

**ARTICLE 7-01
GENERAL ADMINISTRATION**

Chapter 7-01-01 is repealed:

Chapter
7-01-01 Organization of Department

~~**CHAPTER 7-01-01
ORGANIZATION OF DEPARTMENT**~~

Section
7-01-01-01 Organization and Functions of the Department of Agriculture

~~**7-01-01-01. Organization and functions of the department of agriculture.**~~

~~**1. Organization of department.**~~

- ~~a. History. The department of agriculture was originally part of the department of agriculture and labor, established by section 12 of article V of the Constitution of North Dakota approved in 1889. In the years following its creation, the department served primarily as an agency for the collection of statistics related to crop yields, labor forces, and other agricultural statistics.~~

~~In 1965 a constitutional amendment was approved by the voters which provided for a separate department of labor, making the department of agriculture and labor simply the department of agriculture and creating a new department of labor.~~

- ~~b. Commissioner of agriculture. The office of commissioner of agriculture is an elected position. The commissioner, elected for a four year term, is responsible for the determination of policies for operation of the department; dissemination of information concerning agricultural issues to the governor, members of the legislative assembly and the public; assumption of a leadership role in formulating policies affecting the direction of the state's agricultural industry; and advocacy for farmers' needs on the state and national levels. The commissioner or the commissioner's designee serves on numerous boards and commissions.~~

- ~~c. Divisions. The department is organized into these divisions with a director in charge of each division:~~

- ~~(1) Apiary.~~
- ~~(2) Dairy/Poultry.~~
- ~~(3) Livestock.~~
- ~~(4) Marketing.~~
- ~~(5) Pesticide.~~
- ~~(6) Plant protection.~~
- ~~(7) Agricultural mediation service.~~

~~**2. Functions of the divisions.**~~

- ~~a. Apiary division. The apiary division is responsible for the annual licensure of beekeepers, as well as the inspection, certification, and regulation of bees and equipment for purposes of disease control. The division also enforces applicable laws and regulations.~~

~~b. Dairy/Poultry division.~~

- ~~(1) The dairy division is responsible for the promotion of the state dairy industry. It regulates the production, processing, and handling of milk and milk products, and enforces applicable laws and regulations.~~
- ~~(2) The poultry division supervises the national poultry improvement plan and cooperates with the United States department of agriculture in providing grading services. The division promotes the state poultry industry and enforces licensing and bonding rules.~~

~~e. Livestock division. The livestock division is responsible for the licensing of livestock dealers and auction markets, as well as the recording and rerecording once every ten years, of brands and marks identifying livestock. The division also enforces applicable laws and regulations.~~

~~d. Marketing division. The marketing division is responsible for providing a variety of marketing services to North Dakota food producers and processors, thereby enhancing the sale of agricultural products. The services include educational seminars, counseling, market research, secondary crop development, and direct export marketing. The division also works with commodity groups to promote and market North Dakota agricultural products in this country and abroad. Administration of the honey and turkey promotion funds is another responsibility of this division.~~

~~e. Pesticide division. The pesticide division enforces laws and regulations regarding the storage, transportation, application, and disposal of pesticides. It also enforces laws and regulations dealing with chemigation, noxious weeds, and anhydrous fertilizer plants.~~

~~f. Plant protection division. The plant protection division is responsible for the inspection, certification, and enforcement of laws and regulations pertaining to nurseries. It invokes and maintains quarantines to prevent the introduction and spread of plant pests and it conducts surveys to evaluate established pests and detect new ones. It also initiates control programs for the suppression or eradication of pests. Through inspection and certification, this division ensures that plants and plant products meet domestic and foreign plant quarantine requirements.~~

~~g. Agricultural mediation service. This division disseminates information and provides assistance to farmers regarding agricultural credit problems. It provides training for negotiators and mediators, assigns them to individual farmers, and coordinates the efforts of public and private entities dealing with agricultural credit matters and financially distressed farmers.~~

~~3. **Inquiries.** Information about the department of agriculture and its programs and responsibilities may be obtained by contacting:~~

~~North Dakota Department of Agriculture
State Capitol
Bismarck, North Dakota 58505~~

~~**History:** Amended effective December 1, 1981; February 1, 1986; May 1, 1990.~~

~~**General Authority:** NDCC 28-32-02.1~~

~~**Law Implemented:** NDCC 28-32-02.1~~

**CHAPTER 7-02-02
RULES OF THE APIARY DIVISION**

Chapter 7-02-02 is repealed:

Section

7-02-02-00.1	Apparently Disease Free—Definition
7-02-02-00.2	Treatment of Diseased Bees
7-02-02-00.3	Entrance Permit Requirements
7-02-02-01	Beekeeper's License
7-02-02-02	Registration of Apiaries [Repealed]
7-02-02-03	Measurement of Two Mile [3.22 Kilometer] Radius Restriction [Repealed]
7-02-02-04	Sale or Transfer of Commercial Locations [Repealed]
7-02-02-05	Pollination Locations [Repealed]
7-02-02-06	Crops Pollinated [Repealed]
7-02-02-07	Identification of Hives [Repealed]
7-02-02-08	Notification of Violation
7-02-02-09	Yards Registered Under North Dakota Century Code Chapter 4-12 [Repealed]
7-02-02-10	Honeybee Tracheal Mite—Statement of Purpose—Inspection Upon Request [Repealed]

~~7-02-02-00.1. Apparently disease-free—Definition.~~

~~"Apparently disease free" means that after an inspection of five percent of the colonies operated in North Dakota, less than three percent American foulbrood and an average of two or less varroa mites are detected through an ether roll test or an average of forty mites or less through an apistan strip test in the colonies inspected.~~

~~**History:** Effective April 1, 1992.~~

~~**General Authority:** NDCC 4-12.2-02~~

~~**Law Implemented:** NDCC 4-12.2-01~~

~~7-02-02-00.2. Treatment of diseased bees.~~

- ~~1. Varroa mites. Colonies in apiary locations where varroa mites are detected must be treated with an approved pesticide at an approved rate or destroyed.~~

~~In order to allow orderly development of treatment programs and management programs that are not pesticide based, the department may provide advance written approval of such programs. Such approval must be based upon a written application by the beekeeper or researcher and the department shall evaluate such applications for such factors as feasibility, merit, and legality.~~

- ~~2. American foulbrood. Colonies with American foulbrood must be treated with an approved antibiotic or destroyed.~~

~~**History:** Effective April 1, 1992.~~

~~**General Authority:** NDCC 4-12.2-02~~

~~**Law Implemented:** NDCC 4-12.2-16~~

~~7-02-02-00.3. Entrance permit requirements.~~

~~In addition to the requirements in North Dakota Century Code section 4-12.2-20, before an entrance permit will be granted, the beekeeper shall verify to the satisfaction of the department that treatment has been completed in colonies from apiary locations where varroa mites or American foulbrood had been detected.~~

~~**History:** Effective April 1, 1992.~~

~~**General Authority:** NDCC 4-12.2-02~~

~~Law Implemented: NDCC 4-12.2-20~~

~~7-02-02-01. Beekeeper's license.~~

~~No application for a beekeeper's license will be accepted by the commissioner of agriculture prior to January first of that licensing year. The registration of apiaries required under North Dakota Century Code section 4-12.2-07 shall be submitted at the same time as a license application.~~

~~History: Effective July 1, 1983.~~

~~General Authority: NDCC 4-12.2-02~~

~~Law Implemented: NDCC 4-12.2-04~~

~~7-02-02-02. Registration of apiaries.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-03. Measurement of two-mile [3.22-kilometer] radius restriction.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-04. Sale or transfer of commercial locations.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-05. Pollination locations.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-06. Crops pollinated.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-07. Identification of hives.~~

~~Repealed effective April 1, 1992.~~

~~7-02-02-08. Notification of violation.~~

~~Each beekeeper or beekeeper's agent will be notified by receiving a copy of the inspection report of any violation found in the apiary at the time of inspection. It shall be the beekeeper's responsibility to comply with the recommended procedures for correcting the violation.~~

~~History: Effective July 1, 1983; amended effective June 1, 1989.~~

~~General Authority: NDCC 4-12.2-02~~

~~Law Implemented: NDCC 4-12.2-16~~

~~7-02-02-09. Yards registered under North Dakota Century Code chapter 4-12.~~

~~Repealed effective June 1, 1989.~~

~~7-02-02-10. Honeybee tracheal mite – Statement of purpose – Inspection upon request.~~

~~Repealed effective April 1, 1992.~~

ARTICLE 7-02.1
APIARY DIVISION

Chapter 7-02.1 is created as follows:

<u>Chapter</u>	<u>Rules of the Apiary Division</u>
<u>7-02.1-01</u>	

CHAPTER 7-02.1-01
RULES OF THE APIARY DIVISION

Section

<u>7-02.1-01</u>	<u>Beekeeper's License</u>
<u>7-02.1-02</u>	<u>Notification of Violation</u>

7-02.1-01. Beekeeper's license.

No application for a beekeeper's license will be accepted by the commissioner of agriculture prior to October first of the year prior to the licensing year. The registration of apiaries required under North Dakota Century Code section 4.1-16-08 shall be submitted at the same time as a license application.

History: Effective XXXX.

General Authority: 28-32-02

Law Implemented: 4.1-16-02

7-02.1-02. Notification of violation.

Each beekeeper or beekeeper's agent will be notified by receiving a summary of the inspection report of any violation found in the apiary at the time of inspection. It shall be the beekeeper's responsibility to comply with the recommended procedures for correcting the violation.

History: Effective 2018.

General Authority: 28-32-02

Law Implemented: 4.1-16-12

**CHAPTER 7-03.2-03
REQUIREMENTS FOR SAMPLING AND TESTING**

Section

7-03.2-03-01	General Requirements
7-03.2-03-02	Laboratories
7-03.2-03-03	Universal Sampling
7-03.2-03-04	Sample Reporting - Records
7-03.2-03-05	Butterfat and Protein Composite Sampling
7-03.2-03-06	Farm Tank Calibration Disputes
7-03.2-03-07	Sampling Equipment
7-03.2-03-08	Farm Samplers
7-03.2-03-09	Plant Samplers
7-03.2-03-10	Finished Product Sampling Procedures
7-03.2-03-11	Adulterants

7-03.2-03-01. General requirements.

All tests performed by testers must conform with the requirements in the standard methods. The results of such tests must be retained for one year and must be available to the commissioner upon request.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-184.1-25-26, 4-30-374.1-25-34~~

7-03.2-03-02. Laboratories.

All laboratories used for sampling and testing milk and milk products must meet all of the requirements for grade A laboratories in the pasteurized milk ordinance. All manufacturing grade laboratories used for sampling and testing milk and milk products must meet all regulations imposed by the United States department of agriculture. On a case-by-case basis and only for good cause, the commissioner may waive the requirements of this section if the commissioner imposes substitute requirements that are substantially equivalent to those required above.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-184.1-25-26~~

7-03.2-03-03. Universal sampling.

A universal sample must be collected every time milk is picked up at the farm. This sample must be aseptically collected and may be used for all tests required by the commissioner. Before a sample is collected, the milk in the tank from which the sample is to be taken must be agitated to ensure that the sample is representative of the tank's contents.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-04. Sample reporting - Records.

1. The results of all raw milk testing done for regulatory purposes by industry laboratories must be reported to the commissioner weekly. When a test shows the presence of adulterants, the commissioner must be informed immediately. ~~in these samples, the test results must be reported immediately to the commissioner by telephone or facsimile with a hard copy of the results immediately sent to the commissioner. All tests above the maximum levels established by law must be reported to the commissioner weekly.~~

2. Records on sampling, testing, or grading of milk or cream created to comply with article 7-03.2 and North Dakota Century Code chapter ~~4-30~~ 4.1-25 to establish producer pay levels must be retained and available to the commissioner for twelve months. These records must include the following:
 - a. Producer identification number.
 - b. Date of sampling, testing, or grading.
 - c. Type of sampling, testing, or grading procedure used.
 - d. Results of sampling, testing, or grading.
 - e. Name of licensed tester, grader, or sampler conducting the procedure.
3. When the commissioner is investigating a complaint, the plant must give the commissioner access to all quality records that the commissioner requests.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-184.1-25-26, 4-30-374.1-25-34~~

7-03.2-03-05. Butterfat and protein composite sampling.

A composite sample used to test butterfat and protein must consist of a minimum of twenty milliliters made up of a representative sample from each delivery of milk or cream to the plant. A minimum of ten milliliters of milk from each delivery must be included in the composite sample. The composite sample must be maintained at a temperature of thirty-two to forty degrees Fahrenheit [0 to 4.4 degrees Celsius]. A composite sample may not be retained for more than fifteen days and must be tested within three days after the last addition. A chemical preservative must be added to maintain the integrity of the sample. Approval for the type and concentration of the preservative must be given by the commissioner upon request. If a composite testing program is being used for butterfat or protein determination, a minimum of two deliveries is required. A log is required on all composite samples maintained and available to the commissioner for twelve months. This log must list all of the following:

1. Date of the test.
2. Pickup weight of milk.
3. Producer's identification.
4. Protein or butterfat, or both, result for that composite sample.
5. Name of licensed tester performing the test.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-06. Farm tank calibration disputes.

When a dispute exists between the buyer and seller of raw milk as to the amount of milk being removed from farm bulk milk tanks, the buyer or seller may contact the commissioner who may review the matter and supply a recommended resolution to the buyer and seller.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-07. Sampling equipment.

All sampling equipment must comply with requirements in the standard methods. Certified thermometers must be used to take samples. Certified thermometers must be accurate within two degrees Fahrenheit [0.55 degree Celsius]. Their accuracy must be checked once during a six-month period at a calibration temperature of forty-two to forty-five degrees Fahrenheit [5.5 degrees to 7.22 degrees Celsius]. The thermometer must be calibrated by a certified mercury actuated thermometer. Certification must be obtained at a certified laboratory by a trained analyst approved by the commissioner. The analyst must maintain a log of the results of each thermometer certified. The log must contain the same information recorded on the thermometer and must show the certification history of all thermometers for which the analyst is responsible for one year. The following must be listed on certified thermometers:

1. Initials of the person calibrating the thermometer.
2. The date of calibration.
3. The date the calibration expires.
4. The thermometer owner's name or the thermometer number.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50 Law

Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-08. Farm samplers.

Individuals licensed to sample milk at farms shall follow the procedures in the North Dakota milk hauler and sampler manual, issued by the commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

aw Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-09. Plant samplers.

1. Plant storage tanks used for storing raw milk without sampling cocks must be sampled using the procedures described in the North Dakota milk hauler and sampler manual, issued by the commissioner.
2. Samples taken from plant storage tanks with sampling cocks must use the following procedures:
 - a. Rinse the area around the sample cock with warm water and clean if needed.
 - b. Wash and dry hands.
 - c. Sanitize sample cock with an approved sanitizer or equivalent, using a minimum contact time of sixty seconds.
 - d. Purge sample cock by discarding enough milk to remove any excess chlorine solution.
 - e. Label two sample containers with the following information:
 - (1) Plant name.
 - (2) Date.
 - (3) Time.

- (4) Temperature.
 - (5) Sampler name or initials.
 - (6) Tank or silo identification.
 - (7) The sample container to be used for the temperature control must also have "T.C." noted on it.
- f. Aseptically remove the top of the bag or cap cover of the sample container marked "T.C." Fill the sample container three-quarters full, close, and place immediately in a refrigerated sample case with a water-ice mixture capable of keeping the sample at a temperature of thirty-two through forty degrees Fahrenheit [0 through 4.4 degrees Celsius].
 - g. Using the certified thermometer, obtain the temperature of the milk in the sample container marked "T.C." Write this temperature on both sample containers.
 - h. Aseptically remove the top of the bag or cap of the second sample container and obtain a sample. Fill the sample container three-quarters full. Close and place immediately in the refrigerated sample case.
 - i. Rinse off all excess milk from the sample cock and storage tank or silo.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-10. Finished product sampling procedures.

- 1. All finished product that is to be sampled or tested for regulatory purposes must be collected by the commissioner. Samples must be collected randomly and the older code date must be selected before a more recent code date.
- 2. Finished product chosen for sampling must be stored in a refrigerated sample container that maintains the samples at thirty-two to forty degrees Fahrenheit [0 to 4.4 degrees Celsius]. A temperature control sample must be selected for each area or cooler where finished milk product is stored. The temperature control must be opened and a temperature obtained using a certified thermometer. The temperature control must be closed and sealed to prevent leakage during transport. Samples must be taken at the plant of origin.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-18~~ 4.1-25-26

7-03.2-03-11. Adulterants.

- 1. **Drug testing.**
 - a. Raw milk. Prior to processing, the processor must test all bulk milk pickup tankers for the presence of beta lactam drug residues and for other residues as determined necessary by the commissioner. Test methods will be those approved by the association of official analytical chemists or the food and drug administration. A positive test on the commingled sample requires confirmation testing for drug residues of all individual producer samples making up the bulk pickup tanker. Bulk milk tankers testing positive must be reported to the commissioner immediately. This report must include the tests used, volume of milk contaminated, how the milk was disposed of, and which producer

- caused the positive residue. All milk sample residue results must be recorded and retained for examination by the commissioner for twelve months.
- b. Bulk load rejected. If a bulk load of milk tests positive for a drug residue, the processor shall reject the entire bulk load. The rejected bulk load may not be used for human food.
 - c. Processor's loss - investigation. If a processor sustains a monetary loss because a bulk load of milk is rejected, the processor may file a complaint with the commissioner. The commissioner may investigate the complaint and may issue a report on the amount of monetary loss suffered by the processor and on the responsibility for the rejected load and for the processor's monetary loss.
 - d. Followup testing. If a bulk load of milk tests positive for drug residue, the processor shall immediately notify the commissioner and suspend further pick up of milk from the producer whose milk contaminated the bulk load until followup tests of that producer's milk test negative for drug residues. The dairy processor must perform these followup tests.
 - e. Testing bulk loads. In addition to performing routine beta lactam tests, a processor shall randomly test bulk milk deliveries for other drug residues as required by the commissioner. The drug testing program shall include milk from each producer in at least four separate months during any consecutive six-month period.
 - f. Finished product. All finished milk products must be free of antibiotics. Raw milk contaminated with antibiotics may not be used in processing finished milk products. All manufacturing grade finished milk products must be tested as determined by the commissioner. These products include fluid and cultured products, butter, cheese, and other products so designated by the commissioner.
2. **Drug residue and other substances.** A person may not sell or offer for sale milk that contains drug residues or other chemical substances in amounts above the tolerances set in the food and drug administration's Memorandum of Information No. ~~M-1-05-5, dated September 27, 2005~~, M-1-28-9, dated February 9, 2018 and in title 21, Code of Federal Regulations, parts 530 and 556. These levels are merely guidelines. Milk with drug residues or other chemical substances below these tolerances is not necessarily unadulterated or otherwise acceptable milk, and selling or offering to sell such milk may be subject to penalty and other regulatory action by the commissioner.
- a. When a producer has shipped milk that tests positive for residue, the producer's farm license must be suspended until a sample of the producer's milk tests negative.
 - b. When a producer has shipped milk that tests positive for residue three times in a twelve-month period, the producer's farm license may be revoked if the commissioner's investigation warrants such action.
 - c. The commissioner will complete a followup inspection when a producer's milk tests positive for residue.
3. **Pesticides.** Milk containing any pesticides or chemical contamination exceeding food and drug administration or environmental protection agency standards for safe food may not be offered for sale.
4. **Added water.** Milk may not contain added water. Any milk that tests under .530 degrees Horvet using the cryoscope thermistor test may not be offered for sale.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-22-50~~

Law Implemented: NDCC ~~4-30-02~~ 4.1-25-02, ~~4-30-18~~ 4.1-25-26, ~~4-30-34~~ 4.1-25-36, 4.1-25-37, ~~4-30-38~~
4.1-25-35, ~~4-30-40~~

**CHAPTER 7-03.2-04
LICENSING PROCEDURES FOR DAIRY FARMS**

Section

7-03.2-04-01	General Requirements for Licensing Dairy Farms
7-03.2-04-02	Special Requirements for Licensing Dairy Farms
7-03.2-04-03	Denial of Licensure and Appeal
7-03.2-04-04	Temporary Facilities' License for Selling Raw Milk
7-03.2-04-05	Grade A Farms - Loss of Status - Inspection - Access

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 ~~4-30~~ 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 ~~4-30-364.1-25-30~~; or
 - b. Manufacturing grade, which is a farm that is licensed to meet production requirements required by North Dakota Century Code section ~~4-30-274.1-25-28~~.
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 dairy commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55-14.1-25-50~~

Law Implemented: NDCC ~~4-30-274.1-25-28, 4-30-284.1-25-33, 4-30-364.1-25-30~~

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, including its water supply and all facilities, must meet all pasteurized milk ordinance requirements. 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.
- ~~e. Properly constructed wells must be located at least fifty feet [15.24 meters] from privy pits, cesspools, septic tanks, control pits, absorption fields, sewers, barnyards, and feedlots, and from the high water marks of lakes, streams, sloughs, ponds, etc. Fifty feet [15.24 meters] is the distance requirement with favorable soil conditions. The commissioner may require more than fifty feet [15.24 meters] when soil conditions are unknown or unfavorable, and when required by the presence of contaminants or toxic chemical wastes in the area.~~
- d. ~~Wells must be at least ten feet [3.01 meters] from basements.~~
- e. ~~Wells must be at least one hundred fifty feet [45.72 meters] from underground manure storage, chemical or fertilizer storage, or chemical preparation area.~~
- f. 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.
- ~~g. Well sites may not be subject to flooding and should be graded to facilitate the rapid drainage of surface water away from the well. The area must be filled, if necessary, graded, and maintained to prevent the accumulation or retention of surface water within fifty feet [15.24 meters] of the well.~~
- ~~h. For a well on a hillside, intercepting ditches must be constructed on the uphill side of the well to keep runoff at least fifty feet [15.24 meters] away from the well.~~
- ~~i. The casing or pitless unit for all ground water sources must project not less than twelve inches [30.48 centimeters] above the final ground elevation, the well cover slab, or pumphouse floor.~~
- ~~j. Pit wells, buried well seals, and sand point wells are unacceptable. If, however, a pit well is presently being used on an existing permitted farm, it may continue to be used until there is a need and intention to repair or upgrade it, and, if so, then the pit well must be eliminated from the dairy operation.~~
- k. d. The farm bulk tank must be empty at the time of licensing.
- ~~l.~~ e. The hoseport must be installed in an exterior milkhouse wall.
- ~~m. The hoseport slab must be at least a six foot by six foot [1.83 meter by 1.83 meter] cement slab centered under the hoseport.~~
- ~~n. The milkhouse must have a direct door to the outdoors. Haulers must not have to go into milking area or animal housing area to access the milkhouse.~~
- ~~o. All bulk tanks must have an accurate working thermometer.~~
- ~~p.~~ f. Neither light fixtures nor vents may be placed over bulk tanks.
- ~~q. Handwashing facilities must be in the milkhouse. Hand sinks must be of lavatory fixture style and at least twenty four inches [60.96 centimeters] away from wash vats or have a splash board of sufficient size to prevent contaminating the wash vat. Wash vats must be stainless steel and have two compartments.~~
- ~~r.~~ g. Light must be provided to properly inspect the interior of bulk tanks.
- ~~s.~~ 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 tube, plate coolers and heat exchangers to protect the milkhouse and water supply. Backflow preventors are also required downstream of tubeplate 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.
- ~~¶~~ k. Properly mounted and installed 36A ~~and~~ 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.
- ~~Ⓦ~~ l. All equipment must meet applicable 3A standards and practices.
- ~~×~~ All milk to be offered for sale must be maintained at forty five degrees Fahrenheit [7.22 Celsius] or less.

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 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-28, 4-30-294.1-25-50, 4.1-25-28~~

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. ~~that prevent licensing,~~ the farm may not be licensed.
2. The producer shall correct ~~all~~ 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 2018

General Authority: NDCC ~~4-29-03, 4-29-04, 4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-284.1-25-50~~

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 4-304.1-25 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. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-27, 4-30-36~~ 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 shall remain downgraded for up to ninety days as determined by the commissioner. To regain a grade A license, the farm shall require a reinstatement inspection.
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 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-27, 4-30-28, 4-30-36~~ 4.1-25-30, 4.1-25-50

**CHAPTER 7-03.2-05
MANUFACTURING FARM REGULATIONS**

Section

7-03.2-05-01	Herd Health
7-03.2-05-02	Quality Standards
7-03.2-05-03	Water Supply
7-03.2-05-04	Milk Truck Approach - Hoseport Slab - Port Opening
7-03.2-05-05	Waste
7-03.2-05-06	Federal Requirements
7-03.2-05-07	Pesticides and Medicines
7-03.2-05-08	Bulk Milk - Tank - Conversion Table - Temperature
7-03.2-05-09	Premises Cleanliness
7-03.2-05-10	Milking Procedures
7-03.2-05-11	Farm Inspection Procedures and Enforcement

7-03.2-05-01. Herd health.

Milk offered for sale must be obtained from healthy cows.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-274.1-25-28, 4-30-404.1-25-36~~

7-03.2-05-02. Quality standards.

1. Milk offered for sale must meet United States department of agriculture regulations.
2. The commissioner will place a producer's raw milk under warning when:
 - a. Two of the last four bacteria counts exceed 500,000 cells/ml. No sooner than three days, nor more than twenty-one days, after the commissioner issues the warning, another milk sample must be taken and tested. If the result is more than 500,000 cells/ml, the producer's milk must be excluded from the market. To regain access to the market the farm must pass an inspection by the commissioner, during which the bulk milk tank must be empty, and the farm's milk must be sampled and tested under and must meet conditions set by the commissioner. If the result of this test is 500,000 cells/ml or less, a temporary permit will be issued. If a temporary permit is issued, three milk samples must be taken within twenty-one days after the permit is issued. No more than two samples may be taken within any seven-day period. If the bacteria count of all three samples is 500,000 cells/ml or less, the producer will again have full status for manufacturing grade milk.
 - b. Two out of the last four monthly somatic cell counts exceed 750,000 cells/ml. No sooner than three days, nor more than twenty-one days, after the commissioner issues the warning another milk sample must be taken and tested. If the result is more than 750,000 cells/ml, the producer's milk must be excluded from the market. To regain access to the market the farm's milk must be sampled and tested and must meet conditions set by the commissioner. If the result of this test is 750,000 cells/ml or less, a temporary permit will be issued. If a temporary permit is issued, three milk samples must be taken within twenty-one days after the permit is issued. No more than two samples may be taken within any seven-day period. If the somatic count of all three samples is 750,000 cells/ml or less, the producer will again have full status for manufacturing grade milk.
 - e. ~~The sediment content exceeds regulations set by United States department of agriculture. No sooner than three days, nor more than twenty one days, after the~~

~~commissioner issues the warning another milk sample must be taken and tested. If the result shows that the sediment content does not exceed regulations set by the United States department of agriculture, the warning will be withdrawn. If the result shows that the sediment content exceeds regulations set by the United States department of agriculture, the milk must be excluded from the market. To regain access to the market the producer's farm must pass an inspection by the commissioner and the farm's milk must be sampled and tested under conditions set by the commissioner and the result must show that the milk satisfies standards set in the pasteurized milk ordinance and regulations set by the United States department of agriculture.~~

3. A farm license will be suspended if the farm scores below eighty on three consecutive farm inspections. The commissioner will reinstate a license when conditions leading to the suspension have been corrected by evidence of either test results or a satisfactory farm inspection.
4. ~~Milk offered for sale must be tested monthly to determine sediment content. The sediment standard must not exceed fifty hundredths milligrams. All sediment tests must be by the mixed sample method, unless otherwise approved by the commissioner.~~
5. The volume of milk in the bulk tank after the first milking must be sufficient to ensure adequate agitation of the milk. Failure to produce adequate volumes on the first milking may result in suspension of a farm's license to sell raw milk.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-28, 4-30-314.1-25-36, 4.1-25-37~~

7-03.2-05-03. Water supply.

1. The farm's water supply must be properly located, protected, and operated and must be an ample supply and safe for cleaning utensils and equipment. Rural farm water supplies approved by the state department of health are acceptable. Wells constructed in compliance with state board of water well contractors and tested every three years by an approved laboratory and found to be satisfactory are acceptable. Other water supplies approved by the commissioner and tested annually and found to be satisfactory are acceptable. All water sources must be tested following repairs or other disruptions to the water system and must be found satisfactory. All new water supplies to dairy farms must comply with either the state department of health requirements for rural water or the state board of water well contractors requirements for well construction.
2. Handwashing facilities with soap, individual sanitary towels, and hot and cold water under pressure must be provided.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-04. Milk truck approach - Hoseport slab - Port opening.

The milk truck approach to the milk loading area must prevent excess mud and allow easy access to the milkroom. Farm animals must not have free access to the milk loading area. The hoseport slab and milk loading area must be kept clean. The hoseport slab must be constructed of concrete or other impervious material and centered under the port opening through which milk is transferred from the bulk tank to the milk truck. ~~New hoseport slabs must be at a minimum six feet by six feet [1.83 meters by 1.83 meters].~~ The hose port slab shall be sufficiently large to protect the milk hose from contamination. The port opening must be closed when not in use.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-05. Waste.

All toilet wastes on the farm and all milkhouse and milkroom wastes must be disposed of in a manner that will not pollute the soil surface, contaminate any water supply, or be exposed to insects.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-27~~ 4.1-25-30

7-03.2-05-06. Federal requirements.

Farms selling manufacturing grade milk must comply with United States department of agriculture rules governing such facilities.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-07. Pesticides and medicines.

Only pesticides approved for use in the milkroom with an environmental protection agency number may be stored in the milkroom and when used must be used in accordance with label instructions. Automatic pesticide dispensers are allowed if properly installed and used with approved pesticides. Antibiotics and other medicines may be stored in the milkroom if stored in a manner that ensures that neither the milk supply nor milk contact equipment is contaminated.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-08. Bulk milk - Tank - Conversion table - Temperature.

The bulk milk tank must be equipped with an approved milk measuring device. A conversion table to determine pounds [kilograms] must be in the milkroom. Milk above forty-five degrees Fahrenheit [7.22 degrees Celsius] must not be offered for sale or transported off the farm.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-09. Premises cleanliness.

The farm must be kept clean. Manure must be removed daily from the milking parlor or stored in a way that prevents access by cows. Stacked or piled manure and manure packs in housing facilities must be spread prior to fly season each year. The yard or loafing area must be of ample size to prevent overcrowding, must be drained to prevent standing water pools, and must be kept clean.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-10. Milking procedures.

All milking procedures must comply with United States department of agriculture regulations.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~

7-03.2-05-11. Farm inspection procedures and enforcement.

1. Farms under warning for cleaning violations, major drug violations, or cooling equipment problems will be inspected within twenty-one days.
2. Items for which the commissioner has established a compliance deadline are exempted from further action until the deadline has expired.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-274.1-25-30~~, ~~4-30-284.1-25-50~~

CHAPTER 7-03.2-09 FROZEN DESSERTS

Section

7-03.2-09-01	Frozen Desserts - Manufacturers and Processors Regulations
7-03.2-09-02	Microbiological Requirements for Ice Cream, Ice Milk, Ice Cream Mix, and Frozen Yogurt
7-03.2-09-03	Resampling

7-03.2-09-01. Frozen desserts - Manufacturers and processors regulations.

1. For the purposes of this chapter, frozen desserts include ice cream, ice milk, sherbet, soft serve, frozen yogurt, and any frozen dessert or ice cream mix containing dairy products.
2. A license from the commissioner is required for any frozen dessert processor that packages, freezes, or adds flavors to ice cream mix. Establishments taking the product directly from the mix freezer and delivering it directly to the ultimate consumer are exempt from licensing.
3. All frozen dessert processors must be inspected once every three months by the commissioner.
4. All new equipment used by frozen dessert processors must comply with 3A standards or other standards acceptable to the commissioner. Modifications of plant processes for manufacturing frozen desserts must be submitted to the commissioner for approval prior to installation or construction.
5. All raw milk and dairy ingredients used in processing frozen desserts must be pasteurized and must originate from plants approved by the United States department of agriculture, the food and drug administration, or the commissioner.
6. Sanitary requirements, at a minimum, must meet United States department of agriculture regulations for manufacturing frozen desserts.
7. Four samples within a six-month period must be collected by the commissioner from each frozen dessert processor.
8. Samples must be handled in accordance with the standard methods. Samples must be tested at laboratories approved by the commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-024.1-25-02, 4-30-334.1-25-29, 4-30-35, 4-30-364.1-25-30~~

7-03.2-09-02. Microbiological requirements for ice cream, ice milk, ice cream mix, and frozen yogurt.

1. The United States department of agriculture regulations that set microbiological requirements for frozen desserts apply to ice cream, ice milk, ice cream mix, and frozen yogurt.
2. All milk, when delivered to a plant to be used in making ice cream, ice milk, ice cream mix, or frozen yogurt, must have a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or lower. If the delivered milk is from a single producer, it must not exceed five hundred thousand per milliliter standard plate count. If the delivered milk is commingled, it must not exceed one million per milliliter standard plate count.
3. All cream delivered to a plant to be used in making ice cream, ice milk, ice cream mix, or frozen yogurt must have a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius]

or lower. All delivered cream must not exceed eight hundred thousand per milliliter standard plate count.

4. All dry dairy ingredients to be used in making ice cream, ice milk, ice cream mix, or frozen yogurt must meet the manufacturing standards set by United States department of agriculture regulations.
5. All ice cream, ice milk, ice cream mix, and frozen yogurt products must meet the following phosphatase and coliform requirements:
 - a. Phosphatase. The phenol value of a product may be no greater than the minimum specified for the product as determined by the phosphatase test in the standard methods, or other tests approved by the commissioner.
 - b. Coliform.
 - (1) In plain ice cream, ice milk, ice cream mix, and frozen yogurt products, the coliform may not exceed ten per milliliter. Further, these products must not exceed twenty thousand per milliliter standard plate count.
 - (2) In flavored ice cream, ice milk, ice cream mix, and yogurt products, the coliform may not be more than twenty per milliliter. Further, these products must not exceed twenty thousand per milliliter standard plate count.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-334.1-25-29, 4-30-354.1-25-50, 4-30-364.1-25-30~~
7-03.2-09-03. Resampling.

When a sample exceeds the microbiological requirements, the licensed operator must be notified in writing. ~~When two samples out of four consecutive samples are not in compliance, a warning must be sent. After which, a~~ An additional sample must be taken in not less than three days or more than twenty-one days from the notification. ~~When two samples out of four consecutive samples are not in compliance, a warning must be sent.~~ An inspection must be made at this time to determine sanitary conditions. When three out of five consecutive samples are not in compliance, sale of the product must be stopped until the test results are in compliance.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-29-03, 4-29-04, 4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-334.1-25-29, 4-30-354.1-25-50, 4-30-364.1-25-30~~

**CHAPTER 7-03.2-12
TRANSPORTATION OF MILK AND CREAM FOR MANUFACTURING, PROCESSING, OR
BOTTLING PURPOSES**

Section

7-03.2-12-01	Licensing
7-03.2-12-02	Equipment and Vehicles
7-03.2-12-03	Raw Milk Pickup
7-03.2-12-04	Pup Trailers - Two-Compartment Tankers
7-03.2-12-05	Washing Trucks
7-03.2-12-06	Topping Off - Emptying Farm Bulk Tank

7-03.2-12-01. Licensing.

All persons owning or operating a truck or other vehicle involved in transporting milk and cream for manufacturing purposes must be licensed by the commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-024.1-25-02, 4-30-124.1-25-22, 4-30-38.14.1-25-35~~

7-03.2-12-02. Equipment and vehicles.

The maximum amount of time between pickup of milk on the farm is ninety-six hours. All equipment used to transport milk or cream must conform to 3A standards, or other standards acceptable to the commissioner. Equipment not meeting 3A standards and not otherwise having the commissioner's approval must be sealed or tagged by the commissioner and may not be used for storing and transporting milk and milk products. Vehicles used for transporting milk or milk products may not be used for transporting other products, unless approved by the commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.14.1-25-50~~

Law Implemented: NDCC ~~4-30-384.1-25-50~~

7-03.2-12-03. Raw milk pickup.

1. Raw milk picked up on the farm must be stored in containers meeting all the following requirements:
 - a. Comply with 3A standards, or other standards approved by the commissioner.
 - b. Able to agitate to obtain a universal sample.
 - c. Able to hold milk at a temperature between thirty-two to forty-five degrees Fahrenheit [0 to 7.22 degrees Celsius].
2. Only raw milk stored on the farm in bulk tanks approved by the commissioner may be picked up. Milk stored in containers not complying with this section may not be added to milk stored in a container meeting the requirements of this section.
3. Filter bowls or open bowl strainers with fiber filters must comply with 3A standards. Only approved in-line filtering devices may be used to transfer milk from a farm bulk tank to a farm bulk truck. These devices must be stored in a sanitary manner.
4. During transfer of all milk or milk products from farm bulk trucks or tankers, a filter is required for any air inlet vent when the transfer occurs out-of-doors or in an area not completely enclosed.

5. Transfer of milk and milk products between trucks or tankers must be made from valve to valve with adequate filter protection for air inlet vent.
6. Only milk stored at forty-five degrees Fahrenheit [7.22 degrees Celsius] or below may be picked up at the farm.
7. Milk may only be picked up from farms that have posted a valid license issued by the commissioner.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.1~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-384.1~~ 4.1-25-50

7-03.2-12-04. Pup trailers - Two-compartment tankers.

When pup trailers are used in hauling milk and milk products, the connecting pipeline between the main tanker and pup trailer must be kept free of milk or milk products during transport. Any milk retained in the connecting pipeline must be disposed of and not transferred to plant storage silos or tanks. These connecting pipelines or hoses must be cleaned and sanitized between each use. Two-compartment tankers must carry the same grade product in each compartment unless all the milk is used for the lowest grade.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.1~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-384.1~~ 4.1-25-50

7-03.2-12-05. Washing trucks.

1. a. All tankers and farm bulk trucks used for transporting raw milk from the farm to the plant must be washed and sanitized at the end of each day's use. A record of this cleaning must be kept and may consist of a mechanical recording chart, a wash log, or any other approved methods consistent with the requirements of Appendix B. Milk Sampling, Hauling, and Transportation of the pasteurized milk ordinance. ~~that contains the following information:~~
 - ~~(1) Truck identification, with the state identification number if applicable.~~
 - ~~(2) Name and location of wash station.~~
 - ~~(3) Date and time of washing.~~
 - ~~(4) Date and time of sanitizing.~~
 - ~~(5) Type of sanitizer.~~
 - ~~(6) Complete name of the person who did the washing and sanitizing.~~
- b. All items such as valves and milk pumps that cannot be cleaned in place must be manually cleaned and sanitized at the end of each day's use.
2. a. ~~All tankers and farm bulk trucks washed and sanitized outside of North Dakota require a seal on the outlet valve and wash tag containing the following information:~~
 - ~~(1) Truck identification, with the state identification number if applicable.~~
 - ~~(2) Name and location of wash station.~~
 - ~~(3) Date and time of washing.~~
 - ~~(4) Date and time of sanitizing.~~

~~(5) Type of sanitizer.~~

~~(6) Complete name of the person who did the washing and sanitizing.~~

b. All milk transported in tankers or farm bulk trucks that are washed out of state and do not have the required seal and wash tag must be diverted to nongrade A uses.

3. If milk is held in tankers or farm bulk trucks overnight, the milk may not exceed forty-five degrees Fahrenheit [7.22 degrees Celsius].

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-38~~ 4.1-25-50

7-03.2-12-06. Topping off - Emptying farm bulk tank.

Milk haulers must completely empty a farm bulk tank at every pickup. If this is not possible, the milk remaining in the farm bulk tank must be picked up before the next milking- unless the farm bulk tank is equipped with a seven day temperature-recording device that complies with Appendix H., IV. Temperature-Recording Devices Used in Storage Tanks of the pasteurized milk ordinance. The tank shall be emptied, cleaned, and sanitized at least every seventy-two hours. Failure to completely empty the farm bulk tank prior to the next milking is defined as "topping off". It is a violation of this section to top off any farm bulk tank.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-38~~ 4.1-25-50

CHAPTER 7-03.2-13 MILK HAULERS LICENSING

Section

7-03.2-13-01 License Requirements
~~7-03.2-13-02 Training~~
7-03.2-13-0302 Violations

7-03.2-13-01. License requirements.

All owners of tankers and farm bulk trucks must be licensed by the commissioner as milk haulers. The following items must be complied with to obtain a license:

1. The outside of vehicles hauling milk must be identified with the owner's name, address, and identification number. This information must be in letters of such height making them easy to read from a distance of one hundred feet.
2. Vehicles hauling milk must comply with 3A standards for unrefrigerated tanks storing milk and milk products.
3. The license must be renewed annually.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55-14~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-02~~ 4.1-25-02, ~~4-30-12~~ 4.1-25-22, ~~4-30-38.1~~ 4.1-25-35

~~7-03.2-13-02. Training.~~

~~The milk hauler must train new employees, samplers, and haulers, and must schedule with the commissioner annual training sessions for all employees.~~

~~**History:** Effective October 1, 2009.~~

~~**General Authority:** NDCC ~~4-30-55-1~~~~

~~**Law Implemented:** NDCC ~~4-30-38.1~~~~

7-03.2-13-0302. Violations.

The milk hauler is responsible for the acts of any employee who violates the requirements of this article.

History: Effective October 1, 2009. Amended 2018.

General Authority: NDCC ~~4-30-55-1~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-38-14~~ 4.1-25-35

CHAPTER 7-03.2-17
GOAT AND SHEEP MILK PRODUCTION AND PROCESSING

Section
7-03.2-17-01 Requirements

7-03.2-17-01. Requirements.

1. All grade A goat and sheep milk must be produced according to the pasteurized milk ordinance.
2. Processing goat and sheep milk must meet the United States department of agriculture's manufacturing rules if the milk is to be sold as manufacturing grade milk, but if it is to be sold as grade A milk then it must meet the pasteurized milk ordinance.
3. All raw goat and sheep milk must be pasteurized or heat-treated before being used in cheese or other food products intended for human consumption. All goat or sheep milk cheeses must be properly identified as to type of the product and ingredients, and all heat-treated cheeses must be aged at least six months before being offered for human consumption.
4. The commissioner may modify the requirements of this section if the commissioner finds that the health, safety, and welfare of the general public, as well as the quality of the product, will not be compromised.

History: Effective October 1, 2009. Amended 2018

General Authority: NDCC ~~4-30-55.4~~ 4.1-25-50

Law Implemented: NDCC ~~4-30-38.4~~ 4.1-25-30

**ARTICLE 7-04
ENTOMOLOGY
DIVISION PLANT
INDUSTRIES**

Chapter	
7-04-01	Pest Prevention
7-04-02	Nurseries

**CHAPTER 7-04-01
PEST PREVENTION - BLACK STEM RUST QUARANTINE**

Section	
7-04-01-01	Definitions
7-04-01-02	Regulated Area
7-04-01-03	Regulated Articles
7-04-01-04	Conditions Governing the Movement of Regulated Articles
7-04-01-05	Issuance and Cancellation of Certificates and Permits
7-04-01-06	Compliance Agreements and Cancellation Thereof
7-04-01-07	Assembly and Inspection of Regulated Articles
7-04-01-08	Attachment and Disposition of Certificates or Permits
7-04-01-09	Inspection and Disposal of Regulated Articles
7-04-01-10	Nonliability of the Department

7-04-01-01. Definitions.

The following terms as used in this chapter, except where the context otherwise requires, shall include both the singular and the plural and shall be construed to mean:

1. "Black stem rust" means the disease caused by the organism *puccinia graminis* pers.
2. "Certificate" means a document issued or authorized by the commissioner to allow movement of regulated articles to any destination.
3. "Commissioner" means the commissioner of the department of agriculture of this state or any officer or employee of the department, or other person, to whom the authority to act in the commissioner's stead has been or hereafter may be delegated.
4. "Compliance agreement" means a written agreement between a person engaged in growing, handling, or moving regulated articles and the department of agriculture, wherein the former agrees to comply with the requirements of this chapter.
5. "Limited permit" means a document issued or authorized by the commissioner to allow movement of noncertified regulated articles to a specified destination for limited handling or utilization.
6. "Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.
7. "One year's growth" means the growth of a plant during all growing seasons of any calendar year.
8. "Person" means any individual, corporation, company, society, or association, or other organized group.
9. "Regulated article" means any article described in the quarantine.

10. "Restricted destination permit" means a document issued or authorized by the commissioner to allow the movement of regulated articles not certified under all applicable quarantines to a specific destination for other than scientific purposes.
11. "Rust-resistant plants" means berberis, mahoberberis, and mahonia plants listed as rust-resistant by the director of the plant protection division, United States department of agriculture in the "Manual of Administratively Authorized Procedures to be Used Under the Black Stem Rust Quarantine".
12. "Scientific permit" means a document issued by the commissioner to allow the movement of regulated articles to a specific destination for scientific purposes.
13. "Seedlings" mean any plant grown from seed within the genus berberis of less than two year's growth.
14. "Two year's growth" means the growth of a plant during all growing seasons of two successive calendar years.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-04~~ 4.1-23-01

7-04-01-02. Regulated area.

The entire state is the regulated area.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-04~~ 4.1-23-04

7-04-01-03. Regulated articles.

No person shall move into or within this state any of the following regulated articles except in accordance with conditions prescribed in this chapter:

1. Black stem rust (*puccinia graminis pers*) spores in any living stage.
2. All plants, seeds, fruits, and other parts of plants which are capable of propagation, and belong to the genera berberis, mahoberberis, or mahonia, except mahonia cuttings for decorative purposes.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-04~~ 4.1-23-04

7-04-01-04. Conditions governing the movement of regulated articles.

The following regulated articles may be moved into and within the state if all of the applicable conditions as specified in this section have been fulfilled and if certificates or permits have been issued:

1. **Rust-resistant berberis, mahoberberis and mahonia plants.**
 - a. Seedlings of rust-resistant berberis plants may be moved into or within this state if accompanied by a permit, to any destination authorized by such permit.
 - b. Rust-resistant berberis plants of at least two year's growth, mahoberberis and mahonia plants, and cuttings taken from such plants, may be moved into and within the state to any destination if the commissioner determines that the plants and cuttings are true to type and if the plants and cuttings are accompanied by a certificate or permit.

2. **Seeds and fruits of rust-resistant berberis plants.** Seeds and fruits of rust-resistant berberis plants originating within an eradication area may be moved into or within the state if accompanied by a permit.
3. **Seeds and fruits of rust-resistant mahonia plants.** Seeds and fruits of rust-resistant mahonia plants may be moved into and within this state if accompanied by a permit.
4. **Any regulated article.** Any regulated article may be moved to a specified destination for scientific purposes under such conditions as may be authorized by the commissioner under a scientific permit.
5. **Black stem rust spores.** Living spores originating from any other state may be moved into and within the state if accompanied by a scientific permit. Application for the permit may be made to the commissioner.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-04~~ 4.1-23-04

7-04-01-05. Issuance and cancellation of certificates and permits.

1. Certificates may be issued for any regulated articles by the commissioner if the commissioner determines that they are eligible for certification for movement to any destination under all state plant quarantines applicable to such articles and upon examination they have been found to be free from evidence of black stem rust and to be rust-resistant.
2. Limited permits may be issued by the commissioner to allow intrastate movement of regulated articles, not eligible for certification under this chapter, to specified destinations for limited handling or utilization, when upon evaluation of the circumstances involved in each specific case the commissioner determines that such movement will not result in the spread of the black stem rust and requirements of other applicable state plant quarantines have been met.
3. Restricted destination permits may be issued by the commissioner to allow the intrastate movement of regulated articles for other than scientific purposes to any destination permitted under all applicable state plant quarantines, if such articles are not eligible for certification under all such quarantines, but would otherwise qualify for certification under this chapter.
4. Scientific permits may be issued by the commissioner to allow the intrastate movement of regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the commissioner.
5. Certificate, limited permit, and restricted destination permit forms may be issued by the commissioner to any person for use by the latter for subsequent shipments provided such person is operating under a compliance agreement. Any such person may be authorized by the commissioner to reproduce such forms on shipping containers or otherwise. Any such person may use the certificate forms or reproductions of such forms for the intrastate movement of regulated articles from the premises of the person identified in the compliance agreement if the person has made the determination specified in subsection 1 with respect to such articles. Any such person may use the limited permit forms or reproductions of such forms, for intrastate movement of regulated articles to specific destinations authorized by the commissioner in accordance with subsection 2. Any such person may use the restricted destination permit forms or reproductions of such forms, for the intrastate movement of regulated articles not eligible for certification under all state plant quarantines applicable to such articles, under the conditions specified in subsection 3.
6. Any certificate or permit which has been issued or authorized may be withdrawn by the commissioner if the commissioner determines that the holder thereof has not complied with any condition for the use of such document imposed by this chapter.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-044~~ 4.1-23-04

7-04-01-06. Compliance agreements and cancellation thereof.

1. Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles. Compliance agreement forms may be obtained from the commissioner.
2. Any compliance agreement may be canceled by the commissioner whenever the commissioner finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-044~~ 4.1-23-04

7-04-01-07. Assembly and inspection of regulated articles.

Persons, other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, who desire to move intrastate regulated articles which must be accompanied by a certificate or permit shall as far in advance as possible request the commissioner to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the commissioner designates to facilitate inspection.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-044~~ 4.1-23-04

7-04-01-08. Attachment and disposition of certificates or permits.

1. If a certificate or permit is required for the intrastate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.
2. In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-044~~ 4.1-23-04

7-04-01-09. Inspection and disposal of regulated articles.

The commissioner is authorized to stop, inspect, seize, destroy, or otherwise dispose of, or require disposal of regulated articles in such manner as the commissioner deems necessary.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-054~~ 4.1-23-05

7-04-01-10. Nonliability of the department.

The department of agriculture disclaims liability for any costs incidental to inspections or compliance with provisions of this chapter, other than for the services of the commissioner.

General Authority: NDCC ~~4-33-02~~ 4.1-23-02

Law Implemented: NDCC ~~4-33-054~~ 4.1-23-05

CHAPTER 7-04-02 NURSERIES

Section

7-04-02-01	Definitions
7-04-02-02	Shipping Tag Required [Repealed]
7-04-02-03 <u>01</u>	License to be Posted
7-04-02-04 <u>02</u>	Labeling of Nursery Stock
7-04-02-05 <u>03</u>	Storage and Display Requirements
7-04-02-06 <u>04</u>	Minimum Standards of Viability
7-04-02-07 <u>05</u>	Exemptions
7-04-02-08	Misrepresentation [Repealed]
7-04-02-09 <u>06</u>	Certification of Nursery Stock
7-04-02-40 <u>07</u>	License Fees
7-04-02-41 <u>08</u>	Application for License

~~7-04-02-01. Definitions.~~

- ~~1. "Noncommercial" means sales made by nonprofit and charitable organizations, occasional sales of nursery stock that has not been specifically grown for sale purposes, and sales from hobby type growers or propagators.~~
- ~~2. "Occasional sales" means the sale of not more than twelve trees, shrubs, or woody vines within one calendar year. This exemption is restricted to only nursery stock grown by the seller.~~

~~History:~~ Amended effective August 1, 1978; January 1, 1988.

~~General Authority:~~ NDCC 4-21.1-02

~~Law Implemented:~~ NDCC 4-21.1-01

~~7-04-02-02. Shipping tag required.~~

~~Repealed effective January 1, 1988.~~

~~7-04-02-03~~01. License to be posted.

The nursery license must be posted conspicuously in each place of business. A person offering nursery stock for sale from a vehicle shall have the license in that vehicle.

~~History:~~ Amended effective January 1, 1988; 2018.

~~General Authority:~~ NDCC ~~4-21.1-024.1-22-02~~

~~Law Implemented:~~ NDCC ~~4-21.1-064.1-22-06~~

~~7-04-02-04~~02. Labeling of nursery stock.

- No person may sell or offer for sale any nursery stock which is not securely labeled in accordance with the "International Code of Nomenclature for Cultivated Plants" with the complete correct botanical or approved recognized common name as recognized by the latest edition of one of the following:
 - Hortus Third, Liberty Hyde Bailey Hortorium.
 - ~~a.~~ b. Manual of Woody Landscape Plants and Dirr's Encyclopedia of Trees & Shrubs, Michael A. Dirr
 - ~~b.~~ c. Hilliers' Manual of Trees and Shrubs.
 - ~~e.~~ d. Manual of Cultivated Conifers, Den Oudem and Boon.

- ~~d.~~ e. Plant names recognized and accepted by AmericanHort, the American association of nurserymen, incorporated as published annually in Sources of Plants and Related Supplies.
 - e. f. Plant-name listings of well-recognized, nonprofit horticultural societies and organizations.
2. Fruit trees, evergreens, shade trees, flowering trees, and shrubs must be labeled as to variety or cultivar.
 3. All collected wild plants offered for sale must be labeled "collected from the wild" unless the stock has been grown under cultivation for at least one year.
The statement "nonhardy in North Dakota" must be easily visible to the consumer and printed in minimum 12-point font. The commissioner's nonhardy list shall be updated and accessible on the department website.
 - 4.

History: August 1, 1978; January 1, 1988; 2018.

General Authority: NDCC ~~4-21.1-024~~.1-22-02

Law Implemented: NDCC ~~4-21.1-114~~.1-22-07

7-04-02-~~050~~3. Storage and display requirements.

All nursery stock offered for sale must be stored and displayed as follows:

1. Roots of balled and burlapped stock must be kept moist at all times and should be kept in sawdust, shingle tow, peat, sphagnum moss, or other nonphytotoxic moisture-holding material of sufficient depth to cover one-half of the ball of earth.
2. Container stock must be watered sufficiently to maintain the viability and vigor of the stock. Potting media must be maintained at a depth so as to cover all roots of the plants.
3. Bare-root stock must be kept under conditions of temperature and moisture to retard growth and maintain viability. Moisture must be supplied to the root system by high humidity conditions in storage or by covering the roots with soil, sawdust, peat, wood shavings, or other moisture-holding material not toxic to plants. The material is to be kept moist at all times. Roots of heeled-in stock must be covered with well-packed soil at least one inch [2.54 centimeters] above the crown of the plant.
4. Prepackaged stock with roots packaged in moisture-retaining plastic, peat, wood shavings, or other material must be stored and displayed under conditions that will retard etiolated (nongreen) or otherwise abnormal growth and will ensure an adequate supply of moisture to the roots at all times.

History: Amended effective January 1, 1988; 2018.

General Authority: NDCC ~~4-21.1-024~~.1-22-02

Law Implemented: NDCC ~~4-21.1-114~~.1-22-07

7-04-02-~~060~~4. Minimum standards of viability.

All nursery stock offered for sale must meet these minimum standards of viability or be removed from public view and not offered for sale.

1. Woody-stemmed deciduous stock must have moist, green cambium tissue in the stems and branches and must have viable buds or normal green, unwilted growth sufficient to permit the stock to live and grow in a form characteristic of the species when planted and given reasonable care.
2. Nursery stock when in a wilted, rotted, or other such condition indicative of subnormal vitality may not be sold or offered for sale.
3. Bare-rooted or prepackaged woody-stemmed stock having more than two inches [5.08 centimeters] of etiolated (nongreen) growth from individual buds may not be sold or offered for sale.

4. Balled and burlapped stock in a weakened condition as evidenced by dieback or dryness of foliage or stock having broken or loose soil balls or soil balls of a size smaller than that specified by ~~the American association of nurserymen's~~ AmericanHort's "American Standard for Nursery Stock" may not be sold or offered for sale.
5. Colored waxes or other materials used to coat the aerial parts of plants that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

History: Amended effective January 1, 1988; 2018.

General Authority: NDCC ~~4-21.1-024.1-22-02~~

Law Implemented: NDCC ~~4-21.1-114.1-22-07~~

~~7-04-02-07~~05. Exemptions.

The following plant species are exempt from all provisions of North Dakota Century Code chapter ~~4-21.14.1-22~~:

1. All cClematis species.
2. All rRosa species.
3. All yYucca species.
4. Soil Conservation Districts will only be exempt from the requirements if they abide by the following:
 - a. Only sell nursery stock limited to a caliper of one inch at flare of root, base of tree.
 - b. Bare root or one gallon or less container size
 - c. No grafted trees.

History: Amended effective August 1, 1978; January 1, 1988; 2018.

General Authority: NDCC ~~4-21.1-02~~ 4.1-22-02

Law Implemented: NDCC ~~4-21.1-144.1-22-10~~

~~7-04-02-08. Misrepresentation.~~

~~Repealed effective January 1, 1988~~

~~7-04-02-09~~06. Certification of nursery stock.

1. An inspection certificate will not be issued for any deciduous nursery stock unless the stock has been inspected during active growth.
2. Persons growing Christmas trees and persons with overgrown trees or shrubs that will no longer be sold as nursery stock may be required to declare which trees are to be inspected for certification.
3. All field-grown nursery stock must be maintained by mechanical or chemical, or both, vegetation control. ~~Nursery stock growing in grass or sod will not be certified.~~

History: Effective January 1, 1988; 2018

General Authority: NDCC ~~4-21.1-02~~ 4.1-22-02

Law Implemented: NDCC ~~4-21.1-064.1-22-06~~

7-04-02-~~407~~. License fees.

A person with more than one place of business must operate all of the locations as one business to qualify for the ten dollar fee for additional licenses. The name and address of the principal place of business must be the same on all licenses issued to the person. The address of the other place of business must be on the license.

History: Effective January 1, 1988. Amended 2018.

General Authority: NDCC ~~4-21.1-024~~, 1-22-02

Law Implemented: NDCC ~~4-21.1-064~~, 1-22-06

7-04-02-~~4108~~. Application for license.

1. Each application for an initial license or annual renewal must set forth the applicant's business name, phone number, the name of the manager or owner, the principal location where nursery stock will be sold, the address or location of additional sales locations, the mailing address, the location of the growing area, the number of acres [hectares] in the growing area, the number and type of plant species being grown, and a map of the growing area.
2. The application must also include the names and addresses of the nurseries of the sources of their stock.
3. The applicant must certify that only officially inspected and certified nursery stock will be offered for sale.

History: Effective January 1, 1988. Amended 2018

General Authority: NDCC ~~4-21.1-024~~, 1-22-02

Law Implemented: NDCC ~~4-21.1-064~~, 1-22-06

Chapter 7-04-03 is created as follows:

CHAPTER 7-04-03
GINSENG

Section

<u>7-04-03-01</u>	<u>Definitions</u>
<u>7-04-03-02</u>	<u>Growers and dealers - License - Fees</u>
<u>7-04-03-03</u>	<u>Sale or shipment of cultivated ginseng</u>
<u>7-04-03-04</u>	<u>Inspection or submission of records.</u>
<u>7-04-03-05</u>	<u>Enforcement actions</u>

7-04-03-01. Definitions.

1. "Commissioner" means the commissioner of agriculture.
2. "Cultivated ginseng" means ginseng dry root, live root, tissue culture, or seed propagated in this state.
3. "Dealer" means a person who buys cultivated ginseng for the purpose of resale. The term does not include a person who buys cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States.
4. "Ginseng" means Panax quinquefolius L.
5. "Grower" means a person who grows cultivated ginseng and who sells cultivated ginseng to a dealer.
6. "Out-of-state cultivated ginseng" means cultivated ginseng grown or nurtured outside this state.

General Authority: NDCC 4.1-17

Law Implemented: NDCC 4.1-17

7-04-03-02. Growers and dealers - License - Fees.

1. A person who desires to act as a grower or a dealer shall register with the commissioner on a form provided by the commissioner. A person who acts a dealer and a grower shall register as both.
2. Each dealer shall pay an annual license fee of fifty dollars. Each grower shall pay an annual license fee of twenty-five dollars. The fee must be submitted with the license application. The commissioner shall assign a license number to each person licensed.
3. A ginseng license issued under these rules expires on December thirty-first.

General Authority: NDCC 4.1-17

Law Implemented: NDCC 4.1-17

7-04-03-03 Sale or shipment of cultivated ginseng.

1. Any grower that harvests ginseng must report the harvest to the commissioner, as required by United States fish and wildlife service.
2. All ginseng roots intended for sale must be certified by the commissioner on report forms. Certification shall include inspection of roots to ensure maturity and weight of each shipment. The commissioner may charge a fee of not more than five dollars for the ginseng forms.
3. Any grower or dealer holding unsold ginseng after December thirty-first of the year of harvest must notify the commissioner. The commissioner shall weigh the remaining ginseng and provide certification report of remaining ginseng. This report will be used for future certificate of ginseng.
4. Except as provided in subsection eight, no person may sell or ship cultivated ginseng to a dealer or ship cultivated ginseng out of this state unless the cultivated ginseng is accompanied by a completed shipment certificate provided by the commissioner. The shipment certificate must specify the year in which the cultivated ginseng was harvested. The person selling or shipping the cultivated ginseng shall submit a report form describing to the commissioner the source of all cultivated ginseng included in the sale or shipment. The report must be within thirty days of the sale or shipment. Each person who completes a shipment certificate or report form must retain a copy for three years from the date of the sale or shipment.

5. No dealer may purchase or receive cultivated ginseng unless it is accompanied by a completed shipment certificate. A dealer shall retain a copy of each shipment certificate received for a period of three years from the date of receipt.
6. No dealer may purchase or receive out-of-state cultivated ginseng unless it is accompanied by a valid certificate, issued by the state of origin, certifying that the shipment consists solely of out-of-state cultivated ginseng. The certificate must include the source, year of harvest, and dry weight of the out-of-state cultivated ginseng included in the shipment. The dealer must retain a copy of each certificate received for a period of three years from the date of receipt.
7. No person may import out-of-state cultivated ginseng into this state unless the imported shipment is accompanied by a valid certificate issued by the state of origin. No person may ship out-of-state cultivated ginseng using a shipment certificate issued by this state.
8. Subsection four does not apply to a person who sells or ships cultivated ginseng dry root to a person outside this state who is buying or receiving the cultivated ginseng dry root solely for the purpose of final retail sale to consumers in the United States, if the person selling or shipping keeps a record of the sale or shipment which includes the following:
 - a. The name and address of the purchaser or recipient.
 - b. The dry weight of the cultivated ginseng dry root included in the sale or shipment.
 - c. The date of the sale or shipment.
 - d. The source of all of the cultivated ginseng dry root included in the sale or shipment.
 - e. The year in which the cultivated ginseng dry root was harvested.

General Authority: NDCC 4.1-17

Law Implemented: NDCC 4.1-17

7-04-03-04. Inspection or submission of records.

Each dealer or grower shall make all records, including records that are located outside of this state, required to be kept under this chapter available for inspection or copying by the commissioner upon the commissioner's request.

General Authority: NDCC 4.1-17

Law Implemented: NDCC 4.1-17

7-04-03-05. Enforcement Actions.

The commissioner may deny, suspend, or revoke the registration of any dealer or grower and may invalidate shipment certificates completed by the dealer or grower, if the commissioner finds that the dealer or grower has violated this chapter. The commissioner may, without prior notice or hearing, suspend or invalidate the registration and shipment certificates of a dealer or grower if the commissioner finds that there is a need for immediate action to prevent a violation of this chapter. Any action of the commissioner pursuant to this section must be in writing. Any person who receives a notice under this section is entitled to a hearing before the commissioner if requested within ten days after receipt of the notice. Hearings must be conducted within ten days after receipt of a request for the hearing. Enforcement of any action may not be stayed pending the hearing.

General Authority: NDCC 4.1-17

Law Implemented: NDCC 4.1-17

**ARTICLE 7-06
NOXIOUS WEEDS**

Article 7-06 is repealed

Chapter

~~7-06-01~~ ~~General Provisions~~

**~~CHAPTER 7-06-01
GENERAL PROVISIONS~~**

Section

~~7-06-01-01~~ ~~Weed Control Officer's Certification [Repealed]~~

~~7-06-01-02~~ ~~Noxious Weeds Listed~~

~~7-06-01-01. Weed control officer's certification.~~

~~Repealed effective April 1, 2010.~~

~~7-06-01-02. Noxious weeds listed.~~

~~Weeds declared noxious shall be confined to weeds that are difficult to control, easily spread, and injurious to public health, crops, livestock, land, or other property. The following weeds have been declared noxious for the purpose of North Dakota Century Code chapter 63-01.1:~~

- ~~1. Absinth wormwood (*Artemisia absinthium* L.).~~
- ~~2. Canada thistle (*Cirsium arvense* (L.) Scop.).~~
- ~~3. Dalmatian toadflax (*Linaria gonistifolia* spp. *dalmatica*).~~
- ~~4. Diffuse knapweed (*Contauroa diffusa* Lam.).~~
- ~~5. Leafy spurge (*Euphorbia esula* L.).~~
- ~~6. Musk thistle (*Carduus nutans* L.).~~
- ~~7. Purple loosestrife (*Lythrum salicaria* L., *Lythrum virgatum* L., and all cultivars).~~
- ~~8. Russian knapweed (*Contauroa repens* L.).~~
- ~~9. Saltcedar (*Tamarisk* spp.).~~
- ~~10. Spotted knapweed (*Contauroa maculosa* Lam.).~~
- ~~11. Yellow toadflax (*Linaria vulgaris*).~~

History: Amended effective June 1, 1985; February 1, 2000; September 1, 2002; April 1, 2010.

General Authority: NDCC 4.1-47-04, 28-32-02

Law Implemented: NDCC 4.1-47-04

**ARTICLE 7-11
EGG REGULATIONS**

Chapter
7-11-01 Farm Flock Egg Handling Requirements

**CHAPTER 7-11-01
FARM FLOCK EGG HANDLING REQUIREMENTS**

Section	
7-11-01-01	Definitions
7-11-01-02	Licenses
7-11-01-03	Labeling and Sales Requirements
7-11-01-04	Candling
7-11-01-05	Egg Handling
7-11-01-06	Egg Cleaning
7-11-01-07	General Requirements
7-11-01-08	Consumer Grades

7-11-01-01. Definitions.

1. "Check" means any crack in the exterior shell of an egg. Sometimes called cracked eggs.
2. "Dirties" means eggs that have an unbroken shell with adhering dirt, or foreign material.
3. "Department" means the department of agriculture.
4. "Destination" means the point other than the place of origin where eggs are offered for sale.
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 that the egg contents are exposed or are exuding or free to exude through the shell.
7. "Small commercial flock" means a flock of ~~hens between five hundred and~~ 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 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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.** Every person who candles and grades eggs must be licensed. Candler or egg grader licenses must be issued after the candler or grader shows competence in grading and candling eggs as determined by the department of agriculture.

Egg dealer and candler grader licenses are not transferable. ~~No egg dealer or candler grader licenses may be transferred from one person to another.~~ New egg dealers or candler graders 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 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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.
4. **Expiration dates.** All case lots of eggs must have a placard bearing the expiration date and producer's name. The expiration date cannot exceed twenty-three days from the date of candling washing and sanitizing.

History: Effective January 1, 1993. Amended 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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. Amended 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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 ~~washed~~ 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 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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 must be submerged. After washing the egg, it ~~should~~ must be treated with a sanitizing solution and allowed to dry before packing. Clean potable water must be used in the egg-cleaning process. When manually washing eggs, a wash vat can be used with the detergent. Eggs should not be allowed to soak in water. Sanitizers formulated in compliance with 21 CFR, Section 178.1010 are acceptable for use in sanitizing shell eggs provided they are registered with EPA and labeled for use on shell eggs.

History: Effective January 1, 1993. Amended 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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.
2. 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 ~~4-13.2-05~~ 4.1-19-04.
6. Training for egg candling and grading will be provided by the department of agriculture.
7. Buildings housing egg grading and packing equipment must meet the following requirements:
 - a. Be of sound construction to prevent the entrance or harborage of vermin.
 - b. Be kept clean during grading and packing operations.
 - c. Be kept sanitary to prevent contamination of eggs during handling.
8. 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. 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 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 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 ~~(seven percent for jumbo size)~~ are permitted. Not more than fifty 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 thirty three tenths of one percent. Other types of loss are not permitted. Grade AA eggs at destination may not exceed seven percent checks ~~(nine percent for jumbo size)~~.
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 ~~(seven percent check for jumbo size)~~. Not more than fifty 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

~~thirty three tenths of one~~ percent. Other types of loss are not permitted. Grade A eggs at destination may not exceed seven percent checks (~~nine percent for jumbo size~~).

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 ~~fifty 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 ~~thirty 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 2018.

General Authority: NDCC ~~49-07-02~~ 4.1-19-06

Law Implemented: NDCC ~~49-07-02~~ 4.1-19-06

**ARTICLE 7-13
MEAT INSPECTION**

Chapter	
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7-13-02	Registration and Records Requirements
7-13-03	Marks and Labels
7-13-04	Custom Slaughtering and Processing
7-13-05	Slaughter Requirements
7-13-06	Facility Requirements
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**CHAPTER 7-13-01
GENERAL INFORMATION**

Section	
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~~7-13-01-01. History.~~

~~The first law providing inspection of meat slaughtering and processing facilities was enacted in 1951 as the standards for meat inspection, sanitation, and distribution under North Dakota Century Code chapter 36-23 (S.B. No. 201; S.L. 1951, ch. 223). In 1969, the existing meat inspection program was repealed because of disorganization caused by the lack of inspector training, inconsistency, and lack of guidance in the regulations (S.B. No. 251; S.L. 1969, ch. 322, § 10). It was immediately replaced by the North Dakota Meat Inspection Act under North Dakota Century Code chapter 36-23.1 (S.B. No. 251; S.L. 1969, ch. 322, §§ 1-8). This Act made the United States department of agriculture the only agency in North Dakota providing carcass inspection and inspection for meat slaughtering and processing facilities. North Dakota Century Code chapter 36-23.1 was repealed in 1991 (H.B. No. 1478; S.L. 1991, ch. 377, § 3).~~

~~In 1990, House Bill No. 1290 created a state meat inspection program, giving the North Dakota department of agriculture the authority to make rules and implement inspection of meat slaughtering and processing establishments, including custom exempt plants. The intent of the program is to allow small and medium livestock producers more opportunities to market their animal products and to provide a means for processing alternative or nontraditional livestock. In 2003, Senate Bill No. 2220 added poultry to the program, creating a state meat and poultry inspection program.~~

~~**History:** Effective August 1, 2000; amended effective January 1, 2004.~~

~~**General Authority:** NDCC 4.1-31-24~~

~~**Law Implemented:** NDCC 4.1-31-24~~

7-13-01-0201. Inquiries.

All inquiries regarding the state meat inspection program should be directed to:

North Dakota Department of Agriculture
Director - Meat Inspection Program
600 East Boulevard Avenue, Dept. 602
Bismarck, ND 58505-0020
Telephone: 701-328-2231

Facsimile: 701-328-4567
E-mail: ndda@state.nd.us

History: Effective August 1, 2000.
General Authority: NDCC 4.1-31-24
Law Implemented: NDCC 4.1-31-24

~~7-13-01-03. Federal Law.~~

~~All federal meat and poultry inspection regulations effective as of December 1, 2012, as under title 9, Code of Federal Regulations, parts 301.320, 325, 329, 381, 391, 416-417, 418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.~~

~~**History:** Effective August 1, 2000; amended effective January 1, 2004; July 1, 2009; April 1, 2013.
General Authority: NDCC 4.1-31-24
Law Implemented: NDCC 4.1-31-18, 4.1-31-24~~

~~7-13-01-0402. Definitions.~~

The terms used throughout this article have the same meaning as in title 9, Code of Federal Regulations, parts 301 and 381, unless already defined in North Dakota Century Code section 4.1-31-01, in which case the North Dakota Century Code definitions shall govern. In addition, as used in this chapter or in applying title 9, Code of Federal Regulations, parts 301 and 381:

1. "Administrator" as the term is used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.
2. "Commissioner" means the North Dakota agriculture commissioner or the agriculture commissioner's authorized representative.
3. "Department" means the North Dakota department of agriculture.
4. "Federal Act" means the Federal Meat Inspection Act, as amended [Pub. L. 90-201; 21 U.S.C. 601 et seq.] and the Poultry Products Inspection Act, as amended [Pub. L. 106-170; 21 U.S.C. 451 et seq.].
5. "Food safety inspection service" or "FSIS" as used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.
6. "Official establishment" means a plant, facility, operation, or premises where animals are slaughtered for human consumption, or a plant or premises where meat or meat food products are processed, but does not include:
 - a. Establishments subject to federal inspection.
 - b. Premises of a person who is the owner of the animals to be slaughtered or of carcasses to be processed, and the resulting product is for exclusive use by that person, members of that person's household, or that person's nonpaying guests and employees.
7. "Overtime" means any time when meat inspection personnel are requested to work in an establishment, as follows:
 - a. Saturday or Sunday.
 - b. New Year's Day, Martin Luther King Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day. If

any such holiday falls on Saturday or Sunday, the preceding Friday or succeeding Monday, respectively, shall be a holiday.

- c. The day before Christmas Day and the day before New Year's Day.
- d. Before 6 a.m. or after 6 p.m.
- e. In excess of forty hours of "straight time" in any calendar week.
- f. At any time other than a regularly scheduled slaughter period.
- g. When an owner of an animal requests slaughter inspection from an official establishment at a nonregularly scheduled time.

"Overtime" does not include time spent traveling to or from an establishment.

- 8. "Secretary" or "secretary of agriculture" as used in title 9, Code of Federal Regulations, means the North Dakota agriculture commissioner unless made inappropriate by context.

History: Effective August 1, 2000; amended effective January 1, 2004.

General Authority: NDCC 4.1-31-24

Law Implemented: NDCC 4.1-31-24

7-13-01-~~0503~~. Access authorization.

In addition to the access requirements under North Dakota Century Code section 4.1-31-03, the commissioner and any authorized representative shall have access to establishments where carcasses are stored or processed or where animals are slaughtered.

History: Effective August 1, 2000.

General Authority: NDCC 4.1-31-18, 4.1-31-24

Law Implemented: NDCC 4.1-31-03, 4.1-31-14