Debt collection services;

(2) Loan processing, servicing, and sales;

(3) Sale of repossessed collateral;

(4) Real estate settlement services;

(5) Purchase and servicing of nonperforming loans; and

(6) Referral and processing of loan applications for members whose loan applications have been denied by the credit union;

k. Record retention, security, and disaster recovery services:

(1) Alarm-monitoring and other security services;

(2) Disaster recovery services;

(3) Microfilm, microfiche, optical and electronic imaging, and CD-ROM data storage and retrieval services;

(4) Provision of forms and supplies; and

(5) Record retention and storage;

l. Securities brokerage services;

m. Shared credit union branch (service center) operations;

n. Student loan origination, including the authority to buy and sell participation interests in such loans;

o. Travel agency services;

p. Trust and trust-related services:

(1) Acting as administrator for prepaid legal service plans;

(2) Acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; and

(3) Trust services;

q. Real estate brokerage services;

r. Credit union service organization investments in noncredit union service organization service providers: in connection with providing a permissible service, a credit union service organization or subsidiary credit union service organization may invest in a noncredit union service organization service provider. The amount of the credit union service organization's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods and services;

s. Credit card loan origination; and

t. Payroll processing services.

If a credit union service organization or subsidiary credit union service organization intends on offering any services and activities not previously authorized under an application submitted in accordance with section 13-03-23-03, the credit union shall notify the commissioner at least twenty days prior to any change of operations.

2. The board may issue an order approving any service or activity which is not expressly authorized in subsection 1.

3. Based upon supervisory, legal, or safety and soundness reasons, the board or commissioner may at any time limit any of the credit union service organization or subsidiary credit union service organizations activities expressly listed in subsection 1 or adopted by the board under subsection 2.

4. The board in granting approval for a service or activity shall consider all relevant factors, including:

   a. Whether the credit union service organization or subsidiary credit union service organizations management or staff possesses adequate expertise or skills to perform the service or activity; and

   b. Whether the proposed activity or service is reasonably expected to be profitable.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-23-06. Limitations on investments in and loans to credit union service organizations or subsidiary credit union service organizations.

The following limitations apply to state credit unions for investments in credit union service organizations or subsidiary credit union service organizations:

1. A credit union may not invest in shares, stocks, or obligations of credit union service organizations or subsidiary credit union service organizations in an amount exceeding ten percent of its net worth. ~~The board may waive this limitation for a credit union investment in a credit union service organization existing before December 1, 1992.~~

2. Credit unions may not make loans to a credit union service organization or subsidiary credit union service organizations in which it is affiliated in an amount exceeding ten percent of its net worth.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-23-07. Conflict of interest.

Individuals who serve as officials or senior management employees of an affiliated state credit union, and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization, or subsidiary credit union service organization, either directly or indirectly, or from any person being served through the credit union service organization or subsidiary credit union service organization. This provision does not prohibit an official or senior management employee of a state credit union from assisting in the operation of a credit union service organization or subsidiary credit union service organization, provided the individual is not compensated by the credit union service organization or subsidiary credit union service organization. Further, the credit union service organization or subsidiary credit union service organization may reimburse the state credit union for the services provided by the individual.

History: Effective January 1, 2007; amended effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-23-08. Examinations.

A credit union shall allow the commissioner or the commissioner's examiner, at the commissioner's discretion, to inspect or examine all the books or records of the credit union service organization and subsidiary credit union service organization for the purpose of determining compliance with this chapter and to determine the value of the credit union's investment or loans. In order to accomplish the forgoing, each credit union must have a written agreement in place with the credit union service organization and any subsidiary credit union service organization, prior to investing in or lending to the credit union service organization or subsidiary credit union service organization, and prior to the credit union service organization investing in or lending to the subsidiary credit union service organization, providing that the credit union service organization and subsidiary credit union service organization will:

1. Provide the department with the right to inspect or examine all records of the credit union service organization;

2. Account for all its transactions in accordance with generally accepted accounting principles;

3. Prepare quarterly financial statements and provide the credit union with a copy of these statements within forty-five days of the quarter end; ~~and~~

4. Obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned credit union service organization is not required to obtain a separate annual financial statement audit if that wholly owned credit union service organization is included in the annual consolidated financial statement audit of the investing credit union; and

5. Comply with applicable federal, state, and local laws.

History: Effective January 1, 2007; amended effective January 1, 2013; January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-01-04, 6-01-09, 6-06-06, 6-06-08

13-03-23-09. Structure of a credit union service organization and subsidiary credit union service organization.

1. A credit union and a credit union service organization or subsidiary credit union service organization must be operated in a manner that demonstrates to the public the separate corporate existence of the credit union and the credit union service organization or subsidiary credit union service organization. Good business practices dictate each must operate so that:

   a. Its respective business transactions, accounts, and records are not intermingled;

   b. Each observes the formalities of its separate corporate procedures;

   c. Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

   d. Each is held out to the public as a separate enterprise;

   e. The credit union does not dominate the credit union service organization or subsidiary credit union service organization to the extent the credit union service organization or subsidiary credit union service organization is treated as a department of the credit union; and

   f. Unless the credit union has guaranteed a loan obtained by the credit union service organization or subsidiary credit union service organization, all borrowings by the credit

union service organization or subsidiary credit union service organization indicate that the credit union is not liable.

2. Prior to a credit union investing in a credit union service organization or subsidiary credit union service organization, the credit union shall obtain written legal advice as to whether the credit union service organization or subsidiary credit union service organization is established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the credit union service organization or subsidiary credit union service organization. In addition, if a credit union invests in, or makes a loan to, a credit union service organization or subsidiary credit union service organization, and that credit union service organization or subsidiary credit union service organization plans to change its structure, the federally insured credit union also shall obtain prior written legal advice that the credit union service organization or subsidiary credit union service organization will remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in, or loaned to, the credit union service organization or subsidiary credit union service organization. The written legal advice must address factors that have led courts to "pierce the corporate veil," such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The written legal advice must be provided by independent legal counsel of the investing credit union or the credit union service organization or subsidiary credit union service organization.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-26
INTEREST RATE RISK

13-03-26-01. Definitions.

1. "Gap analysis" is a simple interest rate risk measurement method that reports the mismatch between rate sensitive assets and rate sensitive liabilities over a given time period. Gap can only suffice for simple balance sheets that primarily consist of short-term bullet type investments and non-mortgage-related assets.

2. "Income simulation" is an interest rate risk measurement method used to estimate earnings exposure to changes in interest rates. An income simulation analysis projects interest cashflows of all assets, liabilities, and off-balance sheet instruments in a credit union's portfolio to estimate future net interest income over a chosen time frame. Simulations typically include evaluations under a base-case scenario, and instantaneous parallel rate shocks, and may include alternate interest rate scenarios.

3. "Interest rate risk" means the risk that changes in market rates will adversely affect a credit union's net economic value or earnings or both. Interest rate risk generally arises from a mismatch between the timing of cashflows from fixed rate instruments, and interest rate resets of variable rate instruments, on either side of the balance sheet. As interest rates change, earnings or net economic value may decline.

4. "Net economic value" measures the effect of interest rates on the market value of net worth by calculating the present value of assets minus the present value of liabilities. This calculation measures the long-term interest rate risk in a credit union's balance sheet at a fixed point in time. By capturing the impact of interest rate changes on the value of all future cashflows, net economic value provides a comprehensive measurement of interest rate risk. Net economic value computations demonstrate the economic value of net worth under current interest rates and shocked interest rate scenarios.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-26-02. Interest rate risk policy and program requirements.

1. Any credit union that has assets of less than fifty million dollars must maintain a basic written policy that provides a credit union board-approved framework for managing interest rate risk.

2. Any credit union that has assets of fifty million dollars or more is required to have an interest rate risk policy and program that incorporates the following elements into their interest rate risk program:

   a. Board-approved interest rate risk policy.

   b. Oversight by the board of directors and implementation by management.

   c. Risk measurement systems assessing the interest rate risk sensitivity of earnings and asset and liability values.

   d. Internal controls to monitor adherence to interest rate risk limits.

e. Decisionmaking that is informed and guided by interest rate risk measures.

3. The board of directors shall establish adequacy of an interest rate risk policy and its limits. This must be either a separate policy or part of other written policies. The policy must be consistent with the credit union's business strategies and reflect the board's risk tolerance, taking into account the credit union's financial condition and risk measurement systems and methods commensurate with the balance sheet structure. The policy must state actions and authorities required for exceptions to policy, limits, and authorizations.

4. The policy established to address interest rate risk must identify responsibilities and procedures for identifying, measuring, monitoring, controlling, and reporting interest rate risk, and establish risk limits. A written policy will:

a. Identify committees, persons, or other parties responsible for review of the credit union's interest rate risk exposure;

b. Direct appropriate actions to ensure management takes steps to manage interest rate risk so that interest rate risk exposures are identified, measured, monitored, and controlled;

c. State the frequency with which management will report on measurement results to the board to ensure routine review of information that is current and at least quarterly and in sufficient detail to assess the credit union's interest rate risk profile;

d. Set risk limits for interest rate risk exposures based on selected measures, such as limits for changes in repricing or duration gaps, income simulation, asset valuation, or net economic value;

e. Choose tests, such as interest rate shocks, that the credit union will perform using the selected measures;

f. Provide for periodic review of material changes in interest rate risk exposures and compliance with board-approved policy and risk limits;

g. Provide for assessment of the interest rate risk impact of any new business activities prior to implementation such as evaluating the interest rate risk profile of a new product or service; and

h. Provide for at least an annual evaluation of policy to determine whether it is still commensurate with the size, complexity, and risk profile of the credit union.

5. Interest rate risk policy limits must maintain risk exposures within prudent levels.

6. To implement the board's interest rate risk policy, management shall:

a. Develop and maintain adequate interest rate risk measurement systems;

b. Evaluate and understand interest rate risk exposures;

c. Establish an appropriate system of internal controls, such as establishing separation between the risk taker and interest rate risk measurement staff;

d. Allocate sufficient resources for an effective interest rate risk program. For example, a complex credit union with an elevated interest rate risk profile likely will necessitate a greater allocation of resources to identify and focus on interest rate risk exposures;

e. Develop and support competent staff with technical expertise commensurate with the interest rate risk program;

f. Identify the procedures and assumptions involved in implementing the interest rate risk measurement systems;

g. Establish clear lines of authority and responsibility for managing interest rate risk; and

h. Provide a sufficient set of reports to ensure compliance with board-approved policies.

7. Credit unions shall have interest rate risk measurement systems that capture and measure all material and identified sources of interest rate risk. An interest rate risk measurement system quantifies the risk contained in the credit union's balance sheet and integrates the important sources of interest rate risk faced by a credit union in order to facilitate management of its risk exposures. This must include:

a. Model and analysis assumptions that are reasonable and supportable;

b. Documentation of any changes to assumptions based on observed information;

c. Monitoring of positions with uncertain maturities, rates and cashflows, such as nonmaturity shares, fixed rate mortgages where prepayments may vary, adjustable rate mortgages, and instruments with embedded options, such as calls; and

d. Interest rate risk calculation techniques, measures, and tests to be sufficiently rigorous to capture risk. Some options to calculate this risk include:

(1) Gap analysis for noncomplex or low-risk balance sheets;

(2) Income simulation; and

(3) Net economic value.

8. Prudent internal controls must be established as permitted by the size, structure, and risk profile of the credit union.

9. Credit unions with large or complex balance sheets shall establish prudent risk mitigation processes which include:

a. A policy that provides for the use of outside parties to validate the tests and limits commensurate with the risk exposure and complexity of the credit union;

b. Interest rate risk measurement systems that report compliance with policy limits as shown both by risks to earnings and net economic value of equity under a variety of defined and reasonable interest rate scenarios;

c. The effect of changes in assumptions on interest rate risk exposure results such as the impact of slower or faster prepayments on earnings and economic value; and

d. Enhanced levels of separation between risk taking and risk assessment such as assignment of resources to separate the investments function from interest rate risk measurement, and interest rate risk monitoring and oversight.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-27
LIQUIDITY AND CONTINGENCY FUNDING PLANS

13-03-27-01. Policy requirements.

1. Any credit union that has assets of less than fifty million dollars shall maintain a basic written policy that provides a credit union board-approved framework for managing liquidity and a list of contingent liquidity sources that can be employed under adverse circumstances.

2. Any credit union that has assets of fifty million dollars or more shall establish and document a contingency funding plan that meets the requirements of subsection 4.

3. In addition to the requirement specified in subsection 2 to establish and maintain a contingency funding plan, any credit union that has assets of two hundred fifty million dollars or more shall establish and document access to at least one contingent federal liquidity source for use in times of financial emergency and distressed economic circumstances. These credit unions shall conduct advance planning and periodic testing to ensure contingent funding sources are readily available when needed. A credit union subject to this subsection may demonstrate access to a contingent federal liquidity source by:

   a. Maintaining regular membership in the central liquidity facility, as described in 12 CFR part 725;

   b. Maintaining membership in the central liquidity facility through an agent, as described in 12 CFR part 725; or

   c. Establishing borrowing access at the federal reserve discount window by filing the necessary lending agreements and corporate resolutions to obtain credit from a federal reserve bank pursuant to 12 CFR part 201.

4. A credit union shall have a written contingency funding plan commensurate with its complexity, risk profile, and scope of operations that sets out strategies for addressing liquidity shortfalls in emergency situations. The contingency funding plan may be a separate policy or may be incorporated into an existing policy such as an asset/liability policy, a funds management policy, or a business continuity policy. The contingency funding plan must address, at a minimum, the following:

   a. The sufficiency of the institution's liquidity sources to meet normal operating requirements as well as contingent events;

   b. The identification of contingent liquidity sources;

   c. Policies to manage a range of stress environments, identification of some possible stress events, and identification of likely liquidity responses to such events;

   d. Lines of responsibility within the institution to respond to liquidity events;

   e. Management processes that include clear implementation and escalation procedures for liquidity events; and

   f. The frequency the institution will test and update the plan.

5. A credit union is subject to the requirements of subsections 2 or 3 when two consecutive national credit union administration call reports show its assets to be at least fifty million dollars or two hundred fifty million dollars, respectively. A credit union has one hundred twenty days from the effective date of that second call report to meet the greater requirements.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

CHAPTER 13-03-28
LOAN WORKOUTS, LOAN MODIFICATIONS, AND NONACCRUAL POLICY

13-03-28-01. Definitions.

1. "Cash basis" method of income recognition is set forth in generally accepted accounting principles and means while a loan is in nonaccrual status, some or all of the cash interest payments received may be treated as interest income on a cash basis as long as the remaining recorded investment in the loan, after charge-off of identified losses, if any, is deemed to be fully collectible.

2. "Charge-off" means a direct reduction (credit) to the carrying amount of a loan carried at amortized cost resulting from uncollectability with a corresponding reduction (debit) of the allowance for loan and lease loss account. Recoveries of loans previously charged off should be recorded when received.

3. "Cost recovery" method of income recognition means equal amounts of revenue and expense are recognized as collections are made until all costs have been recovered, postponing any recognition of profit until that time.

4. "Credit grading system" means a formal process that identifies and assigns a relative credit score to each commercial loan as set forth under chapter 13-03-06.

5. "Deferral" means deferring a contractually due payment on a closed-end loan without affecting the other terms, including maturity, of the loan. The account is shown current upon granting the deferral.

6. "Extension" means extending monthly payments on a closed-end loan and rolling back the maturity by the number of months extended. The account is shown current upon granting the extension. If extension fees are assessed, they should be collected at the time of the extension and not added to the balance of the loan.

7. "In the process of collection" means collection of the loan is proceeding in due course either:

   a. Through legal action, including judgment enforcement procedures; or

   b. In appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status in the near future, generally within the next ninety days.

8. "Loan classifications" means all loans meeting the definition of substandard, doubtful, or loss in accordance with accepted industry and regulatory guidance and as assigned during examinations.

9. "New loan" means the terms of the revised loan are at least as favorable to the credit union, having terms are market-based, and profit driven, as the terms for comparable loans to other customers with similar collection risks who are not refinancing or restructuring a loan with the credit union, and the revisions to the original debt are more than minor.

10. "Past due" means a loan is determined to be delinquent in relation to its contractual repayment terms including formal restructures, and must consider the time value of money. Credit unions may use the following method to recognize partial payments on "consumer credit," which includes credit extended to individuals for household, family, and other personal expenditures, including credit cards, and loans to individuals secured by their personal residence, including home equity and home improvement loans. A payment equivalent to ninety percent or more of the contractual payment may be considered a full payment in computing past due status.

11. "Re-age" means returning a past due account to current status without collecting the total amount of principal, interest, and fees that are contractually due.

12. "Recorded investment in a loan" means the loan balance adjusted for any unamortized premium or discount and unamortized loan fees or costs, less any amount previously charged off, plus recorded accrued interest.

13. "Renewal" means underwriting a matured, closed-end loan generally at its outstanding principal amount and on similar terms.

14. "Rewrite" means significantly changing the terms of an existing loan, including payment amounts, interest rates, amortization schedules, or its final maturity.

15. "Total reserves" means, for the purpose of this section, net worth as defined in chapter 13-03-06 plus the allowance for loan and lease loss account.

16. "Troubled debt restructure" loans are as defined in generally accepted accounting principles.

17. "Well secured" means the loan is collateralized by:

    a. A perfected security interest in, or pledges of, real or personal property, including securities with an estimable value, less cost to sell, sufficient to recover the recorded investment in the loan, as well as a reasonable return on that amount; or

    b By the guarantee of a financially responsible party who has demonstrated support of the credit by making loan payments or injecting cash or otherwise improving the financial position of the business to allow it to make loan payments.

18. "Workout loans" include types of workout loans to borrowers in financial difficulties include re-agings, extensions, deferrals, renewals, or rewrites. Borrower retention programs, new loans unless used to restructure or pay existing loans, skip-a-pay programs or like loans are not encompassed within this definition.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-28-02. Loan workout policy and monitoring requirements.

1. The board and management shall adopt and adhere to an explicit written policy and standards that control the use of loan workouts, and establish controls to ensure the policy is consistently applied. These policies must:

    a. Be commensurate with the size and complexity of the credit union;

    b. Define eligibility requirements, under what conditions the credit union will consider a loan workout, including establishing limits on the number of times an individual loan may be modified;

c. Ensure credit union makes loan workout decisions based on the borrower's renewed willingness and ability to repay the loan;

d. Establish sound controls to ensure loan workout actions are appropriately structured;

e. Prohibit additional advances to finance unpaid interest or credit union fees. This is also known as capitalizing interest, and must be prohibited by policy. Advances to cover third party fees such as appraisals or property taxes are permissible;

f. Require documentation that demonstrates the borrower is willing and able to repay the loan; and

g. Require workout loans to be accurately classified; for commercial loans be risk rated with the credit union's credit grading system; be consistent with accepted industry and regulatory guidance, including federal financial institutions examination council's uniform retail classification and account management policy; and accurately identify loans for impairment testing consistent with generally accepted accounting principles.

2. Loan policy must require documented workout arrangements that consider and balance the best interests of both the borrower and the credit union.

3. Management and the board of directors shall implement comprehensive and effective risk management and internal controls. This must include:

a. Thresholds based on aggregate volume of loan workout activity which trigger enhanced reporting to the board of directors;

b. Monitoring of total loan classifications in relation to the credit union's total reserves;

c. A written charge-off policy that it is consistently applied and consistent with industry standards; and

d. A process capable of identifying, documenting, and aggregating any loan that is re-aged, extended, deferred, renewed, or rewritten, including the frequency and extent such action has been taken, and aggregate these loans by loan type.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-28-03. Past due status workout loans including troubled debt restructure past due status.

1. The past due status of all loans must be calculated consistent with loan contract terms, including amendments made to loan terms through a formal restructure. Credit unions shall report delinquency on the call report consistent with this policy.

2. Troubled debt restructure status must be determined and reported without the application of materiality threshold exclusions.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

13-03-28-04. Loan nonaccrual policy and procedures.

1. Policy or procedure must prohibit the accrual of interest or fees on any loan upon which principal or interest has been in default for a period of ninety days or more.

2. Policy or procedure must require loans to be placed in nonaccrual status if maintained on a cash or cost recovery basis under generally accepted accounting principles because of deterioration in the financial condition of the borrower, or for which payment in full of principal or interest is not expected.

3. Policy or procedure must allow nonaccrual noncommercial loan to be restored to accrual status when:

   a. Its past due status is less than ninety days, generally accepted accounting principles does not require it to be maintained on the cash or cost recovery basis, and the credit union is plausibly assured of repayment of the remaining contractual principal and interest within a reasonable period;

   b. When it otherwise becomes both well secured and in the process of collection; or

   c. The asset is a purchased impaired loan and it meets the criteria under generally accepted accounting principles for accrual of income under the interest method specified therein.

4. Policy or procedure must allow nonaccrual commercial loans to be restored to accrual status provided the following conditions are satisfied:

   a. The restructuring and any chargeoff taken on the loan are supported by a current, well documented credit evaluation of the borrower's financial condition and prospects for repayment under the revised terms.

   b. Repayment performance is demonstrated and would involve timely payments under the restructured loan's terms of principal and interest in cash or cash equivalents. In returning the member business workout loan to accrual status, sustained historical repayment performance for a reasonable time prior to the restructuring may be taken into account. Such a restructuring must improve the collectability of the loan in accordance with a reasonable repayment schedule and does not relieve the credit union from the responsibility to promptly charge off all identified losses.

5. After a formal restructure of a member business loan, if the restructured loan has been returned to accrual status, the loan otherwise remains subject to the nonaccrual standards of this rule. If any interest payments received while the member business loan was in nonaccrual status were applied to reduce the recorded investment in the loan the application of these payments to the loan's recorded investment must not be reversed and interest income must not be credited. Likewise, accrued but uncollected interest reversed or charged off at the point the member business workout loan was placed on nonaccrual status cannot be restored to accrual; it can only be recognized as income if collected in cash or cash equivalents from the member.

History: Effective January 1, 2019.
General Authority: NDCC 6-01-04
Law Implemented: NDCC 6-06-06

TITLE 33

STATE DEPARTMENT OF HEALTH

JANUARY 2019

CHAPTER 33-16-03.1

33-16-03.1-13. Public participation.

1. If the department determines a significant degree of public interest exists regarding new or expanding facilities, or significant revisions to a facility's nutrient management plan, it shall issue a public notice requesting comment on applications for both individual permits and general state animal feeding operation permits.

2. The department shall provide a period of not less than thirty days during which time interested persons may submit comments. The period of comment may be extended at the discretion of the department.

3. The public notice must be placed in the official county newspaper or other daily or weekly newspaper circulated in the area of the proposed animal feeding operation. In the case of draft general permits, the public notice will be placed in applicable official county newspapers. The department may also use any other reasonable means to provide the public notice information to parties potentially affected.

4. The public notice must include at least the following:

   a. Name, address, and telephone number of the agency issuing the public notice.

   b. Name and address of the applicant and a brief description of the application information, including the proposed location of the facility. The exception would be draft general permits for which there is no specific applicant.

   c. The date, time, and location of any scheduled public meeting or hearing.

   d. An explanation of how to view or obtain materials (e.g., copy of design plans) related to the application and the department's review.

   e. An explanation of how to submit comments.

5. The department shall send copies of the public notice to the applicant and to local governmental entities which have jurisdiction over the area where the facility is located or is proposed to be located.

6. The department shall hold a public meeting or hearing as it deems appropriate to allow additional public input or to provide information to the public concerning the department's review of the facility.

7. In making its final decision on the application or draft permit, the department shall consider all comments submitted within a timeframe specified in the public notice and all comments received at any public hearing. Within twenty days of the close of the public comment period, the applicant, if any, may submit a written response to the public comments. The department shall consider the applicant's response in making its final decision.

8. Pursuant to the requirements of this chapter and within sixty days of the applicant's response to the public comments, the department shall make a final determination as to whether the permit should be approved, approved with conditions, or denied.

9. The department shall notify the applicant in writing of its final determination and provide to the applicant a copy of the final permit, if issued. Upon request, other interested individuals may also obtain copies of the final permit.

10. Once finalized, information on general permits and their availability must be provided to potentially eligible or affected facilities.

11. The department may combine proceedings under this chapter with proceedings to issue a North Dakota pollutant discharge elimination system permit under chapter 33-16-01. The combined proceedings will be subject to the public participation procedures in chapter 33-16-01.

History: Effective December 1, 2004; amended effective January 7, 2005; October 1, 2018.
General Authority: NDCC 61-28-04
Law Implemented: NDCC 61-28-04

TITLE 33.1

DEPARTMENT OF ENVIRONMENTAL QUALITY

JANUARY 2019

CHAPTER 33.1-15-02

TABLE 1. AMBIENT AIR QUALITY STANDARDS

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Inhalable Particulates PM_{10}	150	micrograms per cubic meter, 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, as determined in accordance with 40 CFR 50, Appendix K, is equal to or less than one.
$PM_{2.5}$	12.0	micrograms per cubic meter annual arithmetic mean concentration. The standard is met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 12.0 micrograms per cubic meter.
	35	micrograms per cubic meter 24-hour average concentration. The standard is met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.
Sulfur Dioxide	0.075	parts per million (196 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.075 parts per million, as determined in accordance with 40 CFR 50, Appendix T.
	0.5	parts per million (1,309 micrograms per cubic meter of air) maximum 3-hour concentration, not to be exceeded more than once per calendar year.
Hydrogen Sulfide	10.0	parts per million (14 milligrams per cubic meter of air), maximum instantaneous (ceiling) concentration not to be exceeded.
	0.20	parts per million (280 micrograms per cubic meter of air), maximum 1-hour average concentration not to be exceeded more than once per month.
	0.10	parts per million (140 micrograms per cubic meter of air), maximum 24-hour average concentration not to be exceeded more than once per year.
	0.02	parts per million (28 micrograms per cubic meter of air), maximum arithmetic mean concentration averaged over three consecutive months.
Carbon Monoxide	9	parts per million (10 milligrams per cubic meter of air), maximum 8-hour concentration not to be exceeded more than once per year.
	35	parts per million (40 milligrams per cubic meter of air), maximum 1-hour concentration not to be exceeded more than once per year.
Ozone	~~0.075~~0.070	parts per million (~~147~~137 micrograms per cubic meter of air) daily maximum 8-hour average concentration. The standard is met when the 3-year average of the annual fourth-highest daily maximum 8-hour average concentration at an ambient air quality monitoring site is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR 50, Appendix P.

Air Contaminants	Standards (Maximum Permissible Concentrations)	
Nitrogen Dioxide	0.053	parts per million (100 micrograms per cubic meter of air), maximum annual arithmetic mean.
	0.100	parts per million (188 micrograms per cubic meter) 1-hour average concentration. The standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 0.100 parts per million, as determined in accordance with 40 CFR 50, Appendix S.
Lead	0.15	micrograms per cubic meter of air, arithmetic mean averaged over a 3-month rolling period. The standard is met when the maximum 3-month mean concentration for a 3-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.

History: Effective January 1, 2019.

33.1-15-14-02. 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 33.1-15-14-01 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 33.1-15-14-01.1, 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 33.1-15-13 or 33.1-15-15 or subpart B of section 33.1-15-22-03. 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 subdivision b of subsection 6 ~~of section 33.1-15-14-02~~ 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 subdivision b of subsection 6 ~~of section 33.1-15-14-02~~, 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 33.1-15-02-07 shall demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the national ambient air quality standards for sulfur oxides (sulfur dioxide) or the prevention of significant deterioration increments for sulfur dioxide. The owner or operator shall also demonstrate that the revised allowable emission rate will not violate any other requirement of this article or the Federal Clean Air Act. Requests for emission limit changes shall be subject to review by the public and the environmental protection agency in accordance with subsection 6.

4. **Submission of plans - Deficiencies in application.** As part of an application for a permit to construct, the department may require the submission of plans, specifications, siting information, emission information, descriptions and drawings showing the design of the installation or source, the manner in which it will be operated and controlled, the emissions expected from it, and the effects on ambient air quality. Any additional information, plans, specifications, evidence, or documentation that the department may require must be furnished upon request. Within twenty days of the receipt of the application, the department shall advise the owner or operator of the proposed source of any deficiencies in the application. In the event of a deficiency, the date of receipt of the application is the date upon which all requested information is received.

a. Determination of the effects on ambient air quality as may be required under this section must be based on the applicable requirements specified in the "Guideline on Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27711) as supplemented by the "North Dakota Guideline for Air Quality Modeling Analyses" (North Dakota state department of health, division of air quality). These documents are incorporated by reference.

b. When an air quality impact model specified in the documents incorporated by reference in subdivision a is inappropriate, the model may be modified or another model substituted provided:

(1) Any modified or nonguideline model must be subject to notice and opportunity for public comment under subsection 6.

(2) The applicant must provide to the department adequate information to evaluate the applicability of the modified or nonguideline model. Such information must include, but is not limited to, methods like those outlined in the "Interim Procedures for Evaluating Air Quality Models (Revised)" (United States environmental protection agency, office of air quality planning and standards, Research Triangle Park, North Carolina 27709).

(3) Written approval from the department must be obtained for any modification or substitution.

(4) Written approval from the United States environmental protection agency must be obtained for any modification or substitution prior to the granting of a permit under this chapter.

5. **Review of application - Standard for granting permits to construct.** The department shall review any plans, specifications, and other information submitted in application for a permit to construct and from such review shall, within ninety days of the receipt of the completed application, make the following preliminary determinations:

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

Contaminant	Averaging Time (hours)				
	Annual ($\mu g/m^3$)	24 ($\mu g/m^3$)	8 ($\mu g/m^3$)	3 ($\mu g/m^3$)	1 ($\mu g/m^3$)
SO_2	1.0	5		25	7.8
PM_{10}		5			
NO_2	1.0				7.5
CO			500		2000
$PM_{2.5}$	0.3	1.2			

b. Whether the proposed project will provide all necessary and reasonable methods of emission control. Whenever a standard of performance is applicable to the source, compliance with this criterion will require provision for emission control which will, at least, satisfy such standards.

6. **Public participation - Final action on application.**

a. The following source categories are subject to the public participation procedures under this subsection:

(1) Those affected facilities designated under chapter 33.1-15-13.

(2) New sources that will be required to obtain a permit to operate under section 33.1-15-14-06.

(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 33.1-15-15, the public participation procedures under section 33.1-15-15-01.2 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 33.1-15-15, 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 33.1-15-02 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 33.1-15-02-04.

(4) The exemptions listed in paragraphs 1, 2, and 3 do not apply to engines that are a utility unit as defined in section 33.1-15-21-08.1.

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 33.1-15-12.

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 33.1-15-04-02.

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 33.1-15-20 which are not a major source as defined in section 33.1-15-14-06.

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 33.1-15-15 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 33.1-15-15, the department shall follow the procedures established in chapter 33.1-15-15. 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 33.1-15-01-06 and enforcement of existing permit conditions are manifestly inappropriate.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-08, 23.1-06-09; S.L. 2017, ch. 199, § 21

33.1-15-14-06. Title V permit to operate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Any national ambient air quality standard or increment or visibility requirement under part C of title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the federal Clean Air Act.

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

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

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

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

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

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

j. "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

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

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

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

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

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

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

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

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

(a) For contaminants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons [9.07 metric tons] per year (tpy) or more of any hazardous air contaminant which has been listed pursuant to section 112(b) of the federal Clean Air Act, twenty-five tons [22.67 metric tons] per year or more of any combination of such hazardous air contaminants, or such lesser quantity as the administrator of the United States environmental protection agency may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

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

(2) A major stationary source of air contaminants, that directly emits or has the potential to emit, one hundred tons [90.68 metric tons] per year or more of any air contaminant subject to regulation (including any major source of fugitive emissions of any such contaminant, as determined by rule by the administrator of the United States environmental protection agency). For purposes of this definition, air contaminant subject to regulation does not include greenhouse gases as defined in

title 40 Code of Federal Regulations 86.1818-12(a). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

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

(b) Kraft pulp mills.

(c) Portland cement plants.

(d) Primary zinc smelters.

(e) Iron and steel mills.

(f) Primary aluminum ore reduction plants.

(g) Primary copper smelters.

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

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

(j) Petroleum refineries.

(k) Lime plants.

(l) Phosphate rock processing plants.

(m) Coke oven batteries.

(n) Sulfur recovery plants.

(o) Carbon black plants (furnace process).

(p) Primary lead smelters.

(q) Fuel conversion plants.

(r) Sintering plants.

(s) Secondary metal production plants.

(t) Chemical process plants.

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

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

(w) Taconite ore processing plants.

(x) Glass fiber processing plants.

(y) Charcoal production plants.

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

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

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

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

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

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

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

w. "Regulated air contaminant" means the following:

(1) Nitrogen oxides or any volatile organic compounds.

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

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

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

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

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

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

x. "Regulated contaminant" for fee calculation, which is used only for chapter 33.1-15-23, means any "regulated air contaminant" except the following:

(1) Carbon monoxide.

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

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

(4) Greenhouse gases.

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

z. "Responsible official" means one of the following:

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

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

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

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

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

(4) For affected sources:

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

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

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

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

cc. "Subject to regulation" means, for any air contaminant, that the air contaminant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation

codified by the administrator of the United States environmental protection agency in title 40 Code of Federal Regulations chapter I, subchapter C, that requires actual control of the quantity of emissions of that air contaminant, and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that air contaminant release from the regulated activity.

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

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

2. **Applicability.**

a. This section is applicable to the following sources:

(1) Any major source.

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

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

(4) Any affected source.

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

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

(1) All sources listed in subdivision a that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the federal Clean Air Act, are exempt from the obligation to obtain a title V permit until such time as the administrator of the United States environmental protection agency completes a rulemaking to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions.

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

(3) Any source listed as exempt from the requirement to obtain a permit under this section may opt to apply for a title V permit. Sources that are exempted by paragraphs 1 and 2 and which do not opt to apply for a title V permit to operate are subject to the requirements of section 33.1-15-14-03.

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

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

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

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

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

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

3. **Scope.** Nothing within this section shall relieve the owner or operator of a source of the requirement to obtain a permit to construct under section 33.1-15-14-02 or to comply with any other applicable standard or requirement of this article.

4. **Permit applications.**

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

(1) Timely application.

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

(b) Title V sources required to meet the requirements under section 112(g) of the federal Clean Air Act, or to have a permit to construct under section 33.1-15-14-02, shall file a complete application to obtain the title V permit or permit revision within twelve months after commencing operation. Where an existing title V permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

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

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

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

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

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

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

Particulate: 2 tons [1.81 metric tons] per year.

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

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

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

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

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

Ozone: 2 tons [1.81 metric tons] per year.

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

Volatile organic compounds: 2 tons [1.81 metric tons].

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

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

However, for insignificant activities or emissions units, a list of such activities or units must be included in the application. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under section 33.1-15-23-04. The application, shall, as a minimum, include the elements specified below:

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

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

(3) The following emissions-related information:

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

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

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

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

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

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

(g) Other information required by any applicable requirement including information related to stack height limitations developed pursuant to chapter 33.1-15-18.

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

(4) The following air pollution control requirements:

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

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

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

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

(7) Additional information as determined to be necessary by the department to define proposed alternative operating scenarios identified by the source pursuant to paragraph 9 of subdivision a of subsection 5 or to define permit terms and conditions implementing any alternative operating scenario under paragraph 9 of subdivision a of subsection 5 or implementing paragraph 2 of subdivision b of

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

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

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

(b) A description as follows:

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

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

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

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

(c) A compliance schedule as follows:

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

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

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

[4] For applicable requirements associated with a proposed alternative operating scenario, a statement that the source will meet such

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

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

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

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

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

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

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

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

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

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

5. **Permit content.**

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

(1) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. Such requirements and limitations may include approved replicable methodologies identified by the source in its title V permit application as approved

by the department, provided that no approved replicable methodology shall contravene any terms needed to comply with any otherwise applicable requirement or requirement of this section or circumvent any applicable requirement that would apply as a result of implementing the approved replicable methodology.

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

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

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

(2) Permit duration. For all sources, the term of the permit may not exceed five years. The permit expires on the date listed on the permit.

(3) Monitoring and related recordkeeping and reporting requirements.

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

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

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

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

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

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

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

[b] The dates analyses were performed;

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

[d] The analytical techniques or methods used;

[e] The results of such analyses; and

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

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

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

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

[2] Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The department shall define "prompt" in the permit consistent with chapter 33.1-15-01 and the applicable requirements.

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

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to title IV of the federal Clean Air Act, or the regulations promulgated thereunder, provided that such increases do not require a permit revision under any other applicable requirement.

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

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

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

(6) Provisions stating the following:

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

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

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

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

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

(7) A provision to ensure that the source pays fees to the department consistent with the fee schedule in chapter 33.1-15-23.

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

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

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

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

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

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

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

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

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

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

b. Federally enforceable requirements.

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

(2) Notwithstanding paragraph 1, the department shall specifically designate as not being federally enforceable under the federal Clean Air Act any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of subsections 6 and 7, or of this subsection, other than those contained in this subdivision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2] The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under paragraph 3 of subdivision a. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the federal Clean Air Act,

which prohibits knowingly making a false certification or omitting material information;

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

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

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

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

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

d. General permits.

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

(2) Title V sources that would qualify for a general permit must apply to the department for coverage under the terms of the general permit or must apply for a title V permit to operate consistent with subsection 4. The department may, in the general permit, provide for applications which deviate from the requirements of subsection 4, provided that such applications meet the requirements of title V of the federal Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under subdivision h of subsection 6, the department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

e. Temporary sources. The department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location

during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

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

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

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

f. Permit shield.

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

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

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

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

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

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

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

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

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

g. Emergency provision.

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

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

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

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

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

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards, or other requirements in the permit; and

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

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

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement and the malfunction notification required under subdivision b of subsection 2 of section 33.1-15-01-13 when a threat to health and welfare would exist.

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

a. Action on application.

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

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

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

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

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

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

(2) Except for applications received during the initial transitional period described in 40 CFR 70.4(b)(11) or under regulations promulgated under title IV or title V of the

federal Clean Air Act for the permitting of affected sources under the acid rain program, the department shall take final action on each permit application, including a request for permit modification or renewal, within eighteen months after receiving a complete application.

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

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

(5) The submittal of a complete application shall not affect the requirement that any source have a permit to construct under section 33.1-15-14-02.

b. Requirement for a permit.

(1) Except as provided in the following sentence, paragraphs 2 and 3, subparagraph e of paragraph 1 of subdivision e, and subparagraph e of paragraph 2 of subdivision e, no title V source may operate after the time that it is required to submit a timely and complete application under this section, except in compliance with a permit issued under this section. If a title V source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have a title V permit is not a violation of this section until the department takes final action on the permit application, except as noted in this subsection. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to paragraph 3 of subdivision a, and as required by paragraph 2 of subdivision a of subsection 4, the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application. For timely and complete renewal applications for which the department has failed to issue or deny the renewal permit before the expiration date of the previous permit, all the terms and conditions of the permit, including the permit shield that was granted pursuant to subdivision f of subsection 5 shall remain in effect until the renewal permit has been issued or denied.

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

(a) The changes are not modifications under chapters 33.1-15-12, 33.1-15-13, and 33.1-15-15 or title I of the federal Clean Air Act.

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

(c) A permit to construct under section 33.1-15-14-02 has been issued, if required.

(d) The facility provides the department and the administrator of the United States environmental protection agency with written notification at least seven days in advance of the proposed change. The written notification shall include a description of each change within the permitted facility, the date on which the

change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

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

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

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

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

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

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

(e) The changes are not modifications under chapters 33.1-15-12, 33.1-15-13, and 33.1-15-15 or any provision of title I of the federal Clean Air Act.

(f) A permit to construct under section 33.1-15-14-02 has been issued, if required.

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

c. Permit renewal and expiration.

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

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

d. Administrative permit amendments.

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

(a) Corrects typographical errors;

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

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

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

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

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

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

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

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

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

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request provided a permit to construct under section 33.1-15-14-02 has been issued, if required.

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

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

(1) Minor permit modification procedures.

(a) Criteria.

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

[a] Do not violate any applicable requirement;

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

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

[d] Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the federal Clean Air Act; and an alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the federal Clean Air Act;

[e] Are not modifications under chapters 33.1-15-12, 33.1-15-13, and 33.1-15-15 or any provision of title I of the federal Clean Air Act; and

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

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

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

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

[2] The source's suggested draft permit;

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

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

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

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

[1] Issue the permit modification as proposed;

[2] Deny the permit modification application;

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

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

(e) Source's ability to make change. A source may make the change proposed in its minor permit modification application only after it files such application and the department approves the change in writing. If the department allows the source to make the proposed change prior to taking action specified in items 1, 2, and 3 of subparagraph d, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

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

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

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

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

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

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

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

[2] The source's suggested draft permit.

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

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

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

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

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

(d) Timetable for issuance. The provisions of subparagraph d of paragraph 1 of subdivision e shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in items 1 through 4 of subparagraph d of paragraph 1 of subdivision e within one hundred eighty days of receipt of the application or fifteen days after the end of the administrator's forty-five-day review period under subdivision c of subsection 7, whichever is later.

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

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

(3) Significant modification procedures.

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

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

f. Reopening for cause.

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

(a) Additional applicable requirements under the federal Clean Air Act become applicable to a major title V source with a remaining permit term of three or more years. Such a reopening shall be completed not later than eighteen months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Transmission of information to the administrator.

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

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

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

b. Review by affected states.

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

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

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

d. Public petitions to the administrator of the United States environmental protection agency. If the administrator of the United States environmental protection agency does not object in writing under subdivision c, any person may petition the administrator of the United States environmental protection agency within sixty days after the expiration of the administrator's forty-five-day review period to make such objection. Any such petition

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

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

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

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

b. The department's failure to take final action on an application for a permit, permit renewal, or permit revision within the time frames referenced in this section shall be appealable in accordance with North Dakota Century Code section 28-32-42 ~~within thirty days after expiration of the applicable timeframes~~. A petition for judicial review may be filed any time before the department denies the permit or issues the final permit.

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

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

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

f. Petitions for judicial review of final permit actions may be filed after the deadline in North Dakota Century Code section 23.1-01-11, only if the petitions are based solely on grounds arising after the deadline for judicial review. Such petitions must be filed no later than thirty days after the new grounds for review arise.

9. **Enforcement.** The department may suspend, revoke, or terminate a permit for violations of this article, violation of any permit condition or for failure to respond to a notice of violation or any order issued pursuant to this article. A permit to operate which has been revoked or

terminated pursuant to this article must be surrendered forthwith to the department. No person may operate or cause the operation of a source if the department denies, terminates, revokes, or suspends a permit to operate.

10. **Compliance assurance monitoring.** Except as noted below, title 40 Code of Federal Regulations part 64 compliance assurance monitoring, as it exists on July 2, 2010, is incorporated by reference.

    a. "Administrator" means the department except for those duties that cannot be delegated by the United States environmental protection agency. For those duties that cannot be delegated, administrator means the department and the administrator of the United States environmental protection agency.

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

    c. "Permitting authority" means the department.

History: Effective January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09, 23.1-06-10; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-08, 23.1-06-09, 23.1-06-10; S.L. 2017, ch. 199, § 21

CHAPTER 33.1-15-15

33.1-15-15-01.2. 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~~2018, 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 33.1-15-14-02 and this chapter. When there is a conflict in the requirements between this chapter and section 33.1-15-14-02, the requirements of this chapter shall apply.

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

40 CFR 52.21(b)(1)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(2)	The following is added: For purposes of this definition, regulated NSR pollutant does not include greenhouse gases as defined in 40 CFR 86.1818-12(a).
40 CFR 52.21(b)(2)(iii)(a)	The following is deleted: Routine maintenance, repair and replacement shall include, but not be limited to, any activity(s) that meets the requirements of the equipment replacement provisions contained in paragraph (cc).
40 CFR 52.21(b)(3)(iii)(a)	The words "the administrator or other reviewing authority" are replaced with "the department or the administrator of the United States environmental protection agency".
40 CFR 52.21(b)	The following is added:

(14)

(v) The department shall provide a list of baseline dates for each contaminant for each baseline area.

40 CFR 52.21(b)(15) The following is added:

(iv) North Dakota is divided into two intrastate areas under section 107(d)(1)(D) or (E) of the Federal Clean Air Act [Pub. L. 95-95]: the Cass County portion of region no. 130, the metropolitan Fargo-Moorhead interstate air quality control region; and region no. 172, the North Dakota intrastate air quality control region (the remaining fifty-two counties).

40 CFR 52.21(b)(23)(i) The following is added:

Greenhouse gases: 75,000 tpy CO_2 equivalent.

40 CFR 52.21(b)(22) The following is added:

Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

40 CFR 52.21(b)(29) The following is added:

This term does not include effects on integral vistas.

40 CFR 52.21(b)(30) The term section 51.100(s) of this chapter is deleted and replaced with "40 CFR 51.100(s)".

40 CFR 52.21(b)(43) The paragraph is deleted in its entirety and replaced with the following:

Prevention of significant deterioration (PSD) program means a major source preconstruction permit program administered by the department that has been approved by the administrator of the United States environmental protection agency and incorporated into the state implementation plan pursuant to 40 CFR 51.166 to implement the requirements of that section. Any permit issued by the department under the program is a major NSR permit.

40 CFR 52.21(b)(48)(ii) The following words are deleted:
"by the administrator for a permit required under this section or".

40 CFR 52.21(b)(49) The following words are deleted "administrator in subchapter C of this chapter" and replaced with the following:

Administrator of the United States environmental protection agency in title 40, Code of Federal Regulations, chapter I subchapter C.

40 CFR 52.21(b)(49)(i) "§ 86.181-12(a) of this chapter" is deleted and replaced with: 40 CFR 86.1818-12(a).

40 CFR 52.21(b)(49)(ii)(a) "Table A-1 to subpart A of part 98 of this chapter" is deleted and replaced with the following: 40 CFR 98, subpart A, table A-1.

The following is deleted:

For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products,

byproducts, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

40 CFR 52.21(b)(50)(i)(c) This paragraph is deleted in its entirety and replaced with the following:

Nitrogen oxides are a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

40 CFR 52.21(b)(50)(i)(d) This paragraph is deleted in its entirety and replaced with the following:

Volatile organic compounds are not a precursor to $PM_{2.5}$ in any attainment or unclassifiable areas.

40 CFR 52.21(b)(51) The paragraph is deleted in its entirety and replaced with the following:

Reviewing authority means the department.

40 CFR 52.21(b)(53) This paragraph is deleted in its entirety and replaced with the following:

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

40 CFR 52.21(b)(54) This paragraph is deleted in its entirety and replaced with the following:

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

40 CFR 52.21(b)(58) This paragraph is deleted in its entirety.

40 CFR 52.21(d) The paragraph is deleted and replaced with the following:

No concentration of a contaminant shall exceed:

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

(2) The concentration permitted by the ambient air quality standards in chapter 33.1-15-02.

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 33.1-15-18.

40 CFR 52.21(i) The following subparagraphs are added:

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

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

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

(1) Any national ambient air quality standard or any standard in chapter 33.1-15-02.

40 CFR 52.21(l)(1)(i) 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~~July 1, 2018). 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 33.1-15-02; 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 January 1, 2019.
General Authority: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 1
Law Implemented: NDCC 23.1-06-04, 23.1-06-09; S.L. 2017, ch. 199, § 21

TITLE 75

DEPARTMENT OF HUMAN SERVICES

JANUARY 2019

CHAPTER 75-01-03
APPEALS AND HEARINGS

75-01-03-02. Vocational rehabilitation determinations - Administrative review procedures - Appeals.

Repealed effective January 1, 2019.

~~1. As used in this section:~~

~~a. "Claimant" means an applicant or eligible individual who is dissatisfied with any determination made by a vocational rehabilitation counselor or coordinator concerning the furnishing or denial of vocational rehabilitation services and who has made a timely request for review of the determination.~~

~~b. "Division" means the vocational rehabilitation division of the department.~~

~~c. "Party" or "parties" refers to the division and to a claimant.~~

~~d. "Request for review" means an appeal or a request for informal resolution made under this section.~~

~~2. A request for review is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied.~~

~~3. Informal resolution may be requested by a claimant. Informal resolution may be provided if it appears likely to be achieved within twenty days or if the parties agree to a delay in the hearing of the claimant's appeal. If informal resolution is not achieved and the parties do not agree to a delay, the hearing of the claimant's appeal must be conducted within forty-five days of the filing date of the claimant's request for review. An informal resolution is achieved when the parties so agree in writing.~~

~~4. A hearing officer must be selected:~~

~~a. From a pool of qualified, impartial hearing officers identified jointly by the department and the rehabilitation advisory council; and~~

~~b. (1) On a random basis; or~~

~~(2) By agreement of the parties.~~

~~5. The hearing officer must conduct an appeal hearing within forty-five days of the filing date of the claimant's request for review, unless informal resolution is achieved or the parties agree to a delay.~~

~~6. a. Except as provided in subdivision b, the division may not suspend, reduce, or terminate services provided under an individual written rehabilitation program pending final determination of the claimant's request for review.~~

~~b. The division may suspend, reduce, or terminate services provided under an individual written rehabilitation program:~~

(1) If the claimant so requests; or

(2) The agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the claimant.

7. The hearing officer shall recommend a decision based on the provisions of the Vocational Rehabilitation Act of 1973, as amended [29 U.S.C. 701, et seq.], the approved vocational rehabilitation state plan, federal and state vocational rehabilitation regulations and policies, and article 75-08, and shall provide to the claimant or, where appropriate, the claimant's representative, and to the director of the division, a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing. The recommendation of the hearing officer becomes the decision of the division unless, within twenty days of issuance of the hearing officer's recommended decision, the director of the division notifies the claimant, in writing, of the director's intent to review the recommendation.

8. Prior to deciding to review the hearing officer's recommended decision under subsection 7, the director may secure assistance or advice from staff assistants without the communication of advice or assistance being treated as ex parte communication in violation of North Dakota Century Code section 28-32-37, if the assistants do not furnish, augment, diminish, or modify the evidence in the record.

9. If the director decides to review the hearing officer's recommended decision under subsection 7, the director must first afford each party an opportunity to submit additional evidence and information relevant to a final decision. Any party who wishes to submit additional relevant evidence and information must transmit that evidence and information, or an abstract thereof, to the other party and to the director within five days after notice of the director's intent to review the hearing officer's recommended decision. Each party may, within five days after mailing or delivery of the evidence, information, or abstract provided by the other party, request an opportunity to provide the party's own evidence or information in a hearing to be called on at least ten days' notice, all pursuant to North Dakota Century Code section 28-32-07.

10. The director may overturn or modify a hearing officer's recommendation that supports the position of the claimant if the director concludes, based on clear and convincing evidence, that the recommendation is clearly erroneous because it is contrary to the Vocational Rehabilitation Act of 1973, as amended [29 U.S.C. 701, et seq.], the approved vocational rehabilitation state plan, federal or state vocational rehabilitation regulations and policies, or article 75-08.

11. Within thirty days of providing notice of intent to review the hearing officer's recommended decision, the director must make and provide to the parties a notice of decision.

12. The hearing officer or the director may grant reasonable extensions of time for good cause shown by either party, except that:

a. The hearing officer may extend the time for conducting an appeal hearing beyond forty-five days of the filing date of the claimant's request for review only if the parties are engaged in informal resolution and agree to the extension;

b. The twenty-day period, within which the director must notify the claimant of the director's intent to review the hearing officer's recommended decision, may not be extended; and

c. The thirty-day period, within which a dissatisfied claimant may request review, may not be extended.

13. The director may not delegate responsibility to make any final decision to any other person.

~~**History:** Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995.~~
~~**General Authority:** NDCC 28-32-02, 50-06-05.1, 50-06.1-04~~
~~**Law Implemented:** NDCC 50-06-16, 50-06.1-10~~

75-01-03-18. Withdrawal or abandonment.

1. An appeal may not be dismissed without hearing unless:

   a. The claimant withdraws or abandons the appeal; or

   b. The department reverses the decision appealed without a hearing~~; or~~

   ~~c. Informal resolution of a vocational rehabilitation request for review is achieved~~.

2. A withdrawal occurs when the hearing officer is notified by the claimant that the claimant no longer wishes to have a hearing.

3. An abandonment occurs when:

   a. The claimant or the claimant's authorized representative fails to appear at the hearing without good cause; or

   b. The claimant cannot be located through the claimant's last address of record, or through the claimant's authorized representative, and such inability to locate the claimant precludes the scheduling of a hearing.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018; January 1, 2019.
General Authority: NDCC 28-32-02, 50-06-16
Law Implemented: NDCC 50-06-05.1

75-01-03-21. Submission of proposed decision.

After the hearing has been closed, the hearing officer shall issue a recommended decision for review by the appeals supervisor and submission to the executive director~~,~~ or the executive director's designee~~, or the director of vocational rehabilitation~~. The recommended decision must include a statement of the facts and of the statutes, regulations, rules, or policies involved and the reasoning that supports the recommended decision.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 50-06-05.1

75-01-03-22. Decision by department.

1. The decision of the department must be made by the executive director~~,~~ or the executive director's designee~~, except in appeals from vocational rehabilitation decisions. In vocational rehabilitation matters, the decision must be made by the director of vocational rehabilitation, who shall notify the executive director of the decision~~.

2. The executive director, or the executive director's designee, after receiving the hearing officer's recommended decision may:

   a. Adopt the recommended decision in its entirety;

   b. Decide the matter on the record; or

c. Order another hearing to be conducted.

3. Prior to taking action under subsection 2, the executive director, or the executive director's designee, may secure assistance or advice from staff assistants:

   a. Without the communication of advice or assistance being treated as an ex parte communication in violation of North Dakota Century Code section 28-32-37, if the assistants do not furnish, augment, diminish, or modify the evidence in the record; or

   b. After transmitting the relevant information or evidence, or an abstract thereof, to each party of record in the appeal, and affording each party an opportunity to examine the information, evidence, or abstract, and to present the party's own information or evidence in a hearing to be called on at least ten days' notice, all pursuant to North Dakota Century Code section 28-32-07, if the communication of advice or assistance furnishes, augments, diminishes, or modifies the evidence in the record.

4. For purposes of this section, staff communications that analyze the correct application of law, rule, regulation, or policy to the evidence in the record do not furnish, augment, diminish, or modify the evidence in the record and do not constitute relevant information or evidence that require notice of an ex parte communication pursuant to North Dakota Century Code section 28-32-37 or furnishing a copy of the advice or assistance to each party of record in the proceeding pursuant to North Dakota Century Code section 28-32-07.

5. The decision rendered for the department must be in writing. It must include a statement of the facts and of the statutes, regulations, rules, or policies involved and the reasoning which supports the decision.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; January 1, 2019.
General Authority: NDCC 28-32-02, 50-06-16
Law Implemented: NDCC 50-06-05.1

75-01-03-23. Notice of decision.

1. After a decision is rendered by the ~~director of vocational rehabilitation or the~~ executive director or the executive director's designee, the appeals supervisor shall mail a copy to the claimant and the county agency, nursing facility, or division of the department that made the determination under appeal. The notice of decision must also contain a statement explaining the right to request a rehearing or reconsideration unless the decision is itself a decision on rehearing or reconsideration.

2. The notice may be mailed by certified mail, return receipt requested, by certified mail, or by regular mail. If notice is given by certified mail without return receipt or by regular mail, an affidavit of mailing indicating to whom the order was mailed must be prepared.

History: Effective September 1, 1979; amended effective January 1, 1984; February 1, 1995; April 1, 2018; January 1, 2019.
General Authority: NDCC 28-32-02, 50-06-16
Law Implemented: NDCC 50-06-05.1

CHAPTER 75-02-04.1

75-02-04.1-01. Definitions.

1. "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.

2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.

3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from public assistance programs that are means tested or provided in the form of subsidy payments made to adoptive parents.

4. a. "Gross income" means income from any source, in any form, but does not mean:

   (1) Benefits received from public assistance programs that are means tested such as the temporary assistance for needy families, supplemental security income, and supplemental nutrition assistance programs, or that are provided in the form of subsidy payments made to adoptive parents;

   (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:

      (a) That benefit may be liquidated; and

      (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty;

   (3) Child support payments;

   (4) Atypical overtime wages or nonrecurring bonuses over which the employee does not have significant influence or control;

   (5) Overseas housing-related allowances paid to an obligor who is in the military to the extent those housing-related allowances exceed the housing allowance in effect at the Minot air force base; or

   (6) Nonrecurring capital gains.

   b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.

   c. For purposes of this subsection, income tax due or paid is not an income tax penalty.

5. "In-kind income" means the receipt from employment or income-producing activity of any valuable right, property or property interest, other than money or money's worth, including

forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.

6. "Net income" means total gross annual income less:

   a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to federal income tax and reduced by deductions allowed in arriving at adjusted gross income under the Internal Revenue Code, and applying:

      (1) The standard deduction for the tax filing status of single; and

      (2) ~~One exemption for the obligor;~~

      ~~(3) (a) One additional exemption for each child, as defined in this section, that the obligor is allowed to claim pursuant to a court order unless the obligor and obligee alternate claiming the exemption for the child pursuant to the court order, in which case, an amount equal to one-half of the exemption; and~~

      ~~(b) For each child, as defined in this section, for whom there is no court order allocating the exemption or for whom it is unknown whether there is such an order, an amount equal to one-half of the exemption if that child is actually claimed on a disclosed tax return or an amount equal to one-half of the exemption if a tax return is not disclosed; and~~

      ~~(4)~~ Tax tables for a single individual for the most recent year published by the internal revenue service~~, reduced by:~~

      ~~(a) One child tax credit for each child's exemption considered under paragraph 3, provided such child is a qualifying child for purposes of the child tax credit; and~~

      ~~(b) An amount equal to one-half of the child tax credit for each child for whom one-half of an exemption is considered under paragraph 3; provided the child is a qualifying child for purposes of the child tax credit~~;

   b. A hypothetical state income tax obligation equal to ~~fourteen~~eleven percent of the amount determined under subdivision a ~~without reduction for child tax credits~~;

   c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, Medicare, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, Medicare, or self-employment tax under the Internal Revenue Code;

   d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, including coverage for dental and vision care, intended to afford coverage for the child or children for whom support is being sought, determined by:

      (1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:

         (a) Reducing the premium payment by the cost for single coverage for the obligor;

         (b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and

(c) Multiplying the result times the number of insured children for whom support is being sought; or

(2) If the cost of single coverage for the obligor is not known:

(a) Dividing the payment by the total number of persons covered; and

(b) Multiplying the result times the number of insured children for whom support is being sought;

e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;

f. Union dues and occupational license fees if required as a condition of employment;

g. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;

h. Subject to documentation, unreimbursed employee expenses for:

(1) Special equipment or clothing required as a condition of employment:

(2) Lodging expenses, not exceeding ninety-three dollars per night, incurred when engaged in travel required as a condition of employment ~~(limited to eighty-three dollars per night)~~; or

(3) Noncommuting mileage incurred for driving a personal vehicle between work locations when required as a condition of employment, computed at the rate of fifty-six cents per mile, less any actual mileage reimbursement from the employer; and

i. Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.

7. "Obligee" includes, for purposes of this chapter, an obligee as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support on behalf of a child.

8. "Obligor" includes, for purposes of this chapter, an obligor as defined in North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.

9. "Parent with primary residential responsibility" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of descriptions such as "shared" or "joint" parental rights and responsibilities given in relevant judgments, decrees, or orders.

10. "Self-employment" means employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.

11. "Split parental rights and responsibilities" means a situation where the parents have more than one child in common, and where each parent has primary residential responsibility for at least one child.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-02. Determination of support amount - General instructions.

1. Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care. Calculation of a child support obligation under section 75-02-04.1-08.2 does not preclude a court from apportioning specific expenses related to the care of the child, such as child care expenses and school activity fees, between the parents. An apportionment under this subsection is in addition to the child support amount determined by application of this chapter.

2. Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.

3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.

4. The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.

5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.

6. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.

7. Income must be sufficiently documented through the use of tax returns, current wage statements, and other information to fully apprise the court of all gross income. Where gross income is subject to fluctuation, regardless of whether the obligor is employed or self-employed, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.

8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child support obligation have changed in the recent past or are very likely to change in the near future, consideration may be given to the new or likely future circumstances.

9. ~~Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.~~

~~10.~~ Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined. If a child support order includes an adjustment for extended parenting time under section 75-02-04.1-08.1, the order must specify the number of parenting ~~nights~~time overnights.

~~11.~~10. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period. The court may

order the obligee to reimburse the obligor for any overpayment that results from the credit provided in this subsection.

~~12.~~11. No amount may be deducted to determine net income unless that amount is included in gross income.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; October 1, 2008; July 1, 2011; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-08. Income of spouse.

The income and financial circumstances of the spouse of an obligor ~~should~~may not be considered as income for child support purposes unless the spouse's income and financial circumstances are, to a significant extent, subject to control by the obligor as where the obligor is a principal in a business employing the spouse.

History: Effective February 1, 1991; amended effective January 1, 1995; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-08.1. Adjustment for extended parenting time.

1. For purposes of this section, "extended parenting time" means parenting time between an obligor and a child living with an obligee scheduled by court order to exceed ~~sixty of ninety consecutive nights or~~ an annual total of one hundred ~~sixty-four nights~~overnights.

2. Notwithstanding any other provision of this chapter and as limited by subsection 3, if a court order provides for extended parenting time between an obligor and a child living with an obligee, the support obligation presumed to be the correct child support amount due on behalf of all children of the obligor living with the obligee must be determined under this subsection.

   a. Determine the amount otherwise due under this chapter from the obligor for those children.

   b. Divide the amount determined under subdivision a by the number of those children.

   c. For each child, multiply the number of that child's parenting time ~~nights~~overnights times .32 and subtract the resulting amount from three hundred sixty-five.

   d. Divide the result determined under subdivision c by three hundred sixty-five.

   e. Multiply the amount determined under subdivision b times each decimal fraction determined under subdivision d.

   f. Total all amounts determined under subdivision e.

3. An adjustment for extended parenting time is not authorized if the parents of a child for whom support is being determined have equal residential responsibility according to section 75-02-04.1-08.2.

History: Effective August 1, 1999; amended effective July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(12); 42 USC 667

75-02-04.1-09. Criteria for rebuttal of guideline amount.

1. The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:

    a. Except as provided in subdivision m of subsection 2, the subsistence needs, work expenses, and daily living expenses of the obligor; or

    b. Except as provided for in subdivision n of subsection 2, the income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a parent with primary residential responsibility.

2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:

    a. The increased need if support for more than six children is sought in the matter before the court;

    b. The increased ability of an obligor, with a monthly net income which exceeds twenty-five thousand dollars, to provide additional child support based on demonstrated needs of the child, including, if applicable, needs arising from activities in which a child participated while the child's family was intact;

    c. The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;

    d. The increased needs of children with disabling conditions or chronic illness;

    e. The increased needs of children age twelve and older;

    f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;

    g. The increased ability of an obligor, whose net income has been substantially reduced as a result of depreciation and to whom income has been imputed under section 75-02-04.1-07, to provide child support;

    h. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;

    i. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;

    j. The reduced ability of an obligor who is responsible for all parenting-time expenses to provide support due to travel expenses incurred predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered parenting time and, when such history is available, actual expenses and practices of the parties;

    k. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed

expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

l. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:

(1) Exceed ten percent of the obligor's gross income;

(2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;

(3) Are not subject to payment or reimbursement from any source except the obligor's income; and

(4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor.

m. The reduced ability of the obligor to provide support when the obligor is in the military, is on a temporary duty assignment, and must maintain two households as a result of the assignment; ~~or~~

n. The reduced needs of the child to support from the obligor in situations where the net income of the obligee is at least three times higher than the net income of the obligor; or

o. The improved convenience to the parents, and negligible impact to the child, of a nominal increase in the child support obligation of the parent with the smaller obligation as determined under section 75-02-04.1-08.2, not to exceed seventy-five dollars per month, in order for the obligation of each parent to be equal prior to application of the payment offset provided in that section and eliminate any net amount being due except during months when the obligation is assigned to a government agency.

3. Assets may not be considered under subdivisions h and i of subsection 2, to the extent they:

a. Are exempt under North Dakota Century Code section 47-18-01;

b. Consist of necessary household goods and furnishings; or

c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.

4. For purposes of subdivision i of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:

a. The transaction occurred after the birth of a child entitled to support;

b. The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and

c. The obligor's income is less than it likely would have been if the transaction had not taken place.

5. For purposes of subdivision k of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.

6. For purposes of subdivisions a through f and subdivision o of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter. When

section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

7. For purposes of subdivisions g through m of subsection 2, any adjustment shall be made to the obligor's net income.

8. For purposes of subdivision n of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter after taking into consideration the proportion by which the obligee's net income exceeds the obligor's net income. When section 75-02-04.1-03 or 75-02-04.1-08.2 applies, the adjustment must be made to the parent's obligation before the lesser obligation is subtracted from the greater obligation.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003; July 1, 2008; April 1, 2010; July 1, 2011; September 1, 2015; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

75-02-04.1-10. Child support amount.

The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

Obligor's Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
~~700~~800 or less	0	0	0	0	0	0
~~800~~	~~160~~	~~195~~	~~229~~	~~256~~	~~283~~	~~309~~
900	~~186~~90	~~226~~126	~~267~~171	~~298~~198	~~329~~234	~~361~~261
1000	~~212~~140	~~258~~183	~~304~~232	~~340~~265	~~376~~305	~~412~~337
1100	~~238~~190	~~290~~240	~~341~~293	~~382~~332	~~423~~375	~~463~~414
1200	~~264~~240	~~321~~296	~~379~~355	~~424~~399	~~469~~446	~~515~~490
1300	290	353	416	466	516	566
1400	316	385	453	508	563	617
1500	342	416	491	550	609	669
1600	368	448	528	592	656	720
1700	384	476	562	630	696	761
1800	400	505	596	668	736	803
1900	416	533	631	706	776	844
2000	431	562	665	744	816	885
2100	447	590	699	781	856	926
2200	463	619	733	819	896	968
2300	479	647	767	857	936	1009
2400	495	676	802	895	976	1050
2500	511	704	836	933	1017	1091
2600	527	733	870	971	1057	1133

2700	542	761	904	1009	1097	1174
2800	558	789	939	1047	1137	1215
2900	574	818	973	1084	1177	1257
3000	590	846	1007	1122	1217	1298
3100	606	875	1041	1160	1257	1339
3200	622	903	1075	1198	1297	1380
3300	637	932	1110	1236	1337	1422
3400	653	960	1144	1274	1377	1463
3500	669	989	1178	1312	1417	1504
3600	685	1017	1212	1350	1457	1545
3700	701	1045	1246	1387	1497	1587
3800	717	1074	1281	1425	1537	1628
3900	733	1102	1315	1463	1577	1669
4000	748	1131	1349	1501	1617	1710
4100	764	1159	1383	1539	1658	1752
4200	780	1188	1417	1577	1698	1793
4300	796	1216	1452	1615	1738	1834
4400	812	1245	1486	1653	1778	1876
4500	828	1273	1520	1691	1818	1917
4600	844	1302	1554	1728	1858	1958
4700	859	1330	1589	1766	1898	1999
4800	875	1358	1623	1804	1938	2041
4900	891	1387	1657	1842	1978	2082
5000	907	1415	1691	1880	2018	2123
5100	923	1444	1725	1918	2058	2164
5200	939	1472	1760	1956	2098	2206
5300	954	1501	1794	1994	2138	2247
5400	970	1529	1828	2031	2178	2288
5500	986	1558	1862	2069	2218	2330
5600	1002	1586	1896	2107	2258	2371
5700	1018	1614	1931	2145	2298	2412
5800	1034	1643	1965	2183	2339	2453
5900	1050	1671	1999	2221	2379	2495
6000	1065	1700	2033	2259	2419	2536
6100	1081	1728	2067	2297	2459	2577
6200	1097	1757	2102	2334	2499	2618
6300	1113	1785	2136	2372	2539	2660

6400	1129	1814	2170	2410	2579	2701
6500	1145	1842	2204	2448	2619	2742
6600	1161	1871	2239	2486	2659	2784
6700	1176	1899	2273	2524	2699	2825
6800	1192	1927	2307	2562	2739	2866
6900	1208	1956	2341	2600	2779	2907
7000	1224	1984	2375	2638	2819	2949
7100	1240	2013	2410	2675	2859	2990
7200	1256	2041	2444	2713	2899	3031
7300	1271	2070	2478	2751	2939	3072
7400	1287	2098	2512	2789	2979	3114
7500	1303	2127	2546	2827	3020	3155
7600	1319	2155	2581	2865	3060	3196
7700	1335	2183	2615	2903	3100	3237
7800	1351	2212	2649	2941	3140	3279
7900	1367	2240	2683	2978	3180	3320
8000	1382	2269	2717	3016	3220	3361
8100	1398	2297	2752	3054	3260	3403
8200	1414	2326	2786	3092	3300	3444
8300	1430	2354	2820	3130	3340	3485
8400	1446	2383	2854	3168	3380	3526
8500	1462	2411	2888	3206	3420	3568
8600	1478	2440	2923	3244	3460	3609
8700	1493	2468	2957	3281	3500	3650
8800	1509	2496	2991	3319	3540	3691
8900	1525	2525	3025	3357	3580	3733
9000	1541	2553	3060	3395	3620	3774
9100	1557	2582	3094	3433	3661	3815
9200	1573	2610	3128	3471	3701	3857
9300	1588	2639	3162	3509	3741	3898
9400	1604	2667	3196	3547	3781	3939
9500	1620	2696	3231	3585	3821	3980
9600	1636	2724	3265	3622	3861	4022
9700	1652	2752	3299	3660	3901	4063
9800	1668	2781	3333	3698	3941	4104
9900	1684	2809	3367	3736	3981	4145
10000	1699	2838	3402	3774	4021	4187

10100	1715	2847	3412	3785	4034	4202
10200	1730	2857	3423	3797	4047	4218
10300	1745	2866	3434	3808	4061	4233
10400	1760	2875	3444	3820	4074	4248
10500	1775	2885	3455	3831	4087	4264
10600	1789	2894	3466	3843	4100	4279
10700	1804	2904	3476	3854	4113	4295
10800	1819	2913	3487	3866	4127	4310
10900	1833	2923	3498	3878	4140	4325
11000	1848	2932	3508	3889	4153	4341
11100	1863	2941	3519	3901	4166	4356
11200	1877	2951	3529	3912	4179	4372
11300	1892	2960	3540	3924	4193	4387
11400	1906	2970	3551	3935	4206	4403
11500	1921	2979	3561	3947	4219	4418
11600	1935	2988	3572	3958	4232	4433
11700	1949	2998	3583	3970	4245	4449
11800	1964	3007	3593	3981	4258	4464
11900	1978	3017	3604	3993	4272	4480
12000	1992	3026	3615	4004	4285	4495
12100	2006	3035	3625	4016	4298	4511
12200	2020	3045	3636	4027	4311	4526
12300	2034	3054	3647	4039	4324	4541
12400	2048	3064	3657	4050	4338	4557
12500	2063	3073	3668	4062	4351	4572
12600	2076	3083	3679	4073	4364	4588
12700	2090	3092	3689	4085	4377	4603
12800	2104	3101	3700	4096	4390	4618
12900	2118	3111	3711	4108	4404	4634
13000	2132	3120	3721	4119	4417	4649
13100	2146	3130	3732	4131	4430	4665
13200	2160	3139	3743	4142	4443	4680
13300	2173	3148	3753	4154	4456	4696
13400	2187	3158	3764	4165	4469	4711
13500	2201	3167	3775	4177	4483	4726
13600	2214	3177	3785	4188	4496	4742
13700	2228	3186	3796	4200	4509	4757

13800	2241	3196	3806	4211	4522	4773
13900	2255	3205	3817	4223	4535	4788
14000	2268	3214	3828	4234	4549	4803
14100	2281	3224	3838	4246	4562	4819
14200	2295	3233	3849	4257	4575	4834
14300	2308	3243	3860	4269	4588	4850
14400	2321	3252	3870	4280	4601	4865
14500	2335	3261	3881	4292	4615	4881
14600	2348	3271	3892	4303	4628	4896
14700	2361	3280	3902	4315	4641	4911
14800	2374	3290	3913	4326	4654	4927
14900	2387	3299	3924	4338	4667	4942
15000	2400	3308	3934	4349	4681	4958
15100	2413	3318	3945	4361	4694	4973
15200	2426	3327	3956	4372	4707	4989
15300	2439	3337	3966	4384	4720	5004
15400	2452	3346	3977	4395	4733	5019
15500	2465	3356	3988	4407	4746	5035
15600	2477	3365	3998	4418	4760	5050
15700	2490	3374	4009	4430	4773	5066
15800	2503	3384	4020	4442	4786	5081
15900	2515	3393	4030	4453	4799	5096
16000	2528	3403	4041	4465	4812	5112
16100	2541	3412	4051	4476	4826	5127
16200	2553	3421	4062	4488	4839	5143
16300	2566	3431	4073	4499	4852	5158
16400	2578	3440	4083	4511	4865	5174
16500	2591	3450	4094	4522	4878	5189
16600	2603	3459	4105	4534	4892	5204
16700	2615	3468	4115	4545	4905	5220
16800	2628	3478	4126	4557	4918	5235
16900	2640	3487	4137	4568	4931	5251
17000	2652	3497	4147	4580	4944	5266
17100	2664	3506	4158	4591	4958	5282
17200	2676	3516	4169	4603	4971	5297
17300	2688	3525	4179	4614	4984	5312
17400	2700	3534	4190	4626	4997	5328

17500	2713	3544	4201	4637	5010	5343
17600	2724	3553	4211	4649	5023	5359
17700	2736	3563	4222	4660	5037	5374
17800	2748	3572	4233	4672	5050	5389
17900	2760	3581	4243	4683	5063	5405
18000	2772	3591	4254	4695	5076	5420
18100	2784	3600	4265	4706	5089	5436
18200	2796	3610	4275	4718	5103	5451
18300	2807	3619	4286	4729	5116	5467
18400	2819	3629	4297	4741	5129	5482
18500	2831	3638	4307	4752	5142	5497
18600	2842	3647	4318	4764	5155	5513
18700	2854	3657	4328	4775	5169	5528
18800	2865	3666	4339	4787	5182	5544
18900	2877	3676	4350	4798	5195	5559
19000	2888	3685	4360	4810	5208	5574
19100	2899	3694	4371	4821	5221	5590
19200	2911	3704	4382	4833	5235	5605
19300	2922	3713	4392	4844	5248	5621
19400	2933	3723	4403	4856	5261	5636
19500	2945	3732	4414	4867	5274	5652
19600	2956	3741	4424	4879	5287	5667
19700	2967	3751	4435	4890	5300	5682
19800	2978	3760	4446	4902	5314	5698
19900	2989	3770	4456	4913	5327	5713
20000	3000	3779	4467	4925	5340	5729
20100	3011	3789	4478	4936	5353	5744
20200	3022	3798	4488	4948	5366	5760
20300	3033	3807	4499	4959	5380	5775
20400	3044	3817	4510	4971	5393	5790
20500	3055	3826	4520	4982	5406	5806
20600	3065	3836	4531	4994	5419	5821
20700	3076	3845	4542	5005	5432	5837
20800	3087	3854	4552	5017	5446	5852
20900	3097	3864	4563	5029	5459	5867
21000	3108	3873	4574	5040	5472	5883
21100	3119	3883	4584	5052	5485	5898

21200	3129	3892	4595	5063	5498	5914
21300	3140	3902	4605	5075	5512	5929
21400	3150	3911	4616	5086	5525	5945
21500	3161	3920	4627	5098	5538	5960
21600	3171	3930	4637	5109	5551	5975
21700	3181	3939	4648	5121	5564	5991
21800	3192	3949	4659	5132	5577	6006
21900	3202	3958	4669	5144	5591	6022
22000	3212	3967	4680	5155	5604	6037
22100	3222	3977	4691	5167	5617	6053
22200	3232	3986	4701	5178	5630	6068
22300	3242	3996	4712	5190	5643	6083
22400	3252	4005	4723	5201	5657	6099
22500	3263	4014	4733	5213	5670	6114
22600	3272	4024	4744	5224	5683	6130
22700	3282	4033	4755	5236	5696	6145
22800	3292	4043	4765	5247	5709	6160
22900	3302	4052	4776	5259	5723	6176
23000	3312	4062	4787	5270	5736	6191
23100	3322	4071	4797	5282	5749	6207
23200	3332	4080	4808	5293	5762	6222
23300	3341	4090	4819	5305	5775	6238
23400	3351	4099	4829	5316	5788	6253
23500	3361	4109	4840	5328	5802	6268
23600	3370	4118	4850	5339	5815	6284
23700	3380	4127	4861	5351	5828	6299
23800	3389	4137	4872	5362	5841	6315
23900	3399	4146	4882	5374	5854	6330
24000	3408	4156	4893	5385	5868	6345
24100	3417	4165	4904	5397	5881	6361
24200	3427	4174	4914	5408	5894	6376
24300	3436	4184	4925	5420	5907	6392
24400	3445	4193	4936	5431	5920	6407
24500	3455	4203	4946	5443	5934	6423
24600	3464	4212	4957	5454	5947	6438
24700	3473	4222	4968	5466	5960	6453
24800	3482	4231	4978	5477	5973	6469

24900	3491	4240	4989	5489	5986	6484
25000 or more	3500	4250	5000	5500	6000	6500

History: Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003; July 1, 2011; September 1, 2015; January 1, 2018; January 1, 2019.
General Authority: NDCC 50-06-16, 50-09-25
Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

CHAPTER 75-08-01
VOCATIONAL REHABILITATION

75-08-01-01. Definitions.

In this chapter:

1. "Appeal" means a request for an impartial due process hearing or an impartial due process hearing to resolve the issue under dispute.

2. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.

~~2.~~3. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

~~3.~~4. "Client assistance program" means the program that informs and advises an individual of all available benefits under the Rehabilitation Act, as amended, and, if requested, may assist and advocate for the individual in matters related to ~~vocational rehabilitation~~the division's decisions and services. Client assistance program services include assistance and advocacy in pursuing mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.

~~4.~~5. "Department" means the North Dakota department of human services.

~~5.~~6. "Division" means the vocational rehabilitation division of the department.

7. "Employment outcome" means, in a manner consistent with this chapter:

a. Entering, advancing in, or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

b. Supported employment; or

c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, and business ownership~~, and homemaker services~~.

~~6.~~8. "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to ~~vocational rehabilitation~~the division for an eligibility determination. The school records of an individual are considered to be existing data; however, ~~vocational rehabilitation~~the division may request additional information if there is an indication of changes in functioning or if there is conflicting information.

~~7.~~9. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.

~~8. "Extended evaluation" means services provided under limited circumstances to determine eligibility when the individual cannot take advantage of trial work or when trial work has been exhausted and eligibility cannot yet be determined.~~

~~9.~~10. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services, including mental health services, are not provided expeditiously.

~~10. "Homemaker" means an individual who has the skills to maintain a home and actively functions in that capacity; and, either enables another family member to engage in competitive employment, or does tasks in the home for another individual or himself or herself that would otherwise need to be done by an outside individual or agency for a fee. Homemaker tasks include some or all of the following activities: kitchen management and food preparation, child care, household management, and clothing care.~~

11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment or from advancing in employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.

12. "Individual with a most significant disability" means an individual:

    a. Who meets the criteria for a significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and

    b. Who requires multiple core services over an extended period of time of six months or more.

13. "Individual with a significant disability" means:

    a. An individual who is receiving social security disability insurance or supplemental security income; or

    b. An individual:

        (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;

        (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and

        (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, ~~mental retardation~~intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.

15. "Mediation" means using an independent third party to assist vocational rehabilitation applicants and clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.

16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.

17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.

18. "Pre-employment transition services" means services for all students with disabilities in need of such services, without regard to the type of disability, and which must be made available to students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

19. "Qualified rehabilitation professional" means a vocational rehabilitation counselor~~, consultant,~~ or administrator who meets ~~the standards established for qualified rehabilitation professionals~~educational and experience standards consistent with requirements for certification by the commission on rehabilitation counseling certification.

20. "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who:

a. Is not younger than the earliest age for the provision of transition services under the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(A)(i)(VIII)] and is not older than twenty-one years of age;

b. Is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794]; or

c. Is a student who is eligible for and receiving special education services under part B of the Individuals with Disabilities Education Act [20 U.S.C.1411 et seq.].

~~19.~~21. "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment, consistent with the individual's abilities and capabilities.

~~20.~~22. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.

~~21.~~23. "Supported employment" means competitive ~~work in an integrated work setting with ongoing support services for an individual with a most significant disability for whom competitive employment has not traditionally occurred; or, for whom competitive employment has been interrupted or intermittent because of a most significant disability; and, who, because of the nature and severity of the disability, needs intensive supported employment services and extended services to be gainfully employed. Supported employment also includes transitional employment for an individual with chronic mental illness~~integrated employment, in which an individual with a most significant disability, including a youth with a most significant disability, is working toward employment that is consistent with their individualized plan for employment. The following terms are defined concerning supported employment:

a. "Competitive ~~work~~employment" means work that, at the time of transition to extended services, is performed ~~weekly~~ on a full-time or part-time basis, as determined in the individualized plan for employment, and for which an individual is compensated ~~consistent with wage standards provided for in the Fair Labor Standards Act [29 U.S.C. 201, et seq.]~~at or above the federal minimum wage.

b. "Extended services" means ongoing support services ~~provided~~that are:

(1) Needed to support and maintain an individual with a most significant disability in supported employment;

(2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining employment;

(3) Based on the needs of an eligible individual, as specified in an individualized plan for employment;

(4) Provided by a state agency, private nonprofit organization, employer, or any other appropriate resource~~, from funds other than titles I, III-D, or VI-B of the Rehabilitation Act [29 U.S.C. 701, et seq.]. Extended services include natural supports, are provided once the time-limited services are completed, and consist of the provision of specific services needed by the individual to maintain employment~~ after an individual has been determined stable in employment and has made the transition from support from the division; and

(5) Provided to a youth with a most significant disability, who will not immediately be able to access extended services from an alternative source. The division shall provide extended services for a period not to exceed four years, or at such time that a youth reaches age twenty-five and no longer meets the definition of a youth with a disability, whichever occurs first. The division may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

c. "Integrated ~~work~~ setting" means ~~jobsites where there is regular contact with other employees or the general public who do not have a disability. Supported employment requires that no more than eight individuals with disabilities be part of a workgroup~~a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.

d. "Ongoing support services" ~~means services needed to support and maintain an individual with a most significant disability in supported employment. The individual may be provided necessary and appropriate supports, including jobsite training, transportation, followup family contact, or any services necessary to achieve and maintain the supported employment placement, throughout the term of employment. Ongoing support must include two monthly contacts with the supported employee at the worksite to assess job stability, unless it is determined that offsite monitoring is more appropriate for a particular individual. Offsite monitoring consists of at least two meetings with the individual and one employer contact each month~~is as defined in 34 C.F.R. 361.5.

e. "Time-limited services" means support services provided by ~~vocational rehabilitation~~the division for a period not to exceed ~~eighteen~~twenty-four months, unless a longer period to achieve job stabilization has been established in the individualized plan for employment, before the individual transitions to extended services.

~~f. "Transitional employment services for an individual with chronic mental illness" means a series of temporary job placements in competitive work in an integrated work setting with ongoing support services for an individual with chronic mental illness.~~

~~22.~~24. "Trial work experiences" means ~~those experiences designed to explore~~an exploration of an individual's abilities, capabilities, and capacity to perform ~~in work situations, including situations~~realistic work in the most integrated setting possible in which appropriate support and training are provided.

~~23.~~25. "Vocational goal" means an employment outcome.

26. "Youth with a disability" means an individual with a disability who:

a. Is at least fourteen years of age; and

b. Is not older than twenty-four years of age.

27. "Youth with a most significant disability" means an individual with a disability who:

a. Is at least fourteen years of age;

b. Is not older than twenty-four years of age;

c. Meets the criteria for a most significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and

d. Requires multiple core services over an extended period of time of six months or more.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-06.1

75-08-01-02. General requirements of the vocational rehabilitation program.

1. The vocational rehabilitation program assists an eligible individual with physical or mental disabilities to prepare for and achieve an employment outcome. The vocational rehabilitation process is based upon an individualized plan for employment oriented to the achievement of a suitable vocational goal. An individual with disabilities must require the service provided to minimize and accommodate the impediment to employment. Services must be reasonable and provided as cost effectively as possible.

2. ~~Vocational rehabilitation~~The division presumes that an individual will benefit in terms of an employment outcome from vocational rehabilitation services, unless the counselor can document, on the basis of clear and convincing evidence and only after trial work experiences, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.

3. Auxiliary aids and services will be provided at no cost to applicants or clients when they are necessary to access the vocational rehabilitation program. The purpose of auxiliary aids and services is to provide effective communications for participants in determining eligibility, assessments, and plan development.

4. Unless otherwise specified in this chapter, eligibility to participate in the vocational rehabilitation program is governed by federal vocational rehabilitation statutes and the federal procedures embodied in the rehabilitation services administration notices and policy memos. The program must conform to lawfully issued regulations and policies of the rehabilitation services administration and the division. Terms used in this chapter have the same meaning as the terms used in the regulations and policies of the rehabilitation services administration and the division, unless this chapter specifically provides otherwise.

5. The ~~department~~division must provide services without regard to sex, race, creed, age, color, national origin, political affiliation, or type of disability.

6. There is no residency requirement, durational or other, that may exclude an otherwise eligible individual present in the state from eligibility. For individuals who are not United States citizens, ~~vocational rehabilitation~~the division must verify that the individual ~~is not prohibited from working~~has the necessary documentation to allow them to work.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: 29 USC 720, et seq.

75-08-01-03. Variance.

Upon written application and good cause shown to the satisfaction of ~~vocational rehabilitation, vocational rehabilitation~~the division, the division may grant a variance from the provisions of this chapter upon terms prescribed by the ~~department~~division.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: 29 USC 720, et seq.

75-08-01-04. Establishment and maintenance of records.

~~Vocational rehabilitation~~The division shall establish and maintain a record of service for each individual applying for or receiving vocational rehabilitation services. The record must include data necessary to comply with state vocational rehabilitation and federal rehabilitation services administration requirements.

History: Effective October 1, 1995; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: 29 USC 720, et seq.

75-08-01-07. Notification of appeals and mediation procedures.

Repealed effective January 1, 2019.

~~1. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services. An individual may request mediation through the counselor, vocational rehabilitation administrator, or client assistance. The results of mediation are not binding.~~

~~2. Vocational rehabilitation shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure in chapter 75-01-03. An individual may appeal vocational rehabilitation's decision concerning the furnishing or denial of services by filing a written notice of appeal with the department's appeals supervisor within thirty days of the date of the notice of the decision.~~

~~3. Vocational rehabilitation shall provide the name and address of the appeals supervisor with whom appeals may be filed and shall inform each individual of the availability of the client assistance program.~~

~~**History:** Effective October 1, 1995; amended effective November 1, 2002.~~
~~**General Authority:** NDCC 50-06-16, 50-06.1~~
~~**Law Implemented:** NDCC 50-06.1-02, 50-06.1-06~~

75-08-01-08. Confidentiality.

All information acquired by ~~vocational rehabilitation~~the division about an individual applying for or receiving services must remain the property of ~~vocational rehabilitation~~the division and must only be used and released for purposes directly connected with the administration of the vocational rehabilitation program. Information obtained from another agency or organization may be released only by or under the conditions established by the other agency or organization. ~~Vocational rehabilitation~~The division's use and release of personal information must conform with applicable state and federal regulations.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-09. Informed written consent.

Informed written consent must:

1. Be in language that the individual or the individual's authorized representative understands;
2. Be signed and dated by the individual or the individual's authorized representative;
3. Include an expiration date;
4. Be specific in designating the department or person authorized to disclose information;
5. Be specific as to the nature of the information that may be released;
6. Be specific in designating the parties to whom the information may be released; and
7. Be specific as to the purpose or purposes for which the released information may be used.

History: Effective October 1, 1995; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-11. Release of information to the individual and others.

1. Upon informed written consent by the individual with disabilities or the individual's authorized representative, all information in the record of service must be made available to the individual with disabilities or the individual's authorized representative in a timely manner, except:
   a. Medical, psychological, or other information ~~vocational rehabilitation~~the division believes may be harmful to the individual and that may not be released directly to the individual, and must be provided through the individual's authorized representative, physician, or licensed psychologist; and
   b. Information obtained from outside ~~vocational rehabilitation~~the division that may be released only under the conditions established by the outside agency, organization, or provider.
2. Upon informed written consent of the individual with disabilities or the individual's authorized representative, ~~vocational rehabilitation~~the division may release information that may be released under subsection 1 to the individual with disabilities to another agency or organization.
3. ~~Vocation rehabilitation~~The division may release personal information, with or without consent of the individual:
   a. If required by state or federal law;
   b. In response to investigations connected with law enforcement, fraud, or abuse (except where expressly prohibited by federal or state laws or regulations); or
   c. In response to judicial order.
4. ~~Vocational rehabilitation~~The division may release personal information, without informed written consent of the individual, in order to protect the individual or others when the information poses a threat to the individual's safety or the safety of others, except for human

immunodeficiency virus test results that may not be released without informed written consent of the individual.

5. ~~Vocational rehabilitation~~The division and social security disability determination services may exchange information, without the informed written consent of the individual.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-12. Release of information for program audit, evaluation, or research.

At the discretion of the ~~vocational rehabilitation~~division director, personal information may be released to an organization, agency, or individual engaged in program audit, program evaluation, or program research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for an individual with disabilities, and only if the organization, agency, or individual assures that:

1. The information is used strictly for the purposes for which it is being provided;

2. The information is released only to an individual officially connected with the audit, evaluation, or research;

3. The information is not released to the individual involved;

4. The information is managed in a manner to safeguard confidentiality; and

5. The final product does not reveal any personal identifying information without the informed written consent of the individual involved or the individual's representative.

History: Effective October 1, 1995; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-13. Subpoenas.

An employee of ~~vocational rehabilitation~~the division may testify in court or in an administrative hearing, but may not release information or records, without the consent of the individual with disabilities, unless ordered to do so by a judge or hearing officer.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-14. Administrative review procedures - Appeals.

Repealed effective January 1, 2019.

~~1. An individual applying for or receiving vocational rehabilitation services, who is dissatisfied with any determination made by rehabilitation personnel concerning the furnishing or denial of services, may request a timely review of the determination. Vocational rehabilitation shall make reasonable accommodation of the individual's disability in the conduct of the appeals process.~~

~~2. Pending a final determination of an appeal hearing, vocational rehabilitation may not suspend, reduce, or terminate services that are being provided under an individualized plan for employment, unless:~~

~~a. The individual or individual's guardian so requests;~~

~~b. The services were obtained through misrepresentation, fraud, collusion, or criminal conduct;~~

~~c. The individual fails to substantially satisfy the terms of the individualized plan for employment. "Failure to substantially satisfy the terms of the individualized plan for employment" means the individual's failure to participate in a service that is instrumental to accomplish the vocational goal; or~~

~~d. The services are determined to be harmful to the individual.~~

~~3. Nothing in this chapter may be construed to forbid any informal, mutally consensual meetings or discussions between the individual and the department or the director. If the department or the director conducts an informal meeting under this section, the individual may still request a formal appeal pursuant to this chapter. An informal meeting will not suspend or extend the time for filing an appeal as set forth in this section. An individual may request a fair hearing through the department immediately without having to go through other appeal procedures.~~

~~4. A fair hearing must be conducted, and a recommended decision shall be issued in accord with North Dakota Century Code chapter 28-32 and chapter 75-01-03. Vocational rehabilitation shall consider the decision as final, unless the decision is based on error of law or is contrary to policy.~~

~~**History:** Effective October 1, 1995; amended effective November 1, 2002.~~
~~**General Authority:** NDCC 50-06-16, 50-06.1~~
~~**Law Implemented:** NDCC 50-06.1-04~~

75-08-01-15. Application for services.

All individuals desiring vocational rehabilitation services must apply for services. An individual is considered to have applied for services when ~~vocational rehabilitation~~the division receives a signed, written request for those services from the individual or the individual's authorized representative.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04; 29 USC 722

75-08-01-16. Period of time to determine eligibility.

~~Vocational rehabilitation~~The division shall determine eligibility for services within a reasonable period of time not to exceed sixty days after the receipt of the application for services, unless:

1. The individual is notified that exceptional and unforeseen circumstances beyond the control of the counselor preclude the counselor from completing the determination within the prescribed time frame, and the individual agrees to a specific extension of time; or

2. ~~Vocational rehabilitation~~The division conducts trial work experiences to explore the individual's abilities, capabilities, and capacity to work in various situations~~; or~~

~~3. An extended evaluation is necessary~~.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-17. Presumption of eligibility and significant disability.

1. An individual who has a disability or is blind as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.] and who receives social security disability insurance benefits or supplemental security income benefits is presumed to be eligible for vocational rehabilitation services if the individual intends to achieve an employment outcome.

2. An individual who receives supplemental security income benefits or social security disability insurance benefits is presumed to have a significant disability.

3. The presumption of eligibility described in this section shall be overcome if ~~vocational rehabilitation~~the division can demonstrate by clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability. The demonstration that the individual cannot benefit from vocational rehabilitation services may be determined only after conducting trial work experiences as described in section 75-08-01-20.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-18. Eligibility criteria and documentation.

1. ~~Vocational rehabilitation~~The division must base eligibility determinations on existing data as the primary source of information to the maximum extent possible and appropriate. The individual requesting services, the family of the individual, or other sources may provide the information. An individual is eligible for vocational rehabilitation if:

   a. The individual has a mental or physical impairment;

   b. The impairment constitutes or results in a substantial impediment to employment as determined by a qualified rehabilitation professional;

   c. The individual can benefit from vocational rehabilitation services in terms of an employment outcome. An individual is presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome unless ~~vocational rehabilitation~~the division can demonstrate by clear and convincing evidence that the individual cannot benefit due to the severity of the disability. This demonstration that the individual cannot benefit can be determined only after conducting trial work experiences as described in section 75-08-01-20; and

   d. The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment.

2. In all cases in which ~~vocational rehabilitation~~the division determines an individual eligible for services, the record of service must include documentation of eligibility, dated and signed by a qualified rehabilitation professional, which demonstrates that the individual:

   a. Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and

   b. Requires vocational rehabilitation services to prepare for, enter, retain, advance in, or regain employment.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-20. Trial work experiences and extended evaluation.

1. Before an individual can be determined ineligible due to the severity of a disability, the individual must receive trial work experiences and there must be a written trial workplan. The trial work must:

   a. Be sufficiently varied and over a sufficient period of time to determine eligibility or ineligibility;

   b. Show by clear and convincing evidence that the individual cannot benefit due to the severity of the disability; and

   c. Include support services such as assistive technology or personal assistance, which must be provided by ~~vocational rehabilitation~~the division.

2. Trial work experiences shall explore the individual's abilities, capabilities, and capacity to perform in work situations, including experiences in which appropriate supports and training are provided.

3. ~~Vocational rehabilitation~~The division must provide assessments periodically during the trial work experiences regarding the individual's abilities, capabilities, and capacity to perform the work.

~~4. Under limited circumstances, if an individual cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted and an eligibility determination cannot be made, vocational rehabilitation will provide extended evaluation services. Extended evaluation services must:~~

~~a. Be identified in a written extended evaluation plan;~~

~~b. Be provided in the most integrated setting possible consistent with the informed choice and rehabilitation needs of the individual; and~~

~~c. Provide only those services that are necessary to determine if there is sufficient evidence to conclude the individual can benefit from vocational rehabilitation services in terms of an employment outcome, or there is clear and convincing evidence the individual is incapable of benefiting from vocational rehabilitation services due to the severity of the disability.~~

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-21. Ineligibility determination.

1. ~~Vocational rehabilitation~~The division may make a determination that an individual is ineligible for vocational rehabilitation services only after providing an opportunity for full consultation with the individual or the individual's representative, as appropriate.

2. When ~~vocational rehabilitation~~the division determines that an individual is ineligible to receive vocational rehabilitation services, the individual or the individual's representative shall be informed of the ineligibility determination in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including:

   a. The reasons for the determination; and

b. A written description of the means by which the individual may express and seek a remedy for any dissatisfaction with the determination. This includes the procedures for appeal as provided in ~~chapter 75-01-03~~section 75-08-01-37, mediation, and the client assistance program.

3. When an ineligibility determination is based on a finding that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the disability, that determination shall be reviewed by ~~vocational rehabilitation~~the division:

   a. Within twelve months and twenty-four months of the date of the determination of ineligibility; and

   b. After that date only if such a review is requested by the individual or the individual's representative, as appropriate.

4. Ineligibility decisions concerning the severity of a disability must be based on clear and convincing evidence and require trial work experiences as described in section 75-08-01-20 prior to closure.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-22. Assessment for determining eligibility and vocational rehabilitation needs.

1. An assessment for determining eligibility and vocational rehabilitation needs means, as appropriate in each case, a review of existing data to determine:

   a. Whether an individual is eligible for vocational rehabilitation services;

   b. The priority for an order of selection as described in section 75-08-01-23;

   c. The necessity of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

   d. Referral, for the provision of assistive technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

   e. An exploration of the individual's abilities, capabilities, and capacity to perform in realistic, integrated work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

2. To the extent additional data is necessary for ~~vocational rehabilitation~~the division to make a determination of employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, a comprehensive assessment may be done by ~~vocational rehabilitation~~the division. The purpose is to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, including the need for supported employment. A comprehensive assessment includes, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, the following:

   a. Information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

b. Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 75-08-01-23;

c. Any information as can be provided by the individual and, when appropriate, by the family of the individual;

d. As necessary, an assessment of the personality, interests, interpersonal skills, intelligence, and related functional capacities, educational achievements, work experiences, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and

e. As necessary, an appraisal of the individual's patterns of work behavior and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-23. Order of selection.

1. ~~Vocational rehabilitation~~The division must provide to an individual applying for services, including an individual receiving trial work experiences, all services necessary to determine eligibility for vocational rehabilitation services and an order of selection priority classification. ~~Vocational rehabilitation~~The division must provide these services on a timely basis in accordance with federal law.

2. When ~~vocational rehabilitation~~the division notifies an individual of eligibility, ~~vocational rehabilitation~~the division must also notify the individual of the individual's priority category and right to request mediation, appeal the assigned category, and to utilize the client assistance program.

3. If ~~vocational rehabilitation~~the division cannot provide services to all eligible individuals who apply due to a lack of resources, an order of selection procedure must be implemented.

   a. An individual receiving services under an individualized plan for employment must continue to receive all required services. An individual requiring or receiving postemployment services must be considered to be under an individualized plan for employment. An individual described in paragraphs 1 through ~~3~~4 must be assigned a priority in the order in which the paragraphs are listed.

      (1) Category ~~1~~1a: An individual ~~determined to have~~with a most significant disability that seriously limits four or more functional capacities.

      (2) Category 1b: An individual with a most significant disability that seriously limits two or three functional capacities.

      (3) Category 2: An individual with a significant ~~disabilities~~disability that seriously limits one or more functional capacities.

      ~~(3)~~(4) Category 3: Other individuals with disabilities.

b. An eligible individual who is not in a priority category that is being served will have access to services provided through information and referral.

History: Effective October 1, 1995; amended effective March 1, 1997; November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-04

75-08-01-24. Individualized plan for employment.

An individualized plan for employment is developed for all individuals who are determined eligible for vocational rehabilitation.

1. Prior to developing the individualized plan for employment, ~~vocational rehabilitation~~the division must give the individual a written copy of the options for developing the plan.

2. The individualized plan for employment may be developed by the individual alone or by the individual with assistance from ~~vocational rehabilitation~~the division or other parties.

3. The individualized plan must be agreed to and signed by the individual or the individual's ~~legal~~authorized representative and approved and signed by a qualified rehabilitation professional employed by ~~vocational rehabilitation~~the division.

4. The individualized plan for employment for eligible ~~students transitioning from secondary education~~individuals must be developed and approved ~~by the time the student leaves the school system~~within ninety days from the date of determination of their eligibility for service.

5. The individualized plan for employment is designed to assist the individual's achievement of the vocational goal, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. The record of service must support the selection of the vocational goal.

6. Counselors shall provide a copy of the individualized plan for employment, and any amendments, to the individual.

7. With the exception of assessment services, ~~vocational rehabilitation~~the division may provide goods and services only in accord with the individualized plan for employment.

8. The individualized plan for employment is not a legal contract.

9. ~~Vocational rehabilitation~~The division must review the individualized plan for employment at least annually in the same manner as it was originally developed and described in subsection 3.

10. ~~Vocational rehabilitation~~The division must include in the individualized plan for employment:

    a. A specific employment outcome in an integrated setting, which must be consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual; and

    b. The specific services to be provided and the projected dates for initiation and anticipated duration of each service, including:

        (1) If appropriate, a statement of the specific assistive technology services;

        (2) If appropriate, a statement of the specific on-the-job and related personal assistance services, and, the individual's appropriate and desired training in managing, supervising, and directing personal assistance services;

(3) An assessment of the need for postemployment services and, if appropriate, extended services;

(4) The terms and conditions under which goods and services are to be provided in the most integrated settings;

(5) The terms and conditions for the provision of services, including the individual's:

(a) Responsibilities and ~~vocational rehabilitation's~~the division's responsibilities;

(b) Participation in the cost of services; and

(c) Access to comparable services and benefits under any other program;

(6) An assurance that the individual with disabilities was informed of:

(a) The availability of services through the client assistance program;

(b) The individual's rights, means of expression, and remedies for any dissatisfaction, including the individual's right to request mediation; and

(c) The opportunity for ~~an administrative~~ review of ~~the rehabilitation~~a determination by the division regarding terms of the individualized plan for employment, as set forth in section ~~75-08-01-14 and chapter 75-01-03~~75-08-01-37;

(7) Information identifying services and benefits from other programs to enhance the capacity of the individual to achieve the individual's vocational goal;

(8) A reassessment of the need for postemployment services, or extended services prior to the point of successful closure; and

(9) If appropriate, any plans for the provision of postemployment services and the basis on which the plans are developed.

11. For an individual with a most significant disability for whom supported employment services are appropriate, in addition to the requirements in subsection 10, the following must be addressed:

a. A description of time-limited services that ~~vocational rehabilitation~~the division provides, not to exceed ~~eighteen~~twenty-four months in duration, unless the individualized plan for employment documents a longer period to achieve job stabilization; and

b. A description of the extended services necessary and identification of the state, federal, or private programs, which may include natural supports, that provide the extended support, or, to the extent that is not possible at the time the individualized plan for employment is written, a statement describing the basis for concluding that there is a reasonable expectation that those sources will become available.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02

75-08-01-25. Comparable services and benefits.

1. Before providing any vocational rehabilitation service, except those listed in subsection 5, to an eligible individual or to members of the individual's family, ~~vocational rehabilitation~~the

division must determine whether comparable services and benefits exist under any other program and whether the services and benefits are available to the individual.

2. If comparable services and benefits do exist and are available to the individual at the time needed to achieve the provisions of the individualized plan for employment, they must be used to meet, in whole or in part, the cost of vocational rehabilitation services.

3. If comparable services and benefits do exist but are not available to the individual at the time they are needed, ~~vocational rehabilitation~~the division shall provide the services until comparable services and benefits become available.

4. The use of comparable services and benefits does not apply if such a determination would interrupt or delay:

   a. The progress of an individual toward achieving the employment outcome identified in the individualized plan for employment;

   b. An immediate job placement; or

   c. The provision of vocational rehabilitation services to an individual with disabilities who is at extreme medical risk.

5. The following categories of service do not require that comparable services and benefits be used:

   a. Assessment for determining eligibility and rehabilitation needs;

   b. Counseling and guidance, including information and support services to assist in exercising informed choice;

   c. Information and referral;

   d. Job-related services, including job search, job placement, job retention services, followup, and follow-along services;

   e. Rehabilitation technology, including telecommunications, sensory, and other rehabilitative technological aids and devices; and

   f. Postemployment services that would be included under subdivisions a through e.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02

75-08-01-26. Determination of financial ~~need~~participation.

1. In all cases, ~~vocational rehabilitation~~the division shall encourage an individual with disabilities and the individual's family to financially contribute as much as possible to the cost of vocational rehabilitation goods and services provided as part of an individualized plan for employment. When available, comparable services and benefits must be used, as described in section 75-08-01-25, and ~~vocational rehabilitation~~the division must apply a financial ~~needs test~~participation threshold to specified vocational rehabilitation services. The individual's refusal to provide financial information will constitute the individual's not meeting the financial ~~need criteria~~participation threshold. In that event, the individual may be unable to access the services ~~based on financial need~~without participating in the cost of such service.

   a. If an individual is single, under the age of eighteen years, and unemancipated, the individual's income, and the income of the individual's parents, must be considered.

b. If an individual is single, under the age of eighteen years, and living with a guardian, ~~vocational rehabilitation~~the division shall determine financial ~~need~~participation based on the individual's income.

c. If an individual is single, eighteen years of age or over, but is living with a parent, ~~vocational rehabilitation~~the division shall determine financial ~~need~~participation based on the individual's income only.

d. If an individual is married, regardless of age, ~~vocational rehabilitation~~the division shall determine financial ~~need~~participation based on the income of the individual and the individual's spouse.

2. ~~The fee scale~~Calculation of financial participation is based on a fee schedule established and administered by ~~vocational rehabilitation~~the division and must be used to determine client ~~liability~~participation. Copies of the fee schedule, which may be updated from time to time, are available from ~~vocational rehabilitation~~the division upon request. When determining client ~~liability~~participation, ~~vocational rehabilitation~~the division must take into consideration disability-related expenses incurred by or for the individual. A vocational rehabilitation administrator may adjust or waive the client financial participation to ensure the level of an individual's participation in the cost of services is not so high as to effectively deny the individual a necessary service.

3. ~~Vocational rehabilitation~~The division must re-evaluate financial ~~need~~participation annually or whenever financial or other circumstances regarding the individual significantly change, whichever occurs first. Significant change includes marriage or divorce, other changes in dependent status, radical change in income, or to the individualized plan for employment.

4. Regional vocational rehabilitation administrators may adjust or waive client financial participation. Documentation must be maintained indicating the conditions under which a waiver or adjustment is made and a copy placed in the client's file.

5. ~~Vocational rehabilitation~~The division may not ~~apply a financial needs test, or~~ require the financial participation of any individual who receives social security disability insurance benefits or supplemental security income benefits as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.].

6. If the individual or the individual's authorized representative disagrees with the outcome of the determination of financial ~~need~~participation, the individual has the right to have the determination reviewed in accordance with ~~chapter 75-03-01~~section 75-08-01-37.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02

75-08-01-27. Services exempt from participation by an individual in the cost of vocational rehabilitation services.

~~Vocational rehabilitation~~The division shall provide the following services without regard to the financial resources available to the individual:

1. Information and referral;

2. Assessments to determine eligibility and priority for services except for nonassessment services provided during trial work experiences;

3. Assessments to determine vocational rehabilitation needs;

4. Counseling and guidance;

5. Interpreter services;

6. Vocational training, except at institutions of higher education. For example, on-the-job training, personal adjustment training, and supported employment training;

7. Orientation and mobility services;

8. Reader and notetaker services;

9. Placement services;

10. Assistive technology services, excluding assistive technology devices; and

11. Personal assistance services.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02

75-08-01-28. Services subject to participation by an individual in the cost of vocational rehabilitation services.

~~Vocational rehabilitation~~The division shall apply a financial ~~needs test~~participation schedule as a consideration for eligibility for the following vocational rehabilitation services:

1. Physical and mental restoration;

2. Maintenance, unless required for assessment purposes;

3. Transportation, unless required for assessment purposes;

4. Assistive technology aids and devices;

5. Occupational licenses;

6. Tools, equipment, and initial stock, including livestock, supplies, and necessary shelters;

7. Services to members of an individual's family, which are necessary for the rehabilitation of the individual with a disability;

8. Telecommunications, sensory, and other technological aids and devices for purposes other than evaluation;

9. Postemployment services necessary to assist individuals in maintaining suitable employment, excluding services normally provided without regard to financial ~~needs~~participation;

10. Home modifications, including adaptive devices and minor structural changes necessary for the individual to function independently in order to achieve a vocational goal;

11. Other goods and services for which the individual may reasonably expect to receive benefits in terms of the individual's employability; and

12. Higher education as described in section 75-08-01-30.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-29. Vocational rehabilitation services necessary to enable the individual to achieve an employment outcome.

Consistent with the individualized plan for employment, ~~vocational rehabilitation~~the division may provide, as appropriate to the vocational rehabilitation needs of each eligible individual, goods or services necessary to enable the individual to achieve an employment outcome. Services include:

1. An assessment for determining eligibility and vocational rehabilitation needs;

2. Counseling, guidance, and work-related placement services for an individual with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and followup;

3. Physical and mental restoration services necessary to correct or modify the physical or mental condition of an individual who is stable or slowly progressive. In the purchase of medical goods or services, ~~vocational rehabilitation~~the division shall comply with the prevailing medical assistance fee schedule, except for certain diagnostic services that Medicaid excludes;

4. Home modifications that may include those adaptive devices and minor structural changes necessary for the individual with disabilities to function independently in order to achieve a vocational goal. Funds for home modifications may not be applied to the purchase or construction of a new residence;

5. Vocational and other training services, including:

   a. Personal and vocational adjustment training;

   b. Correspondence courses; and

   c. Services to the individual's family that are necessary to the personal and vocational adjustment or rehabilitation of the individual;

6. Except in institutions of higher education, where comparable benefits, including services for students with disabilities must be used, ~~vocational rehabilitation~~the division may provide:

   a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;

   b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and

   c. Telecommunications, sensory, and other technological aids and devices;

7. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;

8. Occupational licenses, tools, equipment, initial stocks, and supplies necessary in order to enter an occupation, except that ~~vocational rehabilitation~~the division shall not purchase land or buildings for an individual with disabilities;

9. Time-limited, ongoing support services for an individual receiving supported employment services, including:

   a. Diagnostic services necessary to determine the individual's rehabilitation needs for supported employment that are supplemental to the assessment for eligibility used to determine vocational rehabilitation eligibility, and are provided only after vocational

rehabilitation eligibility has been determined. The purpose of supplemental evaluations is to help develop, finalize, or reassess a supported employment plan of services;

b. Job development and placement services; and

c. Other time-limited services necessary to support the individual in employment. The maximum time period for time-limited services is ~~eighteen~~twenty-four months, unless the individualized plan for employment indicates that more than ~~eighteen~~twenty-four months of services are necessary in order for the individual to achieve job stability prior to transition to extended services. Time-limited services include:

(1) Intensive on-the-job skills training and other training and support services necessary to achieve and maintain job stability;

(2) Followup services with employers, supported employees, parents and guardians, and others for the purpose of supporting and stabilizing the job placement;

(3) Discrete postemployment services, following transition to extended services, which are not available from the extended service provider and which are needed to maintain job placement; and

(4) Other needed services listed in this subsection;

10. Postemployment services for an individual with disabilities who ~~was determined rehabilitated, if the services are necessary to assist the individual to maintain, regain, or advance~~is employed but requires one or more services to assist with maintaining or advancing in suitable employment. ~~The services must relate to the original vocational impediments and the availability of the individual's record of service.~~ An individual requiring multiple services over an extended period of time and a comprehensive or complex rehabilitation plan is not eligible for postemployment services, but may be encouraged to reapply. Postemployment services may:

a. Include counseling and guidance services to assist an individual to advance in employment; and

b. Require an amendment to the individualized plan for employment;

11. Assistive technology services to meet the needs and address the barriers confronted by an individual with disabilities in the areas of education, rehabilitation, employment, and transportation. ~~Vocational rehabilitation~~The division shall provide assistive technology services at any time in the rehabilitation process, including the assessment for determining eligibility and vocational rehabilitation needs, trial work experiences, services provided under an individualized plan for employment, annual reviews of ineligibility decisions, annual reviews of extended employment in rehabilitation facilities, and postemployment services;

12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and objectives;

13. Other supportive services, including:

a. Maintenance for additional costs incurred while participating in rehabilitation;

b. Transportation, including travel and related expenses in connection with transporting an individual and an individual's attendants for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services, with the following restrictions:

(1) Reimbursement cannot exceed the state rate level;

(2) Transportation may include relocation, moving expenses, and vehicle modifications only when the individual is otherwise precluded from achieving a vocational goal;

(3) Reimbursement must be provided at the prevailing rate for the service; and

(4) ~~Vocational rehabilitation~~The division shall not contribute to the purchase of a vehicle; and

c. On-the-job or other related personal assistance services provided while an individual with disabilities is receiving vocational rehabilitation services; and

14. Other vocational rehabilitation goods and services that an individual with disabilities is reasonably expected to benefit from in terms of an employment outcome.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-30. Postsecondary training.

If an individual receives postsecondary training, the following conditions apply:

1. ~~Vocational rehabilitation~~The division may not provide postsecondary training unless maximum efforts have been made to secure grant assistance in whole, or in part, from other sources;

2. ~~Vocational rehabilitation's~~The division's participation shall not be calculated until the institution's financial aid office needs analysis has been received. The financial needs analysis award letter must identify all available aid;

3. An individual must accept all offered grant assistance;

4. ~~Vocational rehabilitation may request an~~An individual may choose to participate in the cost of attendance through the use of college work study and student loans;

5. ~~Vocational rehabilitation~~The division may not participate in payment for postsecondary training if the individual is in default status, or is ineligible for financial aid due to a drug conviction or drug convictions as determined by free application for federal student aid (FAFSA) regulations;

6. Comparable benefits must be used for the following services:

   a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;

   b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and

   c. Telecommunications, sensory, and other technological aids and devices;

7. If the individual attends an in-state public institution, vocational rehabilitation funding for tuition, room and board, books, supplies, transportation, and incidentals for a full-time student will be based on the following:

   a. The estimated financial need as stated on the award letter from the financial aid office;

   b. The unmet need as calculated by ~~vocational rehabilitation~~the division;

   c. The results of the budget assessment conducted by ~~vocational rehabilitation~~the division; and

d. Total aid from all sources may not exceed the school's budget as determined by the financial aid office;

8. If the individual chooses to attend a private in-state or an out-of-state institution when the coursework is available in state, ~~vocational rehabilitation~~the division will not fund more than it would at an in-state public institution;

9. If, because of the individual's vocational impediment or vocational goal, the only available postsecondary training is at an in-state private or out-of-state institution, ~~vocational rehabilitation~~the division may ~~waive the expenditure limit defined in subsection 7~~fund more than it would at an in-state public institution;

10. Funding for tuition and books for a part-time student may not exceed the financial aid office estimated financial need. For an individual not taking sufficient credit hours to apply for financial aid, the limit is the North Dakota university system rate per credit hour;

11. An individual shall maintain a grade point average that meets the school's requirement for graduation and shall otherwise demonstrate progress toward meeting the goal of the individualized plan for employment. If the individual is placed on academic probation, continued funding is dependent on the approval of the regional vocational rehabilitation administrator;

12. Participation in the cost of graduate study is determined on a case-by-case basis if a suitable vocational goal is otherwise unachievable; and

13. Expenditure policies in subsections 1 through 9 do not apply to vocational technical training programs not participating in a federal financial aid program. If comparable training is available through a program that does participate in a federal financial aid program, vocational rehabilitation costs shall not exceed the costs for attendance in that program.

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-31. On-the-job training.

When ~~vocational rehabilitation~~the division provides on-the-job training, there must be a written agreement among the individual, counselor, and employer. The agreement must state the areas of training, the hourly wage which must comply with state and federal wage and hour laws, responsibility for workers' compensation coverage, expected results of the training, and any other conditions of employment.

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-32. Closure due to ineligibility.

1. ~~Vocational rehabilitation~~The division shall close the individual's case as ineligible if the individual has no disability, no substantial impediment to employment, or does not require services to achieve an employment outcome. Closure for ineligibility under these circumstances requires:

   a. The opportunity for the individual or the individual's representative to participate in the closure decision;

   b. Written notification of the closure decision and reasons for the decision;

c. Written notification of mediation, appeal rights, and ~~due process procedures~~informal review, including the name and address of the ~~appeals supervisor~~division's chief of field services with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program;

d. An individualized plan for employment amendment if appropriate;

e. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by ~~vocational rehabilitation~~the division; and

f. Referral to other agencies and community rehabilitation programs as appropriate.

2. ~~Vocational rehabilitation~~The division shall close the individual's case, if there is clear and convincing evidence, after trial work experiences or after a period of service provision under an individualized plan of employment that the individual with disabilities is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome~~. Vocational rehabilitation~~ due to the severity of the individual's disabilities. The division shall provide the following when it closes a case due to ineligibility under these circumstances:

a. The opportunity for the individual or the individual's representative to participate in the closure decision;

b. Written notification of the closure decision and reasons for the decision;

c. Written notification of informal review, mediation, and appeal rights, including the address of the ~~appeals supervisor~~division's chief of field services with whom an appeal may be filed, and written notification of the availability of, and how to contact, the client assistance program;

d. An individualized plan for employment amendment if appropriate;

e. Review of the ineligibility determination within twelve months. A review is not required in situations in which the individual refuses it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal;

f. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by ~~vocational rehabilitation~~the division; and

g. Referral to other agencies and community rehabilitation programs as appropriate.

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-33. Closure for reasons other than ineligibility.

~~Vocational rehabilitation~~The division shall close a case when an individual is unavailable during an extended period of time for an assessment to determine eligibility and vocational rehabilitation needs or when an individual is unavailable for an extended period to participate in planned vocational rehabilitation services. ~~Vocational rehabilitation~~The division shall make good-faith efforts to contact the individual and to encourage the individual's participation. Closure under these circumstances requires:

1. Documentation of the rationale for closure in the record of service;

2. Written notification of the closure decision;

3. Written notification of mediation, appeal rights, and ~~due process procedures~~informal review, including the name and address of the ~~appeals supervisor~~division's chief of field services with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program; and

4. An individualized plan for employment amendment if appropriate.

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-34. Closure for an individual determined to be rehabilitated.

1. An individual is determined to be rehabilitated if the individual has maintained suitable employment for at least ninety calendar days. The individual's record of service must contain documentation that ~~vocational rehabilitation~~the division has:

   a. Determined that the individual is eligible;

   b. Provided an assessment for eligibility and determination of vocational rehabilitation needs;

   c. Provided counseling and guidance;

   d. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized plan for employment;

   e. Determined that the individual has maintained suitable employment for at least ninety calendar days and that the individual and counselor view the employment and the individual's performance in that employment as satisfactory;

   f. Determined that the employment is in an integrated setting;

   g. Provided an opportunity for the individual's involvement in the closure decision;

   h. Reassessed the need for and informed the individual of the purpose and availability of postemployment services, when necessary; and

   i. Provided written notification of mediation, appeal rights, and ~~due process procedures~~informal review, including the name and address of the ~~appeals supervisor~~division's chief of field services with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.

2. An individual in supported employment is determined rehabilitated when:

   a. The individual has substantially met the goals and objectives of the individual's individualized plan for employment;

   b. Extended services are immediately available to preclude any interruption in the provision of the ongoing support needed to maintain employment;

   c. ~~The individual is stabilized for a minimum of sixty days, as determined by vocational rehabilitation, before transition to extended services;~~

   ~~d.~~ The individual has maintained employment for at least ~~sixty~~ninety days after the transition to extended services; and

~~c.~~d. The employment is in an integrated setting.

~~3. If the individual is earning less than minimum wage and in accordance with the Fair Labor Standards Act, the individual will receive an annual review for two years after the individual's case is closed and thereafter if requested by the individual.~~

~~4. For an individual's case to be closed while working in a temporary transitional employment placement, the extended support services must include continuous job placements until job permanency is achieved.~~

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-35. ~~Closure for an individual in extended employment~~Annual review of individuals compensated below federal minimum wage.

~~1. An individual whose case is closed in extended employment shall receive an annual review for two years after the case is closed and thereafter if requested by the individual. The review shall reevaluate the status of the individual to determine the interests, priorities, and needs of the individual, for employment or training for competitive employment in an integrated setting in the labor market.~~

~~2. Upon closure of the case of an individual in extended employment, the individual will receive written notification of mediation, appeal rights, and due process procedures, including the name and address of the appeals supervisor with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program.~~

~~3. An individual whose case is closed in extended employment is not considered to be successfully rehabilitated.~~

If an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act [29 U.S.C. 214(c)] or the division closes the record of services of an individual in extended employment on the basis the individual is unable to achieve an employment outcome due to severity of the individual's disabilities, the division shall document the results of semiannual and annual reviews of the individual's progress and interest to obtain employment at or above the federal minimum wage.

History: Effective November 1, 2002; amended effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-36. Pre-employment transition services.

The division shall provide or make available the following pre-employment transition services:

1. Job exploration counseling;

2. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting, which is provided in an integrated environment in the community to the maximum extent possible;

3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

4. Workplace readiness training to develop social skills and independent living; and

5. Instruction in self-advocacy, which may include peer mentoring.

History: Effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-37. Vocational rehabilitation determinations - Administrative review procedures - Appeals.

1. As used in this section:

   a. "Claimant" means an applicant or eligible individual who is dissatisfied with any determination made by the division that effects the provisions of vocational rehabilitation services and who has made a timely request for review of the determination.

   b. "Party" or "parties" refers to the division and to a claimant.

   c. "Request for review" means a request for informal review, mediation, or an appeal under this section.

2. The division shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services, the name and address of the division's chief of field services, the manner in which a mediator may be selected, and the availability of the client assistance program to assist the individual during mediation sessions. The division shall provide the right to mediation notice at the time the:

   a. Individual applies for vocational rehabilitation services;

   b. Individual is assigned to a category set forth in section 75-08-01-23;

   c. Individualized plan for employment is developed; and

   d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.

3. The division shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure, the name and address of the division's chief of field services, the manner in which an impartial hearing officer may be selected, and the availability of the client assistance program. The division shall provide the right to appeal notice at the time the:

   a. Individual applies for vocational rehabilitation services;

   b. Individual is assigned to a category set forth in section 75-08-01-23;

   c. Individualized plan for employment is developed; and

   d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.

4. The division shall make reasonable accommodation of the individual's disability in the conduct of the process that is undertaken to review the determination with which the claimant is dissatisfied.

5. Nothing in this chapter may be construed to forbid any informal, mutually consensual meetings or discussions between the individual and the division.

6. A claimant who is dissatisfied with any determination made by the division that affects the provision of vocational rehabilitation services may request a timely review of that decision to the division, by requesting an informal review, mediation or appeal hearing. A request for

review is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied. If appropriate, any request for review may be made through claimant's authorized representative.

7. A claimant's appeal may not result in suspension, reduction, or termination of vocational rehabilitation services pending resolution of claimant's appeal unless:

   a. The claimant or, in appropriate cases, the claimant's authorized representative, requests a suspension, reduction, or termination of services; or

   b. There is evidence fraud has occurred or the vocational rehabilitation services were obtained through misrepresentation, collusion, or criminal conduct by claimant or claimant's authorized representative.

8. A claimant may request an informal review to resolve the decision under dispute without mediation or an appeal hearing. A claimant's request for informal review does not prohibit claimant of the right to an appeal hearing or mediation.

   a. A claimant may not be required to go through an informal review prior to, or instead of, an appeal hearing.

   b. A written request for an informal review must be made by claimant to division within thirty days of the determination with which claimant is dissatisfied.

   c. The informal review must be conducted by either the division's chief of field services, or a division employee appointed by the chief of field services, who has had no prior involvement in the case.

   d. An informal review must be conducted within fifteen days of the initial request unless both parties agree additional time is necessary. Informal review may not delay an appeal hearing if one has been requested. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.

   e. The informal review process, if completed, must result in a decision by the division regarding the division's determination under dispute. The division shall notify claimant by writing of the decision within ten days of the informal review, unless circumstances require additional time.

   f. If the informal review does not resolve the issue, the claimant, or authorized representative, may request an appeal hearing or mediation. The claimant shall notify division within fifteen days of the informal review decision that the claimant wishs to proceed with mediation or an appeal hearing.

9. The claimant may request mediation by a qualified and impartial mediator as a means to resolve a dispute with a decision by the division. Both parties must agree to the request. The claimant may bring an authorized representative to assist during the mediation process. A claimant's request for mediation does not prohibit claimant of the right to an appeal hearing.

   a. The request for mediation must be submitted, in writing, to the division within thirty days of the disputed decision, or within fifteen days of issuance of the informal review decision. The request shall identify the decision being disputed, why it is being disputed, and what solution is requested.

b. A qualified and impartial mediator arranged by the division, pursuant to written division policy, must be provided at no cost to the claimant. Mediation sessions must be held in a location and manner convenient to the claimant and the division.

c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to submit evidence and other information that supports the claimant's position.

d. Mediation may not delay the claimant's right to pursue an appeal hearing unless both parties agree additional time is necessary. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.

e. If an agreement is reached pursuant to mediation, the consensus reached by both parties must be documented in writing by the mediator and provided to both parties. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or appeal hearing request.

f. At any point in the mediation process, either party may elect to terminate mediation.

g. If mediation is not successful, the claimant may request an appeal hearing regarding the decision under dispute.

h. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent proceedings.

i. Costs of mediation must be paid by the division. The division is not required to pay for legal or other representation for claimant.

10. A claimant may request an appeal hearing to resolve the decision under dispute without having requested or engaging in mediation or an informal review.

a. Written request for an appeal hearing must be made to division within thirty days of the determination with which the claimant is dissatisfied.

b. A hearing by an impartial hearing officer selected by the division must be conducted within sixty days of the claimant's request for review of a determination made by the division with which claimant is dissatisfied, unless resolution is achieved before that time, or the parties agree to an extension.

c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence.

d. The impartial hearing officer shall:

(1) Make a decision based on federal vocational rehabilitation regulations and state regulations and policies consistent with federal requirements; and

(2) Provide to the claimant or, if appropriate, the claimant's authorized representative, and to the division a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing.

e. The hearing officer's decision is final.

History: Effective January 1, 2019.
General Authority: NDCC 50-06-16, 50-06.1
Law Implemented: NDCC 50-06.1-02, 50-06.1-04, 50-06.1-10

TITLE 85

UNIVERSITY AND SCHOOL LANDS, BOARD OF

JANUARY 2019

ARTICLE 85-01
GENERAL ADMINISTRATION

CHAPTER 85-01-01
DEFINITIONS AND GENERAL PROVISIONS

85-01-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapters 15-05, 15-06, 15-07, 47-30.1, and 57-62, apply to this title:

1. "Board" means the board of university and school lands.
2. "Commissioner" means the commissioner of university and school lands.
3. "Department" means the office of the commissioner and the department of trust lands.
4. "Trust lands" means any property owned by the state of North Dakota and managed by the board.
5. "Trusts" means permanent trusts and other funds managed or controlled by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01

85-01-01-02. Exception.

The board may grant an exception to this title, after due notice and hearing, when such exception is in the best interests of the trusts.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 15-01-02

ARTICLE 85-02
ENERGY INFRASTRUCTURE AND IMPACT GRANTS

CHAPTER 85-02-01
DEFINITIONS

85-02-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapter 57-62, apply to this article:

1. "Advisory committee" means the committee selected by the board to review grant applications and make recommendations to the board. Committee members must possess expertise and experience within a particular sector relevant to the grants being awarded.

2. "Aged grant" means a grant that has not been fully expended, is past the expected completion date, and does not have written approval to extend the completion date.

3. "Director" means the director of the energy infrastructure and impact office or director's designee.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

CHAPTER 85-02-02
GRANT PROCESSING

Section

85-02-02-01. Grant announcement.

All grant announcements must be posted on the energy impact webpage. Grant announcements may be sent either electronically or by postal mail to:

1. Media contacts;

2. Members of the North Dakota legislative assembly;

3. North Dakota league of cities or association of counties, whichever applies;

4. Other associations representing targeted grant sectors;

5. Board members;

6. All department contacts for the targeted grant sector; and

7. Anyone who requests a copy.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-02. Applications.

1. An applicant shall complete and submit a grant application prescribed by the director along with supporting documentation, including engineer estimates, vendor bids or quotes, most recent audited financial statements, established budget for the political subdivision, mill levy and taxable valuation used to determine the mill levy, and any other supplemental information requested by the director or published in the grant announcement.

2. A grant application must be received by the energy infrastructure and impact office before the deadline listed in the grant announcement. For good cause shown, a grant application received after the deadline may be considered at the discretion of the advisory committee, board, or director.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-03. Signatures.

1. For political subdivisions, a grant application must be signed by an appointed or elected government official and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

2. For an entity exempted from statutory political subdivision requirements, a grant application must be signed by the primary executive and the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

3. An electronic signature is permissible.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-02-04. Scoring.

The director has discretion not to score a substantially incomplete application, resulting in the disqualification of the substantially incomplete application. In reviewing a grant application, the following may be considered:

1. Objective;

2. Project readiness and timeline for completion;

3. Impact of energy activity;

4. Health, welfare, and safety of citizens where the project contributes to sustained economic development or activity;

5. Budget and other available funding;

6. Completeness of the application; and

7. Any other criteria deemed relevant by the advisory committee, board, or director.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-02-05. Assignment of funds.

If an advisory committee is appointed, it shall review each application and assign a recommended amount to each grantee, the aggregate not to exceed that authorized by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

85-02-02-06. Supplement.

If approved in advance by the director, an applicant may supplement its application.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-02-07. Advisory committee recommendations.

The advisory committee, if appointed, shall submit to the director its recommendations for funding, as well as a list of the applications not recommended for funding. The director shall submit the recommendations for the board's consideration and approval. The director may also submit the director's recommendations, if different from the advisory committee, for board consideration and approval.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

CHAPTER 85-02-03
GRANT AWARD

85-02-03-01. Authority.

The board retains final authority to award grant funds.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02

85-02-03-02. Signatures.

All correspondence, grant extension requests, grant allocation change requests, or other presentations must be signed by the following:

1. A political subdivision--an appointed or elected government official.

2. An entity exempted from statutory political subdivision requirements--the primary executive or the primary fiscal officer assigned the duties of managing grant communications, reports, and reimbursement requests.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05, 57-62-06

85-02-03-03. Acceptance of grant.

A grant recipient shall receive written notification of the grant awarded by the board from the director. The grant recipient shall acknowledge and return, within thirty days of the date of the notice, the recipient's acceptance or declination of funds on a form provided by the director. If a recipient fails to acknowledge acceptance of the grant funds within the thirty days, the board may declare the grant award void.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

85-02-03-04. Vendor registry.

A grant recipient must be registered with the office of management and budget as an active participant to receive electronic payment transactions.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02

Law Implemented: NDCC 57-62-05

85-02-03-05. Grant period.

The length of a grant period is three years, unless otherwise adjusted by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-06. Progress report.

1. The grantee shall submit to the director a biannual progress report, prescribed by the energy infrastructure and impact office. The biannual progress report must be received by the energy infrastructure and impact office by the twentieth day of June and December of every year of the project.

2. The director may conduct onsite project status visits to review and document utilization of the grant. The director shall provide advance notice to the grantee of any project status visits. The grantee shall provide the director with any project documentation upon request by the director; assist with inspection of equipment purchased, completed construction, or review of any other project expenditures; and provide a description of the remaining budget and timeline for the project.

3. If a grantee is delinquent in submitting a progress report or does not comply with the project status visit, the director may delay grant reimbursements.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-07. Payment of grant.

1. Grant funds are distributed based on documentation of either expenditures for project completion or asset acquisition, as approved by the director. Reimbursement may be authorized in phases or based on the incurrence of expenditures by the grantee. A grantee shall submit a request for reimbursement on forms prescribed by the energy infrastructure and impact office in order to receive reimbursement. A request for reimbursement must include:

   a. A vendor invoice; and

   b. Documentation of payment or formal meeting minutes, if authority is required by a governing body, which approves payment of project expenditures.

2. The director shall transmit the reimbursement electronically, if possible.

3. For final payment, the grantee shall submit a request for reimbursement no later than twenty days after the end of the grant period.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-08. Grant extension or retirement.

1. The grantee may submit a written request to the director if a grant project will not be completed by expiration of the grant period. The request must be received by the director no later than seventy-five days prior to expiration of the grant period. The request must detail:

a. The necessity for the request and the specific reasons why the project cannot be completed by the end of the grant period;

b. The portion of the project completed since the grant was awarded;

c. The efforts the grantee has taken to complete the project prior to expiration of the grant period;

d. The timeline for completion of the project; and

e. Any additional information requested by the director.

2. The grantee shall submit written notice to the director of a project's completion and any remaining unused funds prior to the expiration of the grant period. If a project is not initiated, a grantee shall submit written notice of project retirement to the director. The board may retire the grant and return the remaining balance to the originating grant fund.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-03-09. Changes to purpose or scope of project.

Funds must be used for the purpose or scope proposed in the grantee's application, unless a grantee makes a written request to the director for authorization to modify the purpose or scope of the project. The grantee must provide supporting documentation detailing the proposed modification. Authorization for a modification may be granted, as follows:

1. A modification that does not change the overall project goals, as originally proposed, may be approved by the director.

2. A modification that changes the overall project goals, as originally proposed, or reallocates the funding to costs not included in the grantee's application may only be approved by the board.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

CHAPTER 85-02-04
AGED GRANTS

85-02-04-01. Aged grants.

In the event of an aged grant, the director shall notify the grantee in writing that the board intends to cancel the grant and retire the remaining balance. Within fifteen days of the postmark of the notice, the grantee shall:

1. Submit a written response to the director indicating that the grantee concurs with cancellation of the grant; or

2. Submit a request for a grant extension.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 57-62-05

85-02-04-02. Grant deemed unresponsive.

A grantee that does not respond to the director's notice is deemed to concur with the cancellation of the grant. The board may cancel the grant immediately and retire the remaining balance to the originating grant fund. If an extension of an aged grant is not granted, the board may cancel the grant immediately and retire the remaining balance to the originating grant fund.

History: Effective January 1, 2019.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 15-01-02, 57-62-05

ARTICLE 85-03
UNCLAIMED PROPERTY

CHAPTER 85-03-01
DEFINITIONS

85-03-01-01. Definitions.

The following definitions, in addition to the definitions in North Dakota Century Code chapter 47-30.1, apply to this article:

1. "Claim" means the formal filing that initiates the process of returning unclaimed property to the rightful owner.
2. "Claimant" means the individual submitting the claim form for unclaimed property.
3. "Claim form" means the form prescribed by the administrator by which a claim can be initiated.
4. "Due diligence" means the holder's efforts to contact the owner prior to remitting property to the administrator, as required under North Dakota Century Code section 47-30.1-17.
5. "Heir finder" means an individual or business that assists owners in locating unclaimed property for a fee.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1

CHAPTER 85-03-02
REPORTING ABANDONED PROPERTY

85-03-02-01. Electronic reporting of abandoned property.

A holder shall report abandoned property electronically to the administrator in the standard national association of unclaimed property administrators' format.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

85-03-02-02. Information contained in reports.

In addition to the requirements in North Dakota Century Code section 47-30.1-17, a holder shall submit the following information in the report, if available:

1. Owner social security number;
2. Identifying account or policy number;
3. Owner date of birth;
4. Payee and remitter information for all cashier's checks, money orders, and traveler's checks; and
5. For mineral proceeds, a legal land description, well number, recording information, and any other information to adequately describe the lease.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

85-03-02-03. Due diligence.

Holder due diligence, including written or electronic communication, must include:

1. A deadline for owner response to holder;
2. Property type;
3. Property value; and
4. Unclaimed property division contact information.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17

85-03-02-04. Mineral proceeds.

A holder shall accumulate mineral proceeds and submit an annual lump sum report to the administrator by November first for the amount due through June thirtieth.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-16.1, 47-30.1-17, 47-30.1-27

85-03-02-05. Early reporting.

A holder may report property before it is deemed abandoned if the holder:

1. Has been granted prior written approval by the administrator; and

2. Demonstrates to the satisfaction of the administrator that due diligence has been performed.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-17, 47-30.1-27

CHAPTER 85-03-03
CLAIMING PROPERTY

85-03-03-01. Claims.

A claim must be submitted on a claim form and signed under penalty of perjury.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

85-03-03-02. Required documentation.

A claimant shall provide adequate documentation to establish ownership of the abandoned property, including photo identification and documentation of social security number.

1. The following additional documentation is required when a claim is submitted on behalf of:

   a. Deceased individuals: Copy of death certificate and documentation providing legal claim authority.

   b. Business claims: Federal employer identification number and documentation providing legal claim authority.

   c. Incapacitated individuals: Copy of documentation providing legal claim authority.

2. If there are multiple owners, all reported owners or the legal representative shall submit a claim form.

3. The administrator may request additional documentation necessary to support a claim.

4. If a claimant chooses to donate the property to the common schools trust fund, required documentation remains the same.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-24.1, 47-30.1-25

85-03-03-03. Payment of claim.

Upon approval of a claim, payment must be issued:

1. In the name of the reported owner;

2. In accordance with a court order; or

3. In the name of the rightful owner, as determined by the administrator, based on the records of the holder and other information available to the administrator.

History: Effective January 1, 2019.

General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-25

85-03-03-04. Heir finder requests.

1. An electronic list of owners must be provided upon request. The list includes:

    a. Property held by the unclaimed property division as of the date of the request;

    b. Owner's name;

    c. Owner's last known address;

    d. Holder information;

    e. Date of last activity; and

    f. Type of property.

2. A paper copy of the list must be provided upon request for a fee to be set by the administrator.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-19.1

85-03-03-05. Claims submitted by heir finder.

An approved claim submitted by an heir finder must be paid in the name of the original owner.

History: Effective January 1, 2019.
General Authority: NDCC 47-30.1-38
Law Implemented: NDCC 47-30.1-24, 47-30.1-35