CHAPTER 7-03.2-02
LICENSE TO HAUL, SAMPLE, AND TEST

7-03.2-02-01. New licenses.

All samplers, milk haulers, and testers must have a license from the commissioner. All applicants for a sampler and tester license must successfully complete an examination conducted by a certified individual employed by the commissioner or the state department of health, or other individual approved by the commissioner. Milk haulers must also comply with the requirements of chapter 7-03.2-13.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-22, 4.1-25-26

7-03.2-02-02. Relicensing.

To be relicensed, samplers, milk haulers, and testers must hold a current license and take any examinations or retraining the commissioner requires.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-22, 4.1-25-35

~~**7-03.2-02-03. Training.**~~

~~All licensed samplers and milk haulers must attend a training session at least once every two years. Training must be provided by the commissioner.~~

~~**History:** Effective October 1, 2009; amended effective July 1, 2024.~~
~~**General Authority:** NDCC 4.1-25-50~~
~~**Law Implemented:** NDCC 4.1-25-22, 4.1-25-35~~

CHAPTER 7-03.2-04
LICENSING PROCEDURES FOR DAIRY FARMS

Section

7-03.2-04-01. General requirements for licensing dairy farms.

1. All dairy farms wishing to sell milk must apply for a farm license. No farm may sell milk without a license.

2. Application for a license must be filed with the commissioner. Soon after receiving the application the commissioner shall inspect the farm and its facilities and premises.

3. A set of plans containing information on the dairy farm, milking facility, and milking equipment must be submitted to the commissioner for new dairy farms and prior to major changes in existing facilities. The plans must be provided by the dairy producer and approved by the commissioner prior to licensure and prior to starting any construction.

4. A facility inspection must be conducted and a water sample taken as a licensing requirement. Satisfactory results from both these items will result in the posting of an inspection sheet, which certifies that the facility can sell milk in North Dakota.

5. The inspection sheet must be prominently posted in the milkhouse and is part of the record in all administrative proceedings involving compliance with North Dakota Century Code chapter 4.1-25 and rules enacted under it.

6. The commissioner will license dairy farms either as:

   a. Grade A, which is a farm that is licensed to meet production practices required by North Dakota Century Code section 4.1-25-30; or

   b. Manufacturing grade, which is a farm that is licensed to meet production requirements required by North Dakota Century Code section 4.1-25-28.

7. Licensure continues unless suspended or revoked and is not transferable.

8. A dairy farm temporarily not in use during a normally scheduled inspection is required to be relicensed prior to starting raw milk production.

9. All licensed farms will be assigned a producer number by the commissioner. This number must be used by the producer, bulk hauler, and plant when communicating with the commissioner.

History: Effective October 1, 2009; amended effective July 1, 2024.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-28, 4.1-25-30, 4.1-25-33

7-03.2-04-02. Special requirements for licensing dairy farms.

1. **Grade A milk farm.** To be licensed as a grade A milk farm, the farm must satisfy the following:

   a. The farm must score a ninety or above during the initial inspection, without any equipment cleaning, major drug labeling, major drug storage, or milk cooling violations.

b. The water supply must meet the requirements of the North Dakota board of water well contractors and state department of health, or the water supply must be approved for municipal or rural water use by the state department of health.

~~c.~~ ~~Wells must be at least ten feet [3.01 meters] from hydrants unless the hydrant is frost-free style and with an approved atmospheric vacuum breaker or the hose connection threads are cut off.~~

~~d.~~c. The farm bulk tank must be empty at the time of licensing.

~~e.~~ ~~The hoseport must be installed in an exterior milkhouse wall.~~

~~f.~~ ~~Neither light fixtures nor vents may be placed over bulk tanks.~~

~~g.~~ ~~Light must be provided to properly inspect the interior of bulk tanks.~~

~~h.~~ ~~Livestock or fowl may not have access to truck approach (driveway) or loading area.~~

~~i.~~ ~~Hot water heater capacity must be adequate to properly clean equipment.~~

~~j.~~ ~~There must be adequate backflow preventors upstream from on water lines of tube, plate coolers and heat exchangers to protect the milkhouse and water supply. Backflow preventors are also required downstream of tube, plate coolers, and heat exchangers unless there is a physical break downstream. The physical break must be at least two times the diameter of the discharge line.~~

j. Properly mounted and installed 36A or N36 vacuum relief valves or a properly installed low pressure cut off switch downstream from a shut off valve, are required on power washers and booster pumps.

k. All equipment must meet applicable 3A standards and practices.

2. **Manufacturing grade milk farm.** Manufacturing grade milk farms must meet all rules of the United States department of agriculture.

History: Effective October 1, 2009; amended effective July 1, 2019; XXXXXX.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-28, 4.1-25-50

7-03.2-04-03. Denial of license and appeal.

1. Should the inspection determine that deficiencies exist, causing a score below a ninety without any equipment cleaning, major drug labeling, major drug storage, or milk cooling violations, the farm may not be licensed.

2. The producer shall correct deficiencies before requesting a reinspection.

3. A producer denied a license may appeal that decision to the commissioner within thirty days of the denial, by requesting, in writing, a hearing. The commissioner shall convene a hearing as soon as possible.

History: Effective October 1, 2009; amended effective July 1, 2019.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-02

7-03.2-04-04. Temporary facilities' license for selling raw milk.

1. Application must be made to the commissioner to license temporary facilities for dairy shows, fairs, etc.

2. Temporary facilities must comply with all construction requirements in article 7-03.2 and in North Dakota Century Code chapter 4.1-25 for farm facilities offering raw milk for sale. Lactating dairy animals must never be housed with fowl, swine, or other potential carriers of milk-borne illnesses.

3. An onsite facility inspection must be conducted by the commissioner prior to milk sales. If a temporary permit is issued, the permit will be the commissioner's inspection sheet, which the licensee must post in a place at the licensed facility to be readily viewed by the public. The permit duration will be set by the commissioner.

4. All milk offered for sale from facilities with temporary permits must be screened by the licensee for inhibitory substances by use of the Delvo P or other tests accepted by the commissioner. The person administering the test must be a licensed tester.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-30

7-03.2-04-05. Grade A farms - Loss of status - Inspection - Access.

1. If a grade A farm has three repeat violations that concern the same inspection item, or if the farm scores seventy-five or below in an inspection, it will be downgraded to manufacturing grade status. The commissioner shall notify the milk plant, the milk hauler, and the producer of the status change.

2. A grade A farm in violation of equipment cleaning, drugs, temperature, and other requirements established to protect the public from serious health risks will be reinspected not before three days but before twenty-one days.

3. If a grade A dairy farm is downgraded three times in any two-year period for any reason, the farm must remain downgraded for up to ninety days as determined by the commissioner. For a farm to regain a grade A license, a reinstatement inspection is required.

4. If access to a grade A farm is denied to persons seeking to undertake an inspection, federal check rating, an interstate milk survey, or any state inspection, then the farm will be immediately downgraded to manufacturing grade status and will lose its grade A status.

History: Effective October 1, 2009; amended effective July 1, 2019.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-24, 4.1-25-30

CHAPTER 7-03.2-07
MILK AND MILK PRODUCTS STANDARDS

7-03.2-07-01. Chemical, physical, bacteriological, and temperature standards.

All milk and milk products must meet the chemical, physical, bacteriological, and temperature standards established by the United States department of agriculture regulations and by the pasteurized milk ordinance.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-29, 4.1-25-30

7-03.2-07-02. Enforcement procedures.

1. Whenever three of the last five consecutive bacteria, temperature, or coliform counts exceed the standards of the pasteurized milk ordinance or United States department of agriculture regulations, the commissioner will suspend ~~the license of the plant processing the product.~~ the product in question until an acceptable sample is received.

2. Whenever any phosphatase test is positive, the commissioner shall conduct an investigation to determine the cause and the product in question may not be offered for sale until the cause is determined and eliminated.

3. Whenever any drug or pesticide test results in a level exceeding the limits established by the food and drug administration or environmental protection agency, the product in question must be removed from the market and the commissioner shall conduct an investigation to determine the cause. The milk product in question may not be offered for sale until the cause is determined and eliminated.

4. Cheeses processed or sold in North Dakota must meet definitions and standards found in title 21, Code of Federal Regulations, Part 133.

History: Effective October 1, 2009; amended effective July 1, 2024, XXXXXX.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-29, 4.1-25-30, 4.1-25-52

CHAPTER 7-03.2-14
TRANSPORTATION OF PROCESSED AND MANUFACTURED PRODUCTS

~~7-03.2-14-01. License.~~

~~All persons who transport processed and manufactured dairy products from the processing plant for retail sale or sale directly to the consumer must be licensed by the commissioner.~~

~~**History:** Effective October 1, 2009.~~
~~**General Authority:** NDCC 4.1-25-50~~
~~**Law Implemented:** NDCC 4.1-25-02~~

7-03.2-14-~~02.~~-01 Vehicle requirements.

All vehicles used to transport dairy products must comply with the following:

1. A temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower must be maintained in the storage area of the vehicle.
2. All milk and milk products, except frozen desserts, must be maintained at forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower. Ultrapasteurized and aseptically processed dairy products are exempt from this requirement.
3. Frozen desserts must be properly cooled to maintain solid form and texture.
4. The interior of the storage area must be cleaned daily and be free from insects and rodents.
5. An approved thermometer must be mounted in the storage area of all vehicles.

History: Effective October 1, 2009; amended effective April 1, 2013; XXXXXX.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-50

7-03.2-14-~~03~~02. Outdated products.

Dairy products that have exceeded their code date for retail sale may not be transported from the processing plant ~~if~~ to be offered for sale.

History: Effective October 1, 2009; amended XXXXXX.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-50

CHAPTER 7-03.2-18
DISTRIBUTORS OF MILK AND MILK PRODUCTS

Section

7-03.2-18-01. Licensing requirements.

Any person wanting to be a distributor of milk and milk products must be licensed by the commissioner. Before issuing a license, the commissioner must inspect the applicant's facilities and equipment.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-02, 4.1-25-50

7-03.2-18-02. Origin of grade A products.

A distributor may distribute grade A milk and milk products produced out of state, provided that they are produced by a facility approved and listed as an interstate milk shipper by the interstate milk shippers association.

History: Effective October 1, 2009; amended XXXXXX.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-02, 4.1-25-50

7-03.2-18-03. Compliance with federal rules.

A distributor must comply with the pasteurized milk ordinance.

History: Effective October 1, 2009.
General Authority: NDCC 4.1-25-50
Law Implemented: NDCC 4.1-25-02, 4.1-25-50

ARTICLE 7-07
POULTRY DIVISION

~~CHAPTER 7-07-01~~
~~POULTRY BUSINESS BONDS~~

~~7-07-01-01. Bond required.~~

~~Each applicant for a license under the provisions of North Dakota Century Code section 4.1-19-04 shall file with the application a bond, in the amount of ten thousand dollars, issued by an approved surety company. The department shall be named as the obligee in each bond but the bond shall be held for the purpose of protecting and for the benefit of any person buying or selling live poultry, as the case may be, to the licensee. Such bond shall be conditioned for all of the following:~~

~~1. The faithful performance by the licensee of the licensee's duties as such.~~

~~2. The compliance by the licensee with all of the provisions relating to the purchase or sale of poultry, as the case may be.~~

~~3. The full and complete payment to the seller for all poultry purchased by the licensee.~~

~~4. The full protection of any person who deals with the licensee.~~

~~Each bond shall cover the license period of the licensee.~~

~~Security may not be required for that portion of a licensee's business which is comprised of processing poultry raised and owned by the licensee or custom processing of poultry.~~

~~The department may waive the security requirements if it determines the volume of business is such that security would be impractical.~~

~~History:~~ ~~Amended effective January 1, 1993.~~
~~General Authority:~~ ~~NDCC 4.1-19-03, 4.1-19-04, 28-32-02~~
~~Law Implemented:~~ ~~NDCC 4.1-19-04~~

~~7-07-01-02. Licensee insolvency.~~

~~If any licensee defaults in the provisions of any bond, the licensee shall be deemed insolvent. Upon insolvency, the department by publication of a notice published once each week for three successive weeks in the official newspaper of the county in which the licensee operated shall notify all persons having claims against the licensee to file the claims with the department. Any person who shall fail to file the person's claim with the department, in the manner required by the department, and to surrender to it any receipts which have been obtained from such licensee within forty-five days after the last publication of notice shall be barred from participation upon the claim in any fund marshaled by the department as prescribed.~~

~~**General Authority:** NDCC 4.1-19-03, 4.1-19-04, 28-32-02~~
~~**Law Implemented:** NDCC 4.1-19-04~~

~~**7-07-01-03. Distribution of bond proceeds.**~~

~~Following the determination of the claims made in accordance with the procedures established by the department, the department shall prorate the claims and distribute the amount of bond proceeds accordingly. Any person contesting the validity of the claim shall be afforded a hearing to determine whether the claim is valid.~~

~~**General Authority:** NDCC 4.1-19-03, 4.1-19-04, 28-32-02~~
~~**Law Implemented:** NDCC 4.1-19-04~~

[Repealed effective XXXXXX]

ARTICLE 7-11
EGG REGULATIONS

CHAPTER 7-11-01
FARM FLOCK EGG HANDLING REQUIREMENTS

7-11-01-01. Definitions.

1. "Check" means any crack in the exterior shell of an egg. Sometimes called cracked eggs.

2. "Department" means the department of agriculture.

3. "Destination" means the point other than the place of origin where eggs are offered for sale.

4. "Dirties" means eggs that have an unbroken shell with adhering dirt or other foreign material.

5. "Egg inspector" means an employee of the state of North Dakota authorized by the commissioner of agriculture, responsible for performing inspections pursuant to these rules.

6. "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent the egg contents are exposed or are exuding or free to exude through the shell.

7. "Small commercial flock" means a flock of up to three thousand laying hens.

8. "Washed eggs" means eggs which are washed and candled but are not graded to size. Grade B tolerances for checks will be allowed on these eggs.

History: Effective January 1, 1993; amended effective July 1, 2019.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-02. Licenses - Application for licenses.

Application for licenses must be made on forms provided by the commissioner of agriculture.

~~1.~~ **Egg dealer's license.** Every person who wants access to commercial egg markets, engaged in the business of producing eggs shall first apply to and obtain from the department of agriculture an egg dealer's license. Licenses must be issued by the department upon receipt of proper application after inspection and approval of premises and equipment by an egg inspector pursuant to the rules of this article.

~~2. **Candler license**~~

Egg dealer licenses are not transferable. New egg dealers must possess a license. License fees are ten dollars annually and must be renewed by June first of each year.

History: Effective January 1, 1993; amended effective July 1, 2019; July 1, 2024; <u>XXXXXX</u>
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-03. Labeling and sales requirements.

1. **Farm flock egg handling requirements.** The farm flock egg handling requirements for egg production is a voluntary program.

2. **Temperature.** All eggs held or offered for sale must be stored in refrigerated compartments. The temperature cannot exceed forty-five degrees Fahrenheit [7.22 degrees Celsius]. This also includes temporary storage.

3. **Cartons.** Farm flock eggs offered for sale must be identified with the producer's name and address. Either blank cartons can be used or a carton with the individual farm name can be made up. Federal regulations also required the following label on all shell eggs.

   SAFE HANDLING INSTRUCTIONS: To prevent illness from bacteria: keeps eggs refrigerated, cook eggs until yolks are firm, and cook foods containing eggs thoroughly.

4. **Pack dates**. All cartons must display a code indicating the date the eggs were packed. In addition to the pack date, the package may display a "use before" or "best before" date, but those dates may not exceed forty-five days from the pack date.

History: Effective January 1, 1993; amended effective July 1, 2019; July 1, 2024
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-04. Candling.

All eggs being offered for sale must be candled. The equipment must be of a design allowed by the department of agriculture. Hand candling is permissible.

History: Effective January 1, 1993.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-05. Egg handling.

Eggs being stored before sale must be kept in an area away from objectionable odors. The storage area must be capable of maintaining a temperature of between thirty-three and forty-five degrees Fahrenheit [.55 and 7.22 degrees Celsius].

Egg packing materials must be cleaned and well constructed. Only clean, sound, dry flats and cartons must be used. Any carton or flat that is reused must be made of washable material and shall be sanitized before being reused.

Transportation of all eggs to the point of sale must be done in a covered container.

History: Effective January 1, 1993; amended effective July 1, 2019.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-06. Egg cleaning.

Eggs must be washed either manually or with the aid of automatic cleaning equipment. ~~The entire shell of all eggs may not be submerged.~~ After washing the egg, it must be treated with a sanitizing solution and allowed to dry before packing. Clean potable water must be used in the egg-cleaning and sanitizing process. When manually washing eggs, a wash vat can be used with the detergent. Eggs should not be allowed to soak in water. The strength of the sanitizing spray must be no less than fifty parts per million nor more than two hundred parts per million of available chlorine or its equivalent. Other sanitizers formulated in compliance with 21 Code of Federal Regulations, section 178.1010 are acceptable for use in sanitizing shell eggs provided the sanitizers are registered with the federal environmental protection agency and labeled for use on shell eggs.

History: Effective January 1, 1993; amended effective July 1, 2019; July 1, 2024; [XXXXXX]
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-07. General requirements.

1. Farms selling eggs to retailers or other business establishments will need an annual water sample, if supplied by well water. Well water test results shall be tested by the egg dealer and the results submitted to the commissioner of agriculture.

2. New egg dealers must be inspected prior to issuing the initial license. The commissioner may determine if more inspections are necessary. ~~Inspections of farm shell egg producers must be annually unless the commissioner of agriculture determines more inspections are necessary.~~

3. Failure to comply with farm shell rules may result in revocation of a permit.

4. Farm shell egg producers have the right to appeal or request a hearing to reinstate an egg producer permit. The appeal process must be started within fifteen business days after permit suspension.

~~5.~~ ~~Farm shell egg producers and custom processors, custom hatcheries, and any other persons not directly buying or selling live poultry are exempt from North Dakota Century Code section 4.1-19-04.~~

~~6.~~ 5. Training for egg candling and grading will be provided by the department of agriculture.

~~7.~~ 6. Buildings housing egg grading and packing equipment must meet the following requirements:

- Be of sound construction to prevent the entrance or harborage of vermin.
- Be kept clean during grading and packing operations.
- Be kept sanitary to prevent contamination of eggs during handling.

~~8.~~ 7. North Dakota shell egg production guidelines must be the same as the standards that govern the United States department of agriculture shell egg program.

~~9.~~ 8. The North Dakota department of agriculture may inspect out-of-state eggs at the retail level to assure compliance with North Dakota shell egg regulations.

History: Effective January 1, 1993; amended effective July 1, 2024; [XXXXXX]
General Authority: **General Authority:** NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

7-11-01-08. Consumer grades.

1. **North Dakota consumer Grade AA at origin.** Grade AA eggs at origin must consist of eggs which are at least eighty-seven percent AA quality. The thirteen percent below AA quality may be in any combination of A or B quality. Not more than five percent checks are permitted. Not more than one-half of one percent leakers, dirties, or loss due to blood or meat spots in any combination are permitted except the loss may not exceed three-tenths of one percent. Other

types of loss are not permitted. Grade AA eggs at destination may not exceed seven percent checks.

2. **North Dakota consumer Grade A at origin.** Grade A eggs at origin must consist of eggs which are at least eighty-seven percent A quality or better. Within the thirteen percent which may be below A quality, not more than one percent may be B quality due to blood spots or serious yolk defects. Grade A eggs must have no more than five percent checks. Not more than one-half of one percent may be leakers, dirties, or loss due to blood or meat spots in any combination, except that the loss may not exceed three-tenths of one percent. Other types of loss are not permitted. Grade A eggs at destination may not exceed seven percent checks.

3. **North Dakota consumer Grade B at origin.** Grade B eggs at origin must consist of eggs which are ninety percent B quality or better. Within the maximum tolerance of ten percent which may be below B quality, not more than ten percent may be checks. Not more than one-half of one percent may be leakers, dirties, or loss due to blood or meat spots in any combination, except that the loss shall not exceed three-tenths of one percent. Other types of loss are not permitted. Grade B eggs at destination cannot exceed quality factors set at the place of origin.

History: Effective January 1, 1993; amended effective July 1, 2019.
General Authority: NDCC 4.1-19-06
Law Implemented: NDCC 4.1-19-06

CHAPTER 7-12-03
RISK MANAGEMENT PROGRAM FOR AGRICULTURAL ANHYDROUS AMMONIA FACILITIES

7-12-03-01. Scope.

The requirements of this chapter apply only to agricultural anhydrous ammonia facilities.

History: Effective April 1, 2013.
General Authority: NDCC 4.1-37-01
Law Implemented: NDCC 4.1-37-01

7-12-03-02. Incorporation by reference.

The provisions of 40 CFR part 68 as they existed on ~~June 30, 2011~~January 17, 2025, are incorporated by reference into this chapter, with the following exceptions:

1. Where the term "stationary source" appears in 40 CFR part 68, for the purposes of this chapter only reference the term "agricultural anhydrous ammonia facility" as defined in section 7-12-03-03.

2. Not adopted by reference in 40 CFR section 68.120.

3. Not adopted by reference are 40 CFR section 68.210, and 40 CFR section 68.215.

History: Effective April 1, 2013; Amended effective XXXXXX
General Authority: NDCC 4.1-37-01
Law Implemented: NDCC 4.1-37-01

7-12-03-03. Definitions.

The definitions in 40 CFR part 68 apply to this chapter. The following additional definitions also apply:

1. "Agricultural anhydrous ammonia facility" means any facility that has at least ten thousand pounds [4535 kilograms] of storage capacity and stores anhydrous ammonia intended to be used as a fertilizer or in the manufacturing of a fertilizer.

2. "Fertilizer" means any substance regulated as a fertilizer under North Dakota Century Code chapter 19-20.1.

History: Effective April 1, 2013.
General Authority: NDCC 4.1-37-01
Law Implemented: NDCC 4.1-37-01

CHAPTER 7-15-02
MICRONUTRIENT GUARANTEED ANALYSIS

7-15-02-01. Accepted micronutrient minimum concentrations.

Micronutrients when mentioned in any form or manner shall be registered and guaranteed. Guarantees shall be made on the elemental basis; however, the source of the micronutrient must be specified. For example, a micronutrient that is a mixture of EDTA and citric acid bound micronutrient must specify the percentage of total micronutrient in each form. ~~An iron EDDHA micronutrient must specify the percentage of total iron in ortho-ortho-EDDHA and ortho-para-EDDHA~~. Except guarantees for those water soluble nutrients labeled for ready-to-use foliar fertilizers, read-to-use specialty liquid fertilizers, hydroponic or continuous liquid feed programs and guarantees for potting, garden, and lawn soils, the minimum percentages which will be accepted for registration are as follows:

Element	Minimum Conce., %
Calcium (Ca)	1.0000
Magnesium (Mg)	0.5000
Sulfur (S)	1.0000
Boron (B)	0.0200
Chlorine (Cl)	0.1000
Cobalt (Co)	0.0005
Copper (Cu)	0.0500
Iron (Fe)	0.1000
Manganese (Mn)	0.0500
Molybdenum (Mo)	0.0005
Nickel (Ni)	0.0010
Sodium (Na)	0.1000
Zinc (Zn)	0.0500

History: Effective October 1, 2014; <u>Amended effective XXXXXX.</u>
General Authority: NDCC 4.1-40-11
Law Implemented: NDCC 4.1-40

7-15-02-02. Warning statements.

A warning or caution statement may be required for any product that contains a micronutrient in water soluble form when there is evidence that the micronutrient in excess of a certain percentage or concentration may be harmful to certain crops or human health, or where there are unusual environmental conditions.

History: Effective October 1, 2014.
General Authority: NDCC 4.1-40-11
Law Implemented: NDCC 4.1-40

ARTICLE 7-19
ENVIRONMENTAL IMPACT MITIGATION PROGRAM

CHAPTER 7-19-01
GENERAL PROVISIONS

7-19-01-01. Definitions.

For purposes of this chapter:

1. “Applicant” means a person that has filed on or after March 31, 2024, or is planning to file, an application for a proposed site, corridor, or route, pursuant to North Dakota Century Code chapter 49-22.

2. “Electric energy conversion facility” means as it is defined by North Dakota Century Code section 49-22-03.

3. “Electric transmission facility” means as it is defined by North Dakota Century Code section 49-22-03.

4. “Mitigation” means avoiding or minimizing adverse environmental impact or performing an action or activity to offset or otherwise compensate for adverse environmental impact by:

    a. Planning and executing a mitigation plan; or

    b. Payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.

5. “Mitigation Plan” means a plan of mitigation measures including creating or restoring similar habitat or offsetting or otherwise compensating for habitat adversely affected by the construction or operation of an electric energy conversion facility or electric transmission facility.

6. “Offset” means to counterbalance residual adverse environmental impact ~~to achieve a net neutral or beneficial outcome~~, generally conducted after

reasonable efforts have been undertaken to avoid and minimize impact or when avoidance or minimization of impact is not feasible.

7. "Similar habitat" means a physical environment that has the same or about the same corresponding resources, vegetation, and biotic factors serving multiple species that are exhibited in the physical environment within the vicinity of or generally surrounding the construction or operation of an electric energy conversion facility or electric transmission facility. These separate physical environments comprising similar habitat may resemble or somewhat differ from each other in general appearance, features, or other terrain characteristics.

History: Effective July 1, 2024; Amended XXXXXX.
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1(4); NDCC 49-22-03

7-19-01-02. Implementation and Administration.

1. The agriculture commissioner is responsible for the implementation and administration of an environmental impact mitigation program and the environmental impact mitigation fund.

2 The environmental impact mitigation fund is a continuing appropriation contained within the state treasury. This fund consists of all moneys deposited in the fund by legislative appropriation or under North Dakota Century Code section 49-22-09.2 and all interest or investment earnings upon moneys in the fund.

History: Effective July 1, 2024; Amended XXXXXX.
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1, NDCC 49-22-09.2

7-19-01-03. Mitigation Plan and Payment.

1. Before an application is filed to construct or operate an electric energy conversion facility or electric transmission facility, or very early in that application process, an applicant may notify and coordinate with the agriculture commissioner about identified adverse environmental impacts from the construction or operation of the facility. A notification may:

   a. Propose to the agriculture commissioner a mitigation plan to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts; or

   b. Request the agriculture commissioner to develop a mitigation plan, including a cost estimate, to create or restore similar habitat or to offset or otherwise compensate for identified adverse environmental impacts.

2. Prior to the public service commission issuing the applicant a permit or certificate, the agriculture commissioner shall notify the public service commission, for its consideration, of the mitigation plan and mitigation efforts or of any payment to the agriculture commissioner for deposit into the environmental impact mitigation fund for expenditure in accordance with North Dakota Century Code section 4.1-01-21.1.

3. As part of the permit or certificate process of a wind electric energy conversion facility, the applicant may not make an offset payment to any person, other than the agriculture commissioner, to create or restore similar habitat or to offset or otherwise compensate for the adverse environmental impact resulting from the construction or operation of the ~~an electric energy conversion or transmission~~ facility.

History: Effective July 1, 2024; Amended XXXXXX.
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1, NDCC 49-22-09.2

7-19-01-04. Agriculture Commissioner Notification to Legislative Management.

The agriculture commissioner shall provide a biennial report regarding the environmental impact mitigation fund to legislative management no later than December 31 of every even numbered year.

History: Effective July 1, 2024
General Authority: NDCC 4.1-01-21.1(4)
Law Implemented: NDCC 4.1-01-21.1, NDCC 49-22-09.2

CHAPTER 48.1-01-07

RENDERING PLANTS - COLLECTION OF DEAD ANIMALS

~~Section~~
~~48.1-01-07-01 Rendering Plants - Collection of Dead Animals~~

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

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

~~**History:** Effective July 1, 2016.~~
~~**General Authority:** NDCC 4.1-32~~
~~**Law Implemented:** NDCC 4.1-32-02, 36-14-19~~

[Repealed effective XXXXXX]

ARTICLE 48.1-05
CATTLE

CHAPTER 48.1-05-01
CATTLE

Section

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

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

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

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

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

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

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

2. Certificates of veterinary inspection for cattle must include an importation permit number issued by the state veterinarian before entering the state. Cattle imported on an approved electronic certificate of veterinary inspection platform, not originating in an area classified as infected with contagious disease by the board or state veterinarian, may be exempt from the requirement for an importation permit number.

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

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

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

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

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

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

4. Cattle entering the state must be officially identified by a method approved by the state veterinarian. <u>Feeder heifers, feeder steers and spayed heifers are exempt from identification rules, unless they are dairy source, exhibition or rodeo animals.</u>

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024<u>; XXXXXX</u>.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

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

1. Brucellosis.

   a. Test-eligible cattle, as determined by the board, must have a negative brucellosis test within thirty days prior to entry into North Dakota and must comply with uniform methods and rules in control of brucellosis as published by USDA-APHIS-VS.

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

2. Scabies.

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

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

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

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

3. Trichomonas foetus.

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

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

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

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

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

or

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

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

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

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

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

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

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

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

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

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

(8) Exposed feeder heifers and cows fed in dry lot for slaughter only.

4. Tuberculosis.

~~a. Dairy breed cattle sixty days of age or older, other than steers and spayed heifers, must be negative to an official test for tuberculosis within thirty days prior to entering the state.~~ Cattle sixty days of age or older, other than steers and spayed heifers, must have a negative tuberculosis test within sixty days prior to entry into North Dakota unless they originate from a “free” state established with the uniform methods and rules in control of tuberculosis as published by USDA-APHIS-VS.

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

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

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

(2) Cattle of Mexican origin require 484 electronic identification tags, or another United States department of agriculture-approved electronic method that clearly indicates they are Mexican origin, for identification.

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

(1) Steers;

(2) Spayed females;

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

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

(5) Nursing calves accompanying negative-tested dams.

History: Effective July 1, 2016; amended effective July 1, 2024; XXXXXX.
General Authority: NDCC 36-01-08, 36-01-12
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-01, 36-14-04.1

48.1-05-01-03. Disease control.

1. Anthrax.

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

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

2. Brucellosis.

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

b. Condemnation of infected cattle.

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

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

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

c. Brucellosis vaccination of calves.

(1) Female bovine animals may be vaccinated from four through twelve months (one

hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian.

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

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

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

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

3. Tuberculosis.

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

b. Condemnation of infected cattle.

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

ARTICLE 48.1-07
FARMED ELK

Chapter

CHAPTER 48.1-07-01
DEFINITIONS - GENERAL REQUIREMENTS

Section

48.1-07-01-01. Definitions.

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

1. "Farmed elk" mean mammals of the elk genus and species cervus candensis, formerly a subspecies of cervus elaphus. Red deer (cervus elaphus) are not farmed elk.

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02

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

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

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

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

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

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

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

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

48.1-07-01-04. Quarantine facility.

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

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

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

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

48.1-07-01-05. Fencing requirements.

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

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

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

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

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

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

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

   e. Gates in the perimeter fence must be secured.

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

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

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

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

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

48.1-07-01-07. Identification.

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-08

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

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

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

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

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

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

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

1. Farmed elk to be transferred, bought, or sold must have an itemized bill of sale, certificate of veterinary inspection, or manifest at transfer of ownership that must include individual official identification, species, age, sex, number of animals, buyer and seller and their respective

addresses, date of sale, and farmed elk facility numbers. All manifests and bills of sale must be submitted to the board within seven days of the occurrence.

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-02, 36-25-08, 36-25-10

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Effective July 1, 2016.

General Authority: NDCC 36-25-02
Law Implemented: NDCC 36-25-09

48.1-07-01-13. Slaughter facilities

Slaughter facilities that purchase and slaughter farmed elk shall obtain approval from the board before acquiring animals classified as farmed elk.

1. Slaughter facilities must be inspected under state or federal meat inspection.

2. The slaughter facility must be adequate to contain farmed elk.

3. A slaughter facility may not acquire or possess farmed elk until the board has inspected the containment and handling equipment at the facility; and has issued an approval of the containment and handling equipment at the facility.

4. Chronic Wasting Disease testing is not required of animals belonging to slaughter facilities which pass antemortem inspection.

History: Effective XXXXXX
General Authority: NDCC 36-25-07
Law Implemented: NDCC 36-25-07

ARTICLE 48.1-09
NONTRADITIONAL LIVESTOCK

Chapter

CHAPTER 48.1-09-01
DEFINITIONS - GENERAL REQUIREMENTS

Section

48.1-09-01-01. Definitions.

For purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.4, 36-01-12

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

1. Nontraditional livestock category 1 species:

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

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

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

2. Nontraditional livestock category 2 species:

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

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

3. Nontraditional livestock category 3 species:

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

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

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

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

(3) Bears.

(4) Wolves.

(5) Venomous reptiles and nonvenomous injurious reptiles.

(6) Primates.

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

(8) Other species as ordered by the board.

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

a. Arachnids.

~~b. Amphibians.~~

~~c.~~b. Invertebrates.

~~d. Nonvenomous noninjurious reptiles.~~

~~e.~~c. Tropical freshwater and saltwater fish.

~~f.~~d. Gerbils.

~~g.~~e. Guinea pigs.

~~h.~~f. Hamsters.

~~i.~~g. Mice.

~~j.~~h. Rats.

~~k.~~i. Sugar gliders.

~~l.~~j. Ova, semen, eggs or embryos of nontraditional livestock.

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

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

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

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

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

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

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

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

History: Effective July 1, 2016; amended effective July 1, 2024; XXXXXX.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-08.4, 36-01-12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The board may revoke any license or deny any license application and may dispose of any nontraditional livestock imported or transported for failing to comply with these rules or with

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

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

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

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

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

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

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

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

48.1-09-01-05. Quarantine facility.

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

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

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

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

48.1-09-01-06. Fencing requirements.

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

2. Unless otherwise specified, perimeter fences for cervids, nondomestic sheep and goats, and nondomestic hybrid sheep and goats must follow the height requirements in this section. The bottom of the fence must be at or below ground level. The fence must be a mesh of a size to prevent escape and not spaced more than six inches [15.24 centimeters] apart.

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

   b. All gates in the perimeter fence must be locked and there must not be more than six inches [15.24 centimeters] below or between gates.

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

   d. Each fawning or lambing pen may not exceed one hundred sixty acres [64.75 hectares].

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

      (1) A four-foot [1.22-meter] fence for small cervid species, including muntjac.

      (2) A four-foot [1.22-meter] fence made of twelve-gauge or heavier woven wire, or other material of similar strength for black Hawaiian, Corsican, painted desert, multi-horned hair, Texas dall, New Mexico dall, and desert sand sheep.

      (3) A six-foot [1.83-meter] fence for fallow deer.

      (4) An eight-foot [2.44-meter] fence for white-tailed deer, mule deer, red deer, category 3 nondomestic sheep, and category 3 nondomestic goats.

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

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12

48.1-09-01-07. Identification.

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

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

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

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

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

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

Law Implemented: NDCC 36-01-08, 36-01-08.2, 36-01-12

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

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

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

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

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

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

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

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

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

48.1-09-01-09. Zoos.

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

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

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

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

<u>48.1-09-01-10. Slaughter facilities</u>

<u>Slaughter facilities that purchase and slaughter non-domestic ungulates shall obtain a license from the board before acquiring animals classified as category 2 nontraditional livestock.</u>

1. <u>Slaughter facilities must be inspected under state or federal meat inspection.</u>

2. <u>The slaughter facility must be adequate to contain category 2 nontraditional livestock.</u>

3. <u>A slaughter facility may not acquire or possess category 2 nontraditional livestock until the board has inspected the containment and handling equipment at the facility; and has issued an</u>

approval of the containment and handling equipment at the facility.

4. Chronic wasting disease testing is not required of animals belonging to slaughter facilities which pass antemortem inspection.

History: XXXXXX
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08

CHAPTER 48.1-09-02
IMPORTATION REQUIREMENTS

Section
48.1-09-02-01 Importation Requirements

48.1-09-02-01. Importation requirements.

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

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

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

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

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

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

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

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

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

48.1-09-02-01. Importation requirements, waiver

The requirement for a certificate of veterinary inspection requirement for raptors may be waived if imported for less than 30 days for hunting purposes, provided that the falconer is in compliance with all wildlife regulations.

History: XXXXXX
General Authority: NDCC 36-01-07
Law Implemented: NDCC 36-01-07

CHAPTER 48.1-09-06
CATEGORY 3 SPECIES

48.1-09-06-01. Scope.

Repealed effective January 1, 2013.

48.1-09-06-01. Housing, handling, health, and importation requirements.

1. Suidae including wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

   a. Importation requirements for wild species of the family suidae (hogs and pigs), except swine considered domestic in the state by the board.

      (1) Certificate of veterinary inspection and importation permit number from the board.

      (2) Negative pseudorabies serologic test approved by the state veterinarian within thirty days prior to entry into the state.

      (3) Negative brucellosis test within thirty days of importation.

   b. Housing requirements (perimeter fence aboveground) for a confinement or holding area:

      (1) Perimeter fence at least six feet [1.83 meters] tall must be present.

      (2) Twelve-gauge or stronger mesh is required and must be no greater than three inches by four inches [7.62 centimeters by 10.16 centimeters].

      (3) Four-inch [10.16-centimeter] diameter treated posts or two-inch [5.08-centimeter] steel pipes must be no more than eight feet [2.44 meters] apart. Posts must be set three feet [.91 meter] deep.

      (4) Fence must be attached on the inside.

      (5) Two electric wires must be six inches [15.24 centimeters] inside the fence.

         (a) The first wire must be six to eight inches [15.24 to 20.32 centimeters] above the ground.

         (b) The second wire must be eight to twelve inches [20.32 to 30.48 centimeters] above the first wire.

         (c) Generator backup is required.

         (d) Snow that could affect the integrity of the fence must be removed before animals are allowed into the enclosure.

         (e) Electric fence must be maintained in working order and be kept clear of foliage and debris.

      (6) If a wooden structure is used, posts must be no more than eight feet [2.44 meters] apart with a gap no more than four inches [10.16 centimeters] between planks, except if young pigs are present, the fencing gaps must be no more than two inches [5.08 centimeters].

      (7) In the confinement area, an underground fence must be constructed with concrete

or imperviable surface comparable to concrete that meets the following requirements:

(a) Same strength as perimeter fence.

(b) Buried two feet [.61 meter] below ground.

(c) Three feet [.91 meter] angled forty-five degrees toward interior of enclosure.

(d) Four to six inches [10.16 to 15.24 centimeters] aboveground overlapped and attached to aboveground fence to monitor and ensure proper connection.

c. Gates in confinement area must meet the following requirements:

(1) A gate at least six feet [1.83 meters] tall must be present.

(2) Any gaps must be less than four inches [10.16 centimeters] between the gate and ground, except if young pigs are present, the fencing gaps must be no more than two inches [5.08 centimeters].

(3) An electric wire must span across the gate. The electric fence must be constructed of twelve-gauge wire and consist of a minimum of a two-joules charge.

(4) An underground fence must span the gate opening and must anchor the gating to the ground with a two-inch [5.08 centimeter] steel pipe or equivalent.

2. Large felids and felid hybrids, including mountain lions, jaguars, leopards, lions, tigers, and cheetahs:

a. Large felids that are in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Importation for large felids requires a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for large felids:

(1) Maintained in enclosures utilizing thick laminated safety glass, bars, or sturdy wire or in large outdoor exhibits employing barriers to separate animals and the public.

(2) A cage for a single animal must measure at least twenty feet [6.10 meters] wide by fifteen feet [4.57 meters] deep.

(3) Cages must be fifty percent larger per additional animal.

(4) Enclosures must have smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must measure at least eight feet by eight feet [2.44 meters by 2.44 meters].

(5) Enclosures must be made of steel chain link fencing of at least twelve-gauge strength, or material of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, an underfencing must extend at least forty-two inches [106.68 centimeters] into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(6) A guard rail or natural barrier must be in place which is at least three feet [.91

meter] in height, providing a minimum of a four-foot [1.22-meter] distance between the enclosure and people in areas where people, other than the owner or handler, have access to the enclosure.

(7) A perimeter fence at least eight feet high [2.44 meters] and at least four feet [1.22 meters] from the primary enclosure must be in place to keep animals and persons out of the enclosure and to act as a secondary security measure should an animal escape.

d. Additional housing requirements for very large pantherids (lions and tigers):

(1) Outdoor cages must have vertical walls at least sixteen feet [4.88 meters] high, or thirteen feet [3.96 meters] high with a minimum three-foot [.91-meter] overhang, or be provided with tops at least ten feet [3.05 meters] high.

(2) Raised shelves or ledges for sleeping and resting and large logs for claw sharpening.

e. Additional housing requirements for cheetahs. Cages must have vertical walls at least eight feet [2.44 meters] high.

f. Additional housing requirements for other large felids (leopards, jaguars, and mountain lions (pumas or cougars)):

(1) Elevated ledges or perches for sleeping and resting.

(2) Wood logs or other such materials for claw sharpening.

(3) Enclosures housing leopards and jaguars, whether indoors or outdoors must have secure tops.

(4) An outdoor cage housing mountain lions must be at least eight feet [2.44 meters] high with an additional overhang of fencing angling into the pen at least three feet [.91 meter] or six feet [1.83 meters] high with a ceiling.

3. Bears.

a. Bears, which are in the presence of persons other than the owner, handler, or immediate family, must be under the direct control and supervision of the owner or handler at all times.

b. Importation requirements for all bears are a certificate of veterinary inspection and importation permit number from the board.

c. Housing requirements for bears:

(1) Outdoor enclosures employing barriers, thick laminated safety glass, or bars. When used, dry moats must be at least twelve feet [3.66 meters] wide and twelve feet [3.66 meters] deep.

(2) A dry resting and social area, pool, and den.

(3) The use of electric wires or other means to discourage fence climbing.

(4) In addition to the primary enclosure:

(a) Den space for a single bear must measure at least six feet [1.83 meters] in width and depth and be at least five feet [1.52 meters] in height.

(b) Visual barriers, such as logs or boulders, added to enclosures housing more than one animal.

(c) Adequate shade provided to simultaneously accommodate all individuals housed within the enclosure.

(d) Smaller shift facilities to permit safe cleaning, cage repair, or other separations. Shift cages must be at least eight feet by eight feet [2.44 meters by 2.44 meters].

(5) Fences for all species must be fastened to a cement floor, or if a dirt floor is used, underfencing with a strength equal to the primary fencing must extend at least fortytwo inches [106.68 centimeters] into the pen.

(6) The underfencing must be covered with a minimum of two feet [.61 meter] of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

d. Additional housing requirements for polar bears, brown bears, and grizzly bears:

(1) If vertical walls are used as a primary barrier, they must be at least twelve feet [3.66 meters] high.

(2) Adjoining facilities to permit safe cleaning and additional separation.

(3) The dry resting and social area for one or two adult bears must measure at least four hundred square feet [37.16 square meters] with an additional forty square feet [3.72 square meters] provided for each additional bear.

(4) Fencing must be a minimum of four-gauge steel chain link or equivalent.

e. Additional housing requirements for American black bears, Asiatic black bears, sloth bears, spectacled bears, and sun bears:

(1) Three hundred square feet [27.87 square meters] of dry resting and social area must be provided for one or two animals and be increased by fifty percent for each additional animal.

(2) Fencing must be minimum of nine-gauge steel chain link or equivalent.

(3) Fencing height must be a minimum of ten feet [3.05 meters] with a top or twelve feet [3.66 meters] with an additional three-foot [.91-meter] overhang.

4. Wolves and wolf hybrids.

a. Any wolf that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times.

b. Importation requirements for wolves:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) A statement on the certificate of veterinary inspection that the animal has not been exposed to rabies.

(3) The animal cannot be imported from an area that is quarantined for rabies, unless approved by the state veterinarian.

c. Outdoor housing or holding facility requirements for wolves:

(1) Minimum floor space per animal must be two hundred square feet [18.58 square meters] and floor space must be increased by one hundred square feet [9.29 square meters] for each additional animal. The enclosure must be at least eight feet [2.44 meters] high with an additional overhang of fencing angling into the pen or six feet [1.83 meters] high with a ceiling.

(2) The enclosure must be made of steel chain link fencing of at least twelve-gauge strength, or fencing of adequate strength as approved by the state veterinarian, fastened to a cement floor. If a dirt floor is used, underfencing must extend at least forty-two [106.68 centimeters] inches into the pen. The underfencing must be covered with adequate layers of dirt, gravel, or other substrate and any holes checked and refilled on a regular basis.

(3) Gates must have locks to prevent unauthorized entry of individuals.

(4) Shade and shelter from elements and inclement weather must be provided.

(5) A perimeter fence meeting the requirements of title 9, Code of Federal Regulations, sections 3.75, 3.77, and 3.78, must be required if the animal is kept within the city limits or other populated areas as determined by the state veterinarian.

5. Venomous reptiles and nonvenomous injurious reptiles.

a. A license to possess a venomous reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates an educational purpose for and the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile. An educational purpose includes research and displays at schools, institutions of higher education, wildlife preserves, zoos, and other bona fide educational displays approved by the state veterinarian.

b. A license to possess a nonvenomous injurious reptile may only be issued if the applicant seeking the nontraditional livestock license demonstrates the ability to appropriately house, feed, care for, handle, and, if necessary, dispose of the reptile.

c. The permittee shall provide documentation to the state veterinarian of the permittee's experience with these types of animals and the permittee's ability to safely maintain and control the animals.

d. Importation for venomous reptiles or nonvenomous injurious reptiles requires a certificate of veterinary inspection and importation permit from the board.

e. Premises where venomous reptiles are kept on display to the public must be posted with a notice clearly and conspicuously posted to provide the location of the nearest, most readily available source of appropriate antivenin and a written plan of action in the event of a venomous reptile bite.

(1) This plan of action must receive the written approval of a local medical facility, and a copy of the plan of action and the approval of the medical facility must be provided to the board.

(2) The person possessing the venomous reptile shall arrange for appropriate antivenin to be readily available through a local hospital, the name, address, and telephone number of which must be affixed to the enclosure.

f. Written animal escape emergency procedures must be clearly and conspicuously posted in the building housing venomous reptiles or nonvenomous injurious reptiles and must be supplied to the board at the time the permit application is initially submitted.

g. Written notice of the presence on the premises of venomous or nonvenomous injurious reptiles must be provided to the local police, firefighters, and emergency medical personnel, including an identification of the animals possessed and the location of the animals within the premises.

h. If a venomous or nonvenomous injurious reptile is transported or removed from its primary enclosure for feeding or in order to clean the enclosure, the reptile must be kept in a fully enclosed container with a secure and locked lid which has air holes or other means of ventilation.

i. Snake hooks must be present for caring for venomous snakes.

j. The permittee shall telephonically notify the board of any reptile bite on humans or escapes of any reptiles within twenty-four hours and provide a written report of the incident to the board within seven days.

k. Housing requirements for venomous reptiles:

(1) An enclosure or container containing venomous reptiles must be clearly labeled as "Venomous" and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Venomous reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All enclosures and access to them must be locked.

l. Housing requirements for nonvenomous injurious reptiles:

(1) An enclosure or container containing nonvenomous injurious reptiles must be clearly labeled with safety concerns and be labeled with the common and scientific name of the species as well as the number of animals contained inside.

(2) Nonvenomous injurious reptiles in captivity must be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape. All enclosures and access to them must be locked.

6. Primates:

a. Any primate that is in the presence of persons other than the owner, handler, or immediate family must be under the direct control and supervision of the owner or handler at all times. <u>If taken out of the home enclosure, animals must be in a cage that meets license requirements with a barrier.</u>

b. Importation for primates requires a certificate of veterinary inspection and an importation permit number issued by the board containing the following:

(1) Negative tuberculosis test within thirty days of importation into the state, with mammalian tuberculin used in testing.

(2) Negative hepatitis A test.

(3) Fecal sample tested negative for parasites, shigella, and salmonella.

(4) Statement that a primate has not shown signs of or been exposed to infectious disease in the last one hundred eighty days.

c. Requirements for maintaining a primate after importation:

(1) Negative tuberculosis test prior to renewal of license.

(2) Negative tuberculosis test within thirty days of change of ownership.

d. General housing requirements for primates:

(1) Primate housing must comply with title 9, Code of Federal Regulations, section 3.75.

(2) Primates must have a dedicated primary enclosure area, such as a room or

cage-type enclosure, separate from other living areas of human occupants.

e. Space requirements for primates:

(1) Indoor primate enclosures must be at least two square feet [.19 square meter] per pound [.45 kilogram] of adult body weight per animal. This figure must be increased by fifty percent for each additional animal. The height of the primate primary enclosure area must be at least four times taller than the animal's body length.

(2) Primates kept outdoors must have a dedicated enclosure with a perimeter fence. The enclosure must include a roof, shelter from the elements, fence, and a lock on the enclosure. The dimensions of the outdoor enclosure must be at least as large as required for the indoor enclosure.

f. Additional licensure requirements

(1) A USDA exhibitor's license is required for non-human primate ownership

(2) Ownership of non-human primates requires compliance with Animal Welfare Act and Animal Welfare Regulations: Part 3: Subpart D 3.75 specifications for the Humane Handling, Care, Treatment, and Transportation of Nonhuman Primates.

7. Nondomestic sheep and hybrids and nondomestic goats:

a. Import requirements for category 3 nondomestic sheep and nondomestic goats in addition to those listed in section 48.1-09-02-01:

(1) A certificate of veterinary inspection and importation permit number from the board.

(2) Official identification approved by the state veterinarian.

(3) Negative tuberculosis test within thirty days.

(4) Animals must be free of any signs of scrapie as determined by an accredited veterinarian. The certificate of veterinary inspection must contain a written statement, signed by the consignor, stating that:

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

(5) Special permission must be obtained from the board to possess nondomestic sheep and hybrids and nondomestic goats and hybrids south and west of the Missouri River.

b. Fencing requirements for category 3 nondomestic sheep and nondomestic goats:

(1) Fencing must be at least eight feet [2.44 meters] high and made of twelve-gauge or heavier woven wire, or other material of similar strength.

(2) The bottom of the fence must be at or below ground level.

(3) Gates in the perimeter fence must be locked and there must not be more than six inches [15.24 centimeters] below or between gates.

(4) A handling and holding facility, adequate to handle nondomestic sheep or goats, or both, must be in place.

History: Effective July 1, 2016; amended effective July 1, 2024, XXXXXX.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-01-31.

ARTICLE 48.1-12
SWINE

CHAPTER 48.1-12-01
SWINE

48.1-12-01-01. Definitions.

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

1. "Breeding swine" means any swine that are maintained for breeding purposes, including sows that are parturient or which have given birth to one or more litters of pigs and boars which are uncastrated and which have reached a stage of maturity rendering the animal capable of being used as a breeding animal, including those boars that through age or infirmity are no longer suitable for such use.

2. "Feeder swine" means swine being fed or intended to be fed for weight-gaining purposes and eventual slaughter.

3. "Slaughter swine" means swine that are consigned to a slaughter market or consigned directly to slaughter regardless of age, breed, or sex.

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

48.1-12-01-02. Importation requirements - Certificate of veterinary inspection - Identification - Exemptions.

1. Swine imported into the state, must be accompanied by a certificate of veterinary inspection except:

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

   b. Swine consigned to a state or federally inspected slaughtering establishment.

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

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

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

2. Certificates of veterinary inspection must include an importation permit number issued by the state veterinarian before entering the state. Swine imported on an approved electronic certificate of veterinary inspection platform, not originating from an area classified as infected with contagious disease by the board or state veterinarian, may be exempt from the requirement for an importation permit number.

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

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

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

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

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

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

4. Swine imported into the state must be identified and marked in a manner prescribed by the state veterinarian.

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

6. Swine that is infected, or recently exposed to any contagious or infectious disease, may not be imported.

History: Effective July 1, 2016; amended effective July 1, 2024.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-12-01-03. Importation disease testing requirements.

1. Brucellosis. Breeding swine over six months of age must have had a negative brucellosis test within thirty days prior to entry into the state unless they are imported from a validated herd or a validated state.

2. Pseudorabies. Imported swine must test negative for pseudorabies within thirty days prior to entry into the state or comply with one of the following:

   a. Be from a stage V or stage IV state or area, as designated by the USDA-APHIS-VS;

   b. Be from a qualified pseudorabies negative herd; or

   c. Be from a feeder swine pseudorabies monitored herd as designated by USDA-APHIS-VS.

~~3. Transmissible gastroenteritis. The accredited veterinarian must declare in a statement on the certificate of veterinary inspection, "The premises the swine are originating from has not had any signs or a diagnosis of transmissible gastroenteritis in the last sixty days."~~

4. ~~Porcine epidemic diarrhea virus. The accredited veterinarian must declare in a statement on the certificate of veterinary inspection, "The premises the swine are originating from has not had any signs or a diagnosis of porcine epidemic diarrhea virus in the last sixty days."~~

History: Effective July 1, 2016: amended effective July 1, 2024; XXXXXX.
General Authority: NDCC 36-01-08
Law Implemented: NDCC 36-01-08, 36-01-12, 36-14-04.1

48.1-12-01-04. Disease control.

Pseudorabies.

1. USDA-APHIS-VS establishes criteria for recognizing pseudorabies low-state area or prevalence areas.

2. A pseudorabies vaccination for all swine is prohibited unless approved in writing by the state veterinarian.

3. Breeding and feeder swine of unknown status must be quarantined until the swine pseudorabies status is determined by isolation and a pseudorabies test is conducted at the owner's expense, as well as a retest conducted in thirty to sixty days, at the owner's expense, or such swine must be shipped directly to slaughter.

4. A pseudorabies infected swine herd, as determined by a test approved by the board, must be quarantined and isolated from other susceptible animals on the farm, or other premises where the infected herd is located.

5. Reactor animals must be slaughtered. Then, the infected herd must be retested and receive two negative tests, the tests at least thirty days apart, with the first test occurring not sooner than thirty days after the last reactor animal is removed from the herd. Nursing piglets are not required to be tested.

6. As an alternative to a retest, the entire infected herd may be sent directly to slaughter.

7. The quarantine will be lifted only after the retests required pursuant to this subsection have occurred, or the entire infected herd has been shipped directly to slaughter. Before the quarantine is lifted, the premises of the infected herd must be cleaned and disinfected in a manner prescribed by the state veterinarian, or other agent of the board.

8. Slaughter sows and boars must receive pseudorabies testing at the first point of sale in the state, if necessary under a mandatory pseudorabies testing program instituted by the board.

9. Disposal of carcasses of swine infected with or testing positive for pseudorabies must be by a method prescribed by the state veterinarian.

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

48.1-12-01-05. Removal or damaging of official identification or marks.

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

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

ARTICLE 60-03
PESTICIDES

CHAPTER 60-03-01
PESTICIDE, DISTRIBUTION, HANDLING, AND USE

60-03-01-01. Scope.

Repealed effective January 1, 2013.

60-03-01-02. Definitions.

As used in this chapter, the following words shall have the meaning given to them below, unless otherwise made inappropriate by use and context. Words not defined in this section shall have the meaning given to them in North Dakota Century Code chapter 4.1-33.

1. "Agricultural plants" means any plants grown or maintained for commercial or research purposes.

2. "Board" means the North Dakota pesticide control board created pursuant to North Dakota Century Code section 4.1-33-02.

3. "Bulk pesticide" means any volume of pesticide that is intended to be repackaged, can be accurately measured, and can be transported or held in an individual container.

4. "Bulk pesticide facility" means any place used to handle or store bulk pesticides.

5. "Certification" means recognition by the board or its designee that a person is competent and thus authorized as a:

   a. Certified private applicator to use a restricted use pesticide or supervise the use of restricted use herbicides or general use pesticides in noncommercial settings.

   b. Certified commercial applicator to use a restricted use pesticide or supervise the use of a general use pesticide in commercial settings.

   c. Certified public applicator to use a restricted use pesticide or supervise the use of a general use pesticide in settings that do not require maintaining proof of financial responsibility.

   d. Certified dealer to distribute restricted use pesticides.

6. "Commissioner" means the North Dakota agriculture commissioner.

7. "Compensation" means monetary payment for a specific service.

8. "Competent" means qualified to perform functions associated with pesticide applications, the degree of competency required being directly related to the nature of the activity and the associated responsibility, including receiving proper training to know and understand the pesticide label, the product name and application rate, proper application techniques, recordkeeping requirements, worker protection standards, and emergency response and being able to identify workplace hazards.

9. "Custom blend" means any diluted mixture of pesticide prepared by a dealer to the specifications of the end-user and not held in inventory.

10. "End-use labeling" means the written, printed, or graphic matter on, attached to, or accompanying the pesticide or device or any of its containers or wrappers.

11. "End-user" means the person who applies the pesticide.

12. "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as codified and amended at 7 U.S.C. 136-136y.

13. "Fumigant pesticide" means a chemical compound whose pesticidal action occurs in a gaseous state.

14. "General use pesticide" means any pesticide formulation which is not classified for restricted use.

15. "Handling" means the mixing, loading, application, repackaging, storage, transportation, distribution, sale, purchase, or disposal of pesticides.

16. "Mixture" means any pesticide combined with fertilizer, seed, or other substance.

17. "Mobile container" means a container used to transport pesticides.

18. "Operational area" means:

   a. An area within a permanent containment area where pesticides are transferred, loaded, unloaded, mixed, repackaged, or refilled; or

   b. An area where pesticides are rinsed from a container.

19. "Permanent containment area" means:

a. An aboveground pad or dike constructed of impervious material, such as sealed concrete, stainless steel, or other material as approved by the registrant, unless the commissioner approves or requires material other than that approved by the registrant; or

b. An area that has a berm or curb or is otherwise designed to contain discharges that may occur while handling pesticides or pesticide-containing materials.

20. "Pesticide-containing material" means:

a. Any container of a pesticide product that has not been triple-rinsed or the equivalent of triple-rinsed;

b. Any rinsate that is derived from a pesticide container, pesticide application equipment, or equipment washing;

c. Any material that is used to collect or contain excess or spilled pesticide or rinsate;

d. Any mixture of pesticide and diluent such as wash water, rinse water, or rainwater; or

e. Material that is generated as a result of contact with or utilization of a pesticide in an application, containment, recovery, reuse, or treatment system. The term does not include personal protective equipment that contains pesticide residue.

21. "Pesticide-producing establishment" means any site where a pesticide is manufactured, packaged, repackaged, prepared, processed, labeled, relabeled, or held for distribution.

22. "Registrant" means the person holding the pesticide product registration under North Dakota Century Code chapter 4.1-34.

23. "Repackaging" means the transfer of a pesticide in an unaltered state from a container into a designated or dedicated refillable container for the purpose of distribution.

24. "Spill kit" means a portable kit or other equipment that is designed to recover, minimize, contain, or absorb discharges of pesticides. A spill kit must include the following:

a. Enough absorbent material, or any combination of absorbent pads, pillows, or tubes sufficient to absorb five gallons [18.93 liters] of liquid;

b. One or more impervious containers with a combined minimum capacity of ten gallons [37.85 liters]; and

c. Adequate tools to collect and place pesticide-contaminated material in containers.

25. "Under the direct supervision" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified applicator who is responsible for the actions of that person and who is available if and when needed, even though the certified applicator is not physically present at the time and place the pesticide is applied. The certified applicator must be able to physically arrive at the location of a supervised applicator within thirty minutes.

26. "Use of a pesticide" means mixing, filling application equipment, applying, storing, distributing, and disposing of a pesticide.

27. "Use of a pesticide in a manner inconsistent with its labeling" means using any pesticide in a manner that is not permitted by the labeling, except that the term does not apply to any of the following:

a. Applying a pesticide at any dosage, concentration, or frequency that is less than that specified on the label, unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.

b. Applying a pesticide against any target pest that is not specified on the labeling if the application is to the crop, animal, or site that is specified on the label.

c. Employing any method of application that is not prohibited by the labeling unless the label specifically states that the product may be applied only by the methods specified on the labeling.

d. Mixing a pesticide or pesticides with a fertilizer when the labeling does not prohibit such mixture.

e. Any use of a pesticide that is in compliance with section 5, 18, or 24 of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 [Pub. L. 104-170; Stat. 7 U.S.C. 136 et seq.].

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; March 1, 2003; July 1, 2004; January 1, 2013; XXXXXX.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03

60-03-01-03. Restricted use pesticides.

Repealed effective January 1, 2013.

60-03-01-04. Prohibited pesticides. [Reserved]

60-03-01-05. Classes of commercial applicator, public applicator, and dealer certifications.

A commercial applicator, public applicator, or dealer certificate may be issued to individuals who pass a core certification examination and who have obtained certification in one or more of the following classes:

~~1. **Agricultural pest control (plant and animal).** This class authorizes the use of pesticides intended for agricultural crop land, grasslands, animals, animal facilities, and noncrop lands, including natural areas, fallow, nonproducing agricultural lands, and mines.~~

~~2. **Seed treatment.** This class authorizes the use of pesticides intended for agricultural crop seeds, other seeds, and vegetative seed stocks.~~

~~3. **Commodity and structural fumigation.** This class authorizes the use of fumigant pesticides intended for raw agricultural commodities, processed foods, nonfood commodities, transport vessels, commodity processing facilities, and commodity storage structures.~~

~~4. **Ornamental and turf pest control.** This class authorizes the use of pesticides intended for producing and maintaining ornamental trees, shrubs, flowers, and turf.~~

~~5. **Greenhouse.** This class authorizes the use of pesticides intended for greenhouses.~~

~~6. **Right of way.** This class authorizes the use of pesticides in parking lots and rights of way for roads, powerlines, telecommunication lines, pipelines, and railways, and in other similar areas.~~

~~7. **Public health pest control.** This class authorizes the use of pesticides by government employees, applicators working under government contract, or other persons for public health purposes.~~

~~8. **Research and demonstration pest control.** This class authorizes the use of pesticides by individuals for the purpose of education or research. These would include county agents, state, federal, and commercial employees, plus other persons conducting research or demonstrating the proper application of restricted use pesticides.~~

~~9. **Home, industrial, and institutional pest control.** This class authorizes the use of pesticides in or around food-handling establishments, human dwellings, public or private institutions, warehouses, grain elevators, and any other structures.~~

~~10. **Wood preservatives.** This class authorizes the use of pesticides intended to preserve lumber products.~~

~~11. **Vertebrate.** This class authorizes the use of pesticides intended to control vertebrate pests, such as rodents, certain predators, and bats not in or around structures.~~

~~12. **Sewer root control.** This class authorizes the use of pesticides intended to control tree or other plant roots infesting sewer systems.~~

1. **Agricultural pest control-Crop.** This class authorizes the use of pesticides in production of agricultural commodities, including but not limited to grains, vegetables, small fruits, tree fruits, peanuts, tree nuts, tobacco, cotton, feed and forage crops including grasslands, and non-crop agricultural lands.

2. **Agricultural pest control—Livestock.** This class authorizes the use of pesticides on animals or to places on or in which animals are confined. Certification in this class alone is not sufficient to authorize the purchase or use of sodium cyanide or sodium fluoroacetate products for predator control.

3. **Forest pest control.** This class authorizes the use of pesticides use pesticides in forests, forest nurseries and forest seed production.

4. **Ornamental and turf pest control.** This class authorizes the use of pesticides to control pests in the maintenance and production of ornamental plants and turf.

5. **Seed treatment.** This class authorizes the use of pesticides on seeds in seed treatment facilities.

6. **Aquatic pest control.** This class authorizes the use of pesticides purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in number 9 below.

7. **Right-of-way pest control.** This class authorizes the use of pesticides in the maintenance of roadsides, powerlines, pipelines, and railway rights-of-way, and similar areas.

8. **Industrial, institutional, and structural pest control.** This class authorizes the use of pesticides in, on, or around the following: Food handling establishments, packing houses, and food-processing facilities; human dwellings; institutions, such as schools, hospitals and prisons; and industrial establishments, including manufacturing facilities, warehouses, grain elevators, and any other structures and adjacent areas, public or private, for the protection of stored, processed, or manufactured products.

9. **Public health pest control.** This class authorizes the use of pesticides by State, Tribal, Federal or other governmental employees and contractors in government-sponsored public health programs for the management and control of pests having medical and public health importance.

10. **Demonstration and research.** This class authorizes the use of pesticides by individuals who demonstrate to the public the proper use and techniques of application of such demonstration

and to persons conducting field research with pesticides. This includes such individuals as extension specialists and county agents, commercial representatives demonstrating pesticide products, individuals demonstrating application or pest control methods used in public or private programs, and State, Federal, commercial, and other persons conducting field research on or involving pesticides.

11. **Soil fumigation.** This class authorizes the use of pesticides to fumigate soil.

12. **Non-soil fumigation.** This class authorizes the use of pesticides to fumigate anything other than soil.

13. **Aerial pest control.** This class authorizes the use of pesticides applied by fixed or rotary wing aircraft.

14. **Wood preservatives.** This class authorizes the use of pesticides intended to preserve lumber products. Holders of this class shall demonstrate practical knowledge of the types of wood that require chemical protection against pests and other factors of decay. They must demonstrate a practical knowledge of wood preservatives being used for preserving and protecting wood, posts, treated wood products, and various lumber products. They also must demonstrate knowledge of the hazards associated with handling, treating, storage, and transport of treated wood products. They must demonstrate a knowledge of the concept and methods for sealing treated wood to minimize exposure.

15. **Vertebrate.** This class authorizes the use of pesticides intended to control vertebrate pests, such as rodents, certain predators, and bats not in or around structures. The class does not authorize the use of sodium cyanide and sodium fluoroacetates for predator control. Holders of this class shall demonstrate practical knowledge of pest vertebrate life cycles, habitat and damage symptoms. These include primarily rodent and predator problem vertebrate animals. The applicator shall demonstrate a practical knowledge of pesticide formulations and application techniques that avoid contamination of the habitat of non-target animals, and avoid exposure to people and animals. Since pest vertebrate control usually involves outdoor applications, applicators must also demonstrate practical knowledge of the environmental conditions particularly related to this activity. Applicators must demonstrate comprehension of all laws and regulations applicable to the pesticides use on vertebrate animals, including the U.S. Fish and Wildlife Service requirements for protecting endangered species.

16. **Sewer root control.** This class authorizes the use of pesticides intended to control tree or other plant roots infesting sewer systems. Holders of this class must exhibit knowledge of root problems in sewers, root growth biology, pesticides used to control roots in sewers, safe handling procedures, transporting pesticides, storing pesticides, equipment types, calibration procedures, pesticide mixing, safety procedures, PPE, and application concerns such as the effect on waste water treatment plants.

17. **Greenhouse.** This class authorizes the use of pesticides intended for greenhouses. Holders of this class shall demonstrate practical knowledge of pests, pesticide problems, application of a pesticides in confined areas associated with the management of a greenhouse, and distribution to the public of any treated plant materials. Because of frequent visitation by humans, applicators in this category must demonstrate safe and practical knowledge of application methods which will minimize or prevent hazards to customers and employees.

History: Amended effective February 1, 1982; October 1, 1990; November 1,1991; March 1, 1996; August 1, 2000; March 1, 2003; January 1, 2013; XXXXXX.

General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-06, 4.1-33-07, 4.1-33-11, 4.1-33-12

60-03-01-05.1. Commercial applicator, public applicator, and dealer certifications.

1. A commercial applicator, public applicator, or dealer certificate shall be issued only to persons who:

   a. Are eighteen years of age or older;

   b. Complete an application on forms and in the manner required by the board or its designee;

   c. Demonstrate competence in the use of pesticides as described in the core competencies contained in title 40, Code of Federal Regulations found in §§171.103 as they existed on January 4, 2017; and

   d. Pay the costs of training and education and any other fees.

2. Commercial applicator, public applicator, and dealer certificates shall expire on April first following the third anniversary of the year of certification or recertification. A person holding these certificates may be recertified by attending a board-approved ~~seminar~~ training or by passing a board-approved examination, or both if required by the board, at least every third year. All board approved exams and trainings must comply with title 40, Code of Federal Regulations found in §§171.107 as they existed on January 4, 2017.

3. A person holding a commercial applicator, public applicator, or dealer certificate who is unable to complete recertification requirements due to active duty military service may apply for an extension of the person's certification status for a time period not to extend beyond April first of the year following the person's return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether to grant the application.

4. A person holding an ~~aerial core commercial or aerial core public applicator~~ Aerial Pest Control certificate shall attend a professional aerial applicators' support system (PAASS) program or other board-approved program at least once every three years. Proof of attendance at a PAASS program or other board-approved program must be received by the North Dakota state university extension service before recertification is issued.

5. Any person who fails an examination may retake it after three or more days.

6. All commercial and public applicators must be certified, under section 60-03-01-05, in the class that applies to how they use pesticides.

7. All dealers must be certified, under section 60-03-01-05, in the class that applies to the pesticides they distribute.

8. If a pesticide is labeled for more than one target pest, a dealer only needs to be certified in one of the applicable classes.

9. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013; XXXXXX.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-07, 4.1-33-08, 4.1-33-11

60-03-01-05.2. Private applicator certification.

1. A private applicator certification shall be issued only to persons who:

a. Are eighteen years of age or older;

b. Complete an application on forms and in the manner required by the board or its designee;

c. Demonstrate competence in the use of pesticides <u>as described in the core competencies contained in title 40, Code of Federal Regulations found in §§171.105 as they existed on January 4, 2017</u>; and

d. Pay the costs of training and education and any other fees.

2. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section. An individual seeking certification as a private applicator may demonstrate competence by:

a. Attending a board-approved educational seminar, signing of a certificate of attendance, and passing a written examination administered by the board or its designee;

b. Completing a course of self-instruction and passing a written examination administered by the board or its designee; or

c. Passing the dealer, public applicator, or commercial applicator certification examination and submitting the passing grade to the board or its designee.

3. Certified private applicators purchasing, storing, or applying restricted use fumigant pesticides intended for use on agricultural commodities and in grain storage structures must pass a board-approved commodity and structural fumigation examination complete the Non-Soil Fumigation class requirements for commercial applicators and public applicators. The fee for the certification will be set by the North Dakota state university extension service.

4. Certified private applicators purchasing, storing, or applying restricted use fumigant pesticides for burrowing pest control must pass a board-approved vertebrate examination complete the vertebrate requirements for commercial applicators and public applicators. The fee for the certification will be set by the North Dakota state university extension service.

<u>5.</u> <u>Certified private applicators purchasing, storing, or applying restricted use soil fumigants must complete the Soil Fumigation class requirements for commercial applicators and public applicators. The fee for the certification will be set by the North Dakota state university extension service.</u>

<u>6.</u> <u>Certified private applicators applying restricted use pesticides applied by fixed or rotary wing aircraft must complete the Aerial Pest Control class requirements for commercial applicators and public applicators. The fee for the certification will be set by the North Dakota state university extension service.</u>

~~5.~~ <u>7.</u> A certified private applicator must be recertified by attending a board-approved seminar training or by passing a board-approved examination, or both if required by the board, at least every third year. <u>All board approved exams and trainings must comply with title 40, Code of Federal Regulations found in §§171.107 as they existed on January 4, 2017.</u>

8. certification requirements due to active duty military service may apply for an extension of the person's certification status for a time period not to extend beyond April first of the year following the person's return from active duty. The application must be in writing and accompanied by a certified copy of military orders or other trustworthy proof showing the date on which active duty military service began and ended. The board has discretion whether to grant the application.

9. Any person who fails an examination may retake such examination after three or more days.

No more than three examinations may be given before requiring attendance at another initial training course.

10. The board designates the North Dakota state university extension service to provide training, administer testing, and issue certifications under this section.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-12

60-03-01-05.3. Pesticide certification examination - Cheating.

1. An individual who seeks certification under section 60-03-01-05.1 or 60-03-01-05.2 may not, while taking a written examination, give or receive information or assistance to or from any other person, utilize the assistance of any electronic device capable of storing data, or consult any written materials unless expressly authorized in advance by the board or its designee. The written examination and any other writings made during the examination period must be provided to the board or its designee at the end of the examination period.

2. Cheating by an applicant in applying for or taking the examination may result in the invalidating of examination grades, expulsion from the examination room, disqualification from taking the examination for a specified period of time, and other penalties the board may impose. When the board believes that cheating has occurred, the applicant or certified individual must be given notice and an opportunity to be heard pursuant to North Dakota Century Code chapter 28-32 before imposing any penalties.

History: Effective July 1, 2004; amended effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-07, 4.1-33-11, 4.1-33-12

60-03-01-05.4. Certification denial.

1. The board, or its designee, may refuse to issue a pesticide certification, including an applicant for reciprocal certification under North Dakota Century Code section 4.1-34-15, to an individual who has had that individual's certification suspended or revoked in the past three years in any state or province or to an individual that has committed a documented violation of FIFRA or the pesticide regulations of any state, provincial, or tribal authority within the last three years.

2. The board, or its designee, may require an additional demonstration of applicator qualification if the applicator has had a license suspended or revoked or has otherwise had a history of pesticide violations.

History: Effective July 1, 2004; amended effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-06, 4.1-33-07, 4.1-33-11, 4.1-33-12, 4.1-33-15

60-03-01-06. Pesticide mixing, filling, and application - Storage - Transportation - Disposal.

1. **Mixing, filling, and application**.

   a. All pesticides must be used in accordance with the labeling.

   b. Pesticide applications must be made in a manner that prevents off-target discharges of pesticides.

   c. Pesticide application equipment or equipment used to fill application equipment that is designed to draw water from surface water must have a properly functioning antisiphoning device attached to the inlet hose.

d. Applications must not occur when the atmospheric conditions favor the off-target drift of pesticides or prevent the proper deposition of pesticides to the target area.

e. Pesticides must be applied in a manner that minimizes exposure to animals. Unless permitted by the labeling, an applicator shall take all reasonable precautions to prevent a pesticide from being applied if unprotected persons are present within the application site or are present in adjacent areas when off-target drift may occur.

f. Pesticide applicators and persons assisting with an application shall follow all safety precautions as specified on the labeling.

g. All equipment used in pesticide mixing, filling application equipment, and application must be operationally sound and properly calibrated to prevent adverse effects on the environment.

h. Any commercial or public applicator who mixes, fills application equipment, or otherwise uses pesticides shall have immediate access to a spill kit at the filling site. The spill kit requirement does not apply to a person using only ready-to-use pesticides.

i. The labeling, a legible reproduction of the labeling, or a specimen labeling of the pesticides being applied must be at the application site during the application. Aerial applicators must have the labeling available at the filling site.

2. **Storage**.

a. All pesticides, except bulk pesticides, must be stored in their original container and in accordance with labeling recommendations. All labeling of stored pesticides must be plainly visible. All pesticide containers must have a proper label affixed to them.

b. All pesticides must be stored in dry, well-ventilated spaces, and in a manner that will not endanger humans, animals, or the environment, nor contaminate food, feed, seed, or any goods intended for consumer distribution, through a release or escape of pesticide products.

c. If a storage area contains a floor drain, it must be sealed or self-contained.

d. Pesticide storage areas containing products intended for distribution or use by commercial or public applicators and dealers must be marked at all entrances. Storage areas containing only hard surface disinfectants are exempt from this requirement.

e. Label-specific safety equipment for all pesticides stored must be available at the immediate storage site.

f. Stored pesticides must be secured in a manner that prevents children, unauthorized persons, or animals from gaining entry or access to them. Security of a pesticide storage area is achieved when normal points of access are closed and locked while unattended and the structural integrity of the area prevents access by other than normal means.

3. **Transportation**.

a. All pesticides, except bulk pesticides, must be transported in their original containers. All pesticides must be transported in a secure manner to avoid breakage of containers, spills, or any other manner of contamination.

b. Pesticides must not be transported with foodstuffs, feed, or any other product or material so as to pose a hazard to humans, animals, or the environment.

c. Pesticides in an unattended transport vehicle must be secured to prevent children, unauthorized persons, or animals from gaining access.

d. Equipment contaminated while transporting pesticides must be cleaned and decontaminated prior to any other use.

4. **Disposal**.

   a. Empty pesticide containers must be stored in accordance with label recommendations and in a manner that will not endanger humans, animals, or the environment.

   b. Empty nonreturnable pesticide containers must be triple-rinsed or the equivalent on the day of their use. Secondary use of such containers that would endanger humans, animals, or the environment is prohibited.

   c. Pesticide containers must be disposed of in accordance with labeling directions and in a manner that will not endanger humans, animals, or the environment.

History: Amended effective April 15, 1985; October 1, 1990; July 1, 1992; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004; January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-17

60-03-01-07. Recordkeeping - Commercial, public, and private applicators and dealers.

1. **Dealers.** Every pesticide dealer shall keep separate, accurate, and complete records of all of the dealer's purchases and sales of restricted use pesticides and all pesticides used under section 18 (emergency exemption) and section 24-c (special local needs) of FIFRA. Dealers shall positively identify all purchasers of restricted use pesticides using any trustworthy proof of identification. If a restricted use pesticide is to be delivered to a person other than the certified applicator making the purchase, the dealer must have a completed and signed authorization to receive restricted use pesticides form on file for the purchaser for the current year. The records must include the following for each pesticide purchased or sold:

   a. Purchases.

      (1) Dealer's name and address.

      (2) Pesticide trade name and environmental protection agency registration number, if available.

      (3) Quantity of pesticide.

      (4) Date pesticide was shipped or received.

      (5) Name of the person from whom the pesticide was received.

   b. Sales.

      (1) Dealer's name and address and identification of the person making the sale.

      (2) Name, address, certification number, and signature of the certified applicator making the purchase.

      (3) Date of sale.

      (4) Trade name and environmental protection agency registration number, if available.

      (5) Quantity of pesticide.

      (6) Accurate inventory by product.

      (7) Certification class and expiration date of the certification.

(8) Intended application site or intended crop for all pesticides used under section 18 of FIFRA.

(9) Dealers shall positively identify all purchasers of restricted use pesticide products.

(10) The State, Tribe, or Federal Agency that issued the certification document.

2. **Commercial or public applicators.** Commercial and public applicators shall keep a record of all pesticide applications and of the use or disposal of all pesticide rinsate. The record must be made within twenty-four hours of the pesticide application or the use or disposal of the pesticide rinsate. A copy of the record must be provided to the applicator's client as soon as possible, not to exceed thirty days, unless the applicator has on file a signed letter from the client waiving the right to receive a copy. The record must include for each application:

a. Name and address of the person for whom the pesticide was applied.

b. Legal description of the land, specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure, grain bin identification, railcar number, or other description of where the pesticide was applied.

c. Pest or pests controlled.

d. Start and completion time of the pesticide application (month, day, year, and hour).

e. Person who supplied the pesticide that was applied, if other than the person making the application or that person's employer.

f. Specific trade name and environmental protection agency registration number of the pesticide that was applied.

g. Direction and estimated velocity of the wind and the estimated temperature of the outdoor air at the time the pesticide was applied. This requirement shall not apply to seed treatment applications or if bait is used to attract the pest or pests or if the application is made indoors.

h. Amount of pesticide used, including:

(1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.

(2) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].

i. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.

j. Description of equipment used in application.

k. Signature and number of applicator, if any.

l. Right-of-way applicators must record weather conditions and geographic location in two-hour increments.

3. **Private applicators.** Private applicators shall keep a record of all restricted use pesticide applications. The record must be made within twenty-four hours of the pesticide application or the use or disposal of the pesticide rinsate. The record must include for each application:

a. Legal description of the land, grain bin identification, or other description of where the pesticide was applied.

b. State and completion time of the pesticide application (month, day, year, and hour).

c. Specific trade name and environmental protection agency registration number of the restricted use pesticide that was applied.

d. ~~Amount~~ Total amount of pesticide used, including:

(1) Pounds [kilograms] or gallons [liters] per acre [.40 hectare] of formulated product.

(2) Pounds [kilograms] or gallons [liters] of tank mix applied per acre [.40 hectare].

e. Specific crops, commodities, and total acreage [hectarage] or other common identifying unit of measure to which the pesticide was applied.

f. Signature and certification number of applicator, if any.

History: Amended effective October 1, 1990; May 1, 1994; March 1, 1996; March 1, 2003; July 1, 2004; January 1, 2013; XXXXXX.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-14

60-03-01-07.1. Report of loss records.

Repealed effective January 1, 2013.

60-03-01-08. Unlawful acts.

Repealed effective March 1, 2003.

60-03-01-09. Reports of pesticide incidents.

Any person who is involved in or causes a pesticide incident that could result in adverse effects to humans, animals, or the environment must report it to the commissioner. The report must be made within twenty-four hours after the incident. The report may be filed by letter or electronic mail at the address or number identified in subsection 4 of section 60-01-01-01. A telephone report is acceptable if followed within twenty-four hours by a letter or electronic mail report. The report must contain:

1. The specific trade name of the pesticide.

2. The amount of pesticide or tank mix or both.

3. The location of the incident.

4. The time of the incident (month, day, year, and hour).

5. The direction and estimated velocity of the wind and estimated temperature at the time of the incident, if outdoors.

6. Actions taken to remedy the adverse effects on humans, animals, and the environment.

7. The name of and contact information for the person making the report.

History: Effective February 1, 1982; amended effective March 1, 1996; March 1, 2003; January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03

60-03-01-10. Identifying information for pesticide mixtures, custom blends, and bulk containers.

1. Any person who produces a mixture of any quantity of pesticide, to be applied by another person must have an environmental protection agency establishment number.

   The person making the mixture must supply the person applying the mixture with end-use labeling for each pesticide in the mixture. The end-use labeling must include the environmental protection agency establishment number of the facility that supplied the mixture.

2. The environmental protection agency establishment number of the facility that supplied the pesticide, end-use labeling, and the business name and physical address of the facility where the bulk storage container resides must be attached to bulk pesticide storage containers.

3. The environmental protection agency establishment number of the facility that supplied the pesticide, end-use labeling, and quantity of pesticide must accompany or be attached to the mobile bulk pesticide container.

4. Any person who custom blends any quantity of pesticide to be applied by another person must ensure that end-use labeling for all pesticides in the blend accompanies the blend to the point where the blend leaves that person's control. No environmental protection agency establishment number is required for the blending facilities.

History: Effective April 15, 1985; amended effective October 1, 1990; July 1, 1992; May 1, 1994; January 1, 1997; March 1, 2003; January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-13, 4.1-33-17

60-03-01-11. Storage and transportation of bulk pesticides.

1. Transporting and storing bulk pesticides must comply with the manufacturer's requirements.

2. Transporting bulk pesticides must comply with all applicable state and United States department of transportation rules and regulations.

3. A bulk pesticide storage container must be made of materials approved by the registrant and so constructed to be compatible with the pesticide stored and the conditions of storage, including any specifications that may appear on the pesticide label and labeling. The commissioner may approve or require materials other than those approved by the registrant.

4. A bulk storage container and loading areas must be constructed and located on a site in a manner so that pesticides will not contaminate the environment, such as streams and water supplies.

5. A permanent bulk storage container must be equipped with a locking withdrawal valve or must be stored in a secure locked area. The valves or storage area must be locked during nonbusiness hours or while unattended.

6. A bulk pesticide storage container that is going to be refilled with a different pesticide must be cleaned and rinsed according to both the facility's and manufacturer's agreed-upon written instructions and all former labeling must be removed.

History: Effective March 1, 2003; amended effective July 1, 2004; January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-13

60-03-01-11.1. Adoption of the environmental protection agency pesticide container regulations.

The environmental protection agency pesticide container regulations effective as of August 17, 2011, as provided under title 40, Code of Federal Regulations, part 165 subparts A, B, C, and D, are hereby adopted by the board and incorporated by reference and made part of this title. Copies of title 40, Code of Federal Regulations, part 165 subparts A, B, C, and D, are available upon request by contacting the board at its inquiry address listed in section 60-01-01-01.

History: Effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-13

60-03-01-11.2. Permanent containment area - Construction - Inspection - Maintenance - Recordkeeping requirements.

1. An outdoor permanent containment area must be constructed of sufficient size and material so as to contain any spilled or discharged materials. Minimum containment capacity must be one hundred twenty-five percent of the single largest bulk pesticide storage container, or sufficient to recover and contain a volume of a four-inch rainfall, whichever is greater.

2. An indoor permanent containment area located within an enclosed structure must be constructed of sufficient size and material to contain any spilled or discharged materials, and approved by the pesticide registrant. Minimum containment capacity must be one hundred ten percent of the single largest bulk pesticide storage container.

3. A permanent containment area must not have a drain that exits the containment area.

4. A permanent containment area must be constructed to provide protection of appurtenances (hoses, pumps, valves, pipes, etc.) and stationary pesticide containers against damage from operating personnel and moving equipment.

5. Appurtenances, discharge outlets, or gravity drains must not be configured through the base or wall of the permanent containment structure, except for direct connections between adjacent structures. The configuration of appurtenances must allow easy observation of discharges.

6. Inspections of permanent containment areas, bulk pesticide containers within containment areas, and appurtenances must be completed at least monthly during periods when pesticides are being stored or dispensed.

7. Initial repairs on any damage, cracks, or gaps in permanent containment areas and bulk pesticide containers must begin within twenty-four hours from when the problem is noticed. Completed repairs using materials approved by the registrant of the pesticides stored in the containment area or bulk pesticide container must be made within a reasonable time, taking into account factors such as the weather and the availability of cleanup materials, trained staff, and equipment. Additional pesticides must not be stored in the permanent containment area or bulk pesticide container until repairs are completed.

8. Records of inspection and maintenance for permanent containment areas and for bulk pesticide containers and their appurtenances must be kept for three years and must including the following:

    a. Name of the individual conducting the inspection or maintenance;

    b. Date the inspection or maintenance was conducted;

    c. A description of the conditions found during the inspection; and

    d. Specific maintenance performed.

History: Effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-08

60-03-01-12. Repackaging requirements for bulk pesticides.

1. A person must obtain a repackaging agreement from the registrant prior to repackaging bulk

pesticides.

2. Repackaging must be performed at a facility with an environmental protection agency establishment number.

3. Repackaging must use meters or scales, or both, compatible with the pesticide being repackaged.

4. Repackaging must be done in a permanent containment area with a primary shutoff valve or switch within immediate reach of the person who is repackaging.

5. The repackaging area must be kept clean of clutter and not used as a storage area for items not immediately used for repackaging.

6. A spill kit must be located within fifty feet of an operational area.

7. During repackaging, clean up of any discharged pesticide or pesticide-containing materials must be performed immediately after the occurrence and reported according to local, state, and federal guidelines.

8. During repackaging, a discharged pesticide or pesticide-containing material must be contained by the permanent containment area, mitigated using a spill kit, or drained, pumped, or transferred to an additional impermeable, aboveground holding tank or reservoir until utilized or disposed of in compliance with applicable local, state, and federal laws. The holding tank or reservoir must be suitably constructed to prevent the release of pesticides or pesticide-containing materials to the environment.

History: Effective March 1, 2003; amended effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-13, 4.1-33-17

60-03-01-13. Prohibitions.

No person may:

1. Repackaging into a container unless the container is capable of holding, in undivided quantities, the capacity as specified by the environmental protection agency.

2. Hold in inventory a mixture or custom blend of any quantity of pesticide, but rather, after producing a mixture or custom blend, it must be promptly delivered to the person requesting it.

3. Place bulk pesticide storage containers underground.

4. Repackage into improperly labeled containers.

5. Repackage into containers not designated as refillable by the registrant and container manufacturer.

History: Effective March 1, 2003; amended effective January 1, 2013.
General Authority: NDCC 4.1-33-03
Law Implemented: NDCC 4.1-33-03, 4.1-33-13, 4.1-33-17

ARTICLE 95-01
GENERAL ADMINISTRATION

CHAPTER 95-01-01
ORGANIZATION OF COMMISSION

95-01-01-01. Organization of agricultural products utilization commission.

1. **History and function.** The agricultural products utilization commission was established by the legislative assembly in 1979. ~~Its functions include administering a fuel tax fund and a subsidy program for agriculturally derived alcohol-blended fuels.~~ The commission is authorized by North Dakota Century Code chapter ~~4-14.1~~4.1-01.1-01 to provide assistance to agriculturally related industry.

2. **Purpose of commission.** The purpose of the commission is to enact the provisions of the code by supporting projects that are consistent with the code and enhance opportunities in agricultural research, development, diversification, processing, technologies, marketing, and promotion.

3. **Commission membership.** The commission consists of nine members as designated in North Dakota Century Code section ~~4-14.1-03~~4.1-01.1-01.

History: Effective June 1, 1990; amended effective April 1, 2012, XXXXXX.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~04.1-01.1

ARTICLE 95-02.1
CATEGORIES AND GENERAL PROCEDURES FOR GRANT REQUESTS

Chapter

CHAPTER 95-02.1-01
CATEGORIES OF GRANT REQUESTS

Section

95-02.1-01-01. Categories of grant requests.

The commission will consider grant proposals submitted in the following categories:

1. Basic and applied research.

2. Marketing and utilization.

~~3. Cooperative marketing.~~

~~4.~~3. Nature-based agritourism.

~~5.~~4. Technical assistance for value-added businesses.

~~6.~~5. Farm diversification.

~~7.~~6. Agricultural prototype development.

~~8.~~7. Agricultural technologies.

~~9. North American marketing.~~

~~10.~~8. Other agricultural-based initiatives as directed by the legislature.

History: Effective April 1, 2012; Amended XXXXX
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~ 04.1-01.1

CHAPTER 95-02.1-02
APPLICANT AND PROJECT ELIGIBILITY

95-02.1-02-01. Applicant and project eligibility for all categories.

1. Preference will be given to projects that:

   a. Utilize North Dakota agricultural products in their production processes.

   b. Produce food, feed, fuel, and fiber products through processes that are innovative and add to the value of agricultural products.

   c. Are submitted by an existing or prospective company that will be actively engaged in utilizing and adding value to North Dakota agricultural products.

   d. Comply with the goals and intentions of one of the grant categories.

2. Consideration will not be given to applications for:

   a. Projects that do not clearly meet the commissioners' stated purpose.

   b. Projects that are aimed solely at business expansion or creation without regard to enhanced agricultural products utilization.

   c. Projects that cannot reasonably be expected to result in viable commercialization.

   d. Projects that cause unwarranted duplication of efforts or processes.

   e. Projects that focus on agricultural inputs, infrastructure, or production methods that do not relate clearly to agricultural product utilization, agricultural diversification, or nature-based tourism.

   f. Projects from applicants who are not fulfilling, or have not fulfilled, the requirements of prior agricultural products utilization grants.

History: Effective April 1, 2012; amended effective XXXXXX.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~04.1-01.1

CHAPTER 95-02.1-03
EVALUATION AND FUNDING CRITERIA

95-02.1-03-01. Evaluation and funding criteria.

Unless otherwise specified, proposals will be evaluated upon a basis of one hundred points, according to the following criteria:

1. **Probability and extent of new wealth and creation.** Preference will be given to applications that demonstrate a high probability of job and wealth creation. While the commission does not make any specific requirements for jobs created per dollar granted, a close review will be made of return-on-investment and job enhancement. ~~Up to thirty points may be awarded on this criterion.~~

2. **Credibility and merit.** The commission will review each proposal as to its technical and commercial feasibility. Proposals that feature outcomes that are innovative as well as commercially plausible will receive preference. Within this criterion, the relative competence and technical qualifications of project principals will be assessed. Proposals or components of proposals which can be construed as subcontracts or contracts for service, and which provide information that the process by which contractors are selected has been competitive are more highly favored. ~~Up to thirty points may be awarded on these criteria.~~

3. **Timeliness.** Preference will be given to proposals demonstrating a high probability of rapid commercialization or address an imminent need, or both. ~~Up to fifteen points may be awarded on this criterion.~~

4. **Matching funds.** Priority will be given to projects that demonstrate a shared commitment for funding from other private or public sources or from the applicant, or both. Matching funds may be in the form of cash or in-kind services, or both. Approved indirect costs may qualify as matching funds. Disbursement of funds will be contingent upon evidence that matching funds have been allocated to the proposal. ~~Up to ten points may be awarded on this criterion.~~

5. **Geographic consideration.** Preference will be given to the proposals that center efforts on nonurban locales. When the proposal requires specific research activities that cannot possibly be carried out in rural North Dakota, consideration will be given to the ultimate development and commercialization of the results of the proposal, with the same rural preference. Favorable community support will be considered. ~~Up to five points may be awarded on this criterion.~~

6. **Likelihood of success.** Commissioners shall provide their judgment on the probable success and relative importance of the proposed research. ~~Up to ten points may be awarded on this criterion.~~

History: Effective April 1, 2012; amended effective XXXXXX.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-02~~04.1-01.1

CHAPTER 95-02.1-04
PROCEDURE FOR GRANT REQUESTS

Section
95-02.1-04-01 Procedure for Grant Requests

95-02.1-04-01. Procedure for grant request.

1. Applications ~~are limited to fifteen (unless otherwise specified)~~ must be typed, single-spaced or double-spaced eight and one-half inch by eleven-inch pages, including the application form and any attachments or supplementary materials. One signed original of the proposal must be delivered or mailed to the commission on or before the published deadlines for consideration at the next commission meeting.

2. Prescribed formats must be used.

   a. The commission will prepare application forms, instructions, or guidelines and make them available for downloading from the ~~department of commerce website~~ agriculture commissioner website. Hard copies of the grant applications are available at agricultural products utilization commission, ~~1600 east century avenue, suite 2, P.O. box 2057, Bismarck, ND 58502-2057~~ 600 E. Boulevard Ave. Dept 602, Bismarck, ND 58505-0020.Reasonable accommodations will be made to assist individuals with disabilities.

   b. While the specific information requested for each category may vary, it may include:

      (1) Applicant's name, telephone number, mailing address, and e-mail address.

      (2) Applicant adviser's name with similar contact information.

      (3) Applicant's fiscal agent with similar contact information.

      (4) Grant application amount.

      (5) Estimated total cost of the project.

      (6) Estimated time of completion of the project.

      (7) ~~Date~~ Estimated date of final report.

      (8) Brief description of the project and how grant funds will be used.

      (9) Where the business is or will be located.

      (10) Amount of the applicant's personal or company matching funds.

      (11) Other matching funds, with source and amount.

      (12) Assurance that matching funds have been secured, or date of availability.

      (13) Whether the project has received public or private funding prior to this proposal, listing sources and amounts.

      (14) Whether the individual has received previous funding from the agricultural products utilization commission, listing prior projects and amounts.

      (15) Type of business structure. Sole proprietorship, corporation, partnership (listing names and contact information), cooperative (number of people), and date of structure formation.

      (16) Federal tax identification number, if any.

(17) The business's primary financial institution.

(18) The business's gross sales for the last financial year.

(19) The business's current number of employees.

(20) Currency of the business's taxes.

(21) Three years' projection on estimated gross sales, estimated capital expenses, and estimated number of created jobs.

(22) If the grant is to provide professional services, the name of individuals preparing the business plan, the feasibility study, the accounting, and legal work.

(23) Description of the product or potential outcome.

(24) Description of the marketing plan and names or the preparers.

(25) Description of the work, research, or investigation that has been done to date.

(26) Description of intended market, potential customers, new use, etc.

(27) Verification that individuals selected to do marketing have market management experience and expertise.

(28) Prior marketing or advertising.

(29) Listing of the risks or concerns that need to be addressed to make the project a success.

(30) List of competitors.

(31) Scope of work.

(32) Research plan with objectives, milestones, and timelines.

(33) Description of marketing areas, in state and out of state.

(34) Resumes of principal applicant and key participants.

(35) Name and contact information of two references familiar with the applicant's work relevant to the application.

(36) A complete project budget attached as a supplement.

(37) Information suitable for a press release along with authorization.

c. Applicants must complete the application form for the category most suitable for the project. Forms may be downloaded and adjusted to provide room for entries, but the sequence, style, and information requested on the form must be preserved.

d. Information must be succinctly summarized, complete, and accurate to the best of the applicant's knowledge. Estimates should be indicated with the trailing (est.). Inappropriate questions should be marked with "N/A" for not applicable or "none" to indicate that question was considered.

e. The commission reserves the right to deny any grant application, including those that fail to provide information on which commission judgments are made. Similarly, the commission reserves the rights to accept and consider applications that may vary form format but still provide requisite information.

3. Applicants are encouraged to employ services of a project adviser ~~and are required to utilize a fiscal agent~~.

4. The application must be signed by the applicant or by the representative of a company or agency with authority to approve submission of the proposal ~~and the fiscal agent~~. If utilized, the project adviser must sign the proposal indicating the project adviser has offered critical review of the proposal. The applicant's signature is a certification that the submission is complete, the information is accurate, and the proposal represents the true intent of the project. Misrepresentations may disqualify applicants from any further agricultural products utilization commission funding.

5. Promotional materials or materials not directly related to the proposal are discouraged.

6. Applicants are required to complete a press release information and authorization sheet that summarizes the important aspects of the projects. This release should not contain confidential or proprietary information.

7. Applicants will also be encouraged to provide information that collects demographic information that can be used to monitor compliance with applicable federal civil rights laws.

History: Effective April 1, 2012; amended effective XXXXXX.
General Authority: NDCC 28-32-02
Law Implemented: NDCC ~~4-14.1-0~~2 04.1-01.1

CHAPTER 95-02.1-05
SUPPLEMENT PROGRAM INFORMATION

95-02.1-05-01. Supplemental program information.

1. **Funding level.**

   a. Unless otherwise designated, proposals are not limited to a specific dollar amount. The commission reserves the right to increase or decrease the amount of requested funding based on its findings and on its level of available funds. The commission also reserves the right to fund in whole or in part specific portions of eligible proposals. Requests must be justified with respect to the scope of the project.

   b. Except when restricted by legislative directive, or by available funding in commission-administered ancillary programs, the commission may allocate funds to projects in any of the categories.

   c. The commission may elect to limit total funding during any particular quarter, and may disperse available funding over the quarters of a biennium in order to provide opportunities for meritorious projects that may submitted later in the biennium.

2. **Due date.**

   a. Proposals may be submitted anytime within the biennium. ~~Deadline dates for submission are January first, April first, July first, and October first.~~ ~~Prototype and technical assistance grants deadlines are December first, March first, June first, and September first.~~ Only fifteen proposals will be considered at each commission meeting based on the date received. Eligible proposals received after the quota has been met will be deferred until the next commission meeting.

   b. Reviews and grant awards will be made on a quarterly basis.

   c. Generally, grants are limited to a one-year time frame.

3. Multiple, concurrent, and successive proposals.

   a. Generally. applicants are only allowed to apply for one grant at a time. Multiple proposals from the same applicant will be considered if each proposal covers distinctly different projects.

   b. Proposals that have been submitted under other state, federal, or private grant programs may be considered concurrently by the commission. Proposals that contain matching funds from other grant programs must demonstrate contingent approval from appropriate sources prior to release of funds by the commission. Similarly, agricultural products utilization commission grants that are used as match for other grants may be held, with contingent approval, until the other grants have been approved.

   c. Upon completion of a grant, applicants may apply for a successive grant if the subsequent grant demonstrates an important next step; however, the commission reserves the rights to limit or deny the number or amount, or both, of funding of successive grants without cause.

4. **Commission review.**

a. Acting on behalf of the commission, the staff reviews submitted proposals. Incomplete, ineligible, or inappropriate grants may be rejected by the staff or returned for amendment.

b. Eligible proposals are distributed to commission members for review prior to commission meetings. As part of the review process, commissioners or staff, or both, may contact references, experts, government agencies, and other sources to help ascertain feasibility of the project and credibility of the applicants.

c. Each proposal will be considered individually on its own merits, and according to the stated criteria, by the entire commission. Applicants will be invited to present their proposal, discuss relevant points, and clarify components at a commission meeting; however, the predominant consideration will be based on the written proposal. Generally, presentations will be limited to thirty minutes divided into presentation and questioning periods as determined by the commission chair.

d. A decision to accept, modify, or deny each project will then be made, by majority vote of at least a quorum of the commission. Should the process produce a funding level less than the amount requested in the proposal, the commission staff will confer with the applicant to determine whether the amount recommended would be acceptable to further the goals of the project.

e. The decision of the commission is final, binding, and not subject to review or appeal except as allowed by law. Projects that have been denied funding cannot be resubmitted in their original form. Revised projects may be considered as new submissions.

f. By law, no member of the commission may participate in, or vote on, a decision of the commission relating to a project or a business, or both, which would constitute a conflict of interest.

5. **Grant administration and reporting.**

a. Applicants will be notified of the commission's decision. The commission is under no obligation to provide rationale for its decision; however, the applicant may request an advisory report that could point out some of the considerations in the decision.

b. Successful applicants shall adhere to the conditions outlined in this article and North Dakota law. Following approval of the grant award, a formal grant contract will be entered between the agricultural products utilization commission and the grantee. This agreement will specify the agreed-upon objectives, tasks to be performed, timeline and budget, fund release schedule, and any other conditions specific to the individual proposal. Under the terms of all grant contracts, the grantee will be required to submit to the commission periodic interim reports outlining progress and both timeline and budget compliance.

c. In most cases, the entire grant amount will not be released at the time of the commission's decision. In such instances, funds released will be tied to the grant contract, and any insufficiencies with the contract may result in withholding of further funding.

d. Grantees will be required to submit a final written report describing the work performed and the results obtained prior to final release of grant funds. This report must be supplemented by a financial report of all expenses actually incurred and income generated by the project.

6. **Audit and defaults.**

a. As a state agency, the commission is subject to audits through established procedures.

b. To protect the investment of the commission and of the people of North Dakota, all financial documents, books, receipts, orders, expenditures, electronic data and accounting procedures, and practices of the grantee are subject to examination by or for the commission at any time for three years following the completion of the project.

c. When a grant is in default because of inadequate reporting, inappropriate use of grant funds, or nonuse of funds, any moneys that have not yet been released will be withheld. Should such grave insufficiencies exist that the project appears to the commission in jeopardy, the contract may be canceled, and all funds previously released may be recovered through collection procedures.

d. Funds retrieved from vacated and incomplete projects will be returned for redistribution as grants. If the grant originated from special funding, the return and redistribution will be within that funding source.

7. **Eligible uses of funds.**

a. Eligible uses of funds are detailed in each of the category descriptions and as part of the application form.

b. In general, agricultural products utilization commission grant funds are for enhancements, improvements, and new ventures and should not be used to defray the normal operating costs of the individual or business, including salaries of individuals in the business.

c. Projects that bring producers, processors, distributors, buyers, and other individuals important in a supply chain together in a forum that fosters contacts and information exchange supportive of marketing ventures.

8. **Confidentiality and disclosure.**

a. Generally, proposals, grants awards, reports, and proceedings are open records and may be disclosed as allowed under North Dakota law.

b. An applicant may request confidentiality of all portions of a proposal to protect the applicant's intellectual property rights. Such proposals or sections of proposals must be clearly marked as "Proprietary". The commission may limit the dissemination of information regarding confidential proposals, including considering the proposal during an executive session, however, the commission is not, in any event, liable for inadvertent disclosure.

c. By accepting an agricultural products utilization commission grant, awardees agree to serve as a contract for individuals interested in pursuing a similar project.

d. Under the term of all grant contracts, the grantee may be required to submit to the commission periodic interim reports outlining progress and both timeline and budget compliance. In most cases, the entire grant amount will not be released at the time of the commission's decision. In such instances, the release of funds will be tied to the grant contract and any insufficiencies with the contract may result in withholding of further funding. Grantees will be required to submit a final written report describing work performed and the results obtained, prior to final release of grant funds. The report must be supplemented by a financial report of all expenses actually incurred and income generated by the project.

9. **Ownership.**

a. Subject to the policies, if any, of participating public programs and entities, rights to use products, processes, or services developed under this grant program will remain with the grantee.

b. Subject to the same policies, the ownership and all rights to project outcomes may revert to the commission if the grantee or assignee fails to market the product, process, or service in accordance with individually negotiated funding contracts. In such cases, the commission may provide notice and the opportunity to others to assume control of research projects. In these cases, priority will be given to any license under such property or others who benefit North Dakota commercially, with first priority being given to small firms in nonurban areas of the state.

10. **Royalty agreements.** The commission may receive royalties on the sale or lease of any product, process, or service developed under a commission grant. Royalty agreements will be negotiated at the time of the grant award and will be structured so that the commission may recover at least a portion of the investment of public funds. Repaid funds will be used to make new investments in other agricultural products utilization commission projects.

History: Effective April 1, 2012; amended effective XXXXXX.
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