## NORTH DAKOTA ADMINISTRATIVE CODE

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TITLE 33
STATE DEPARTMENT OF HEALTH

#### **AUGUST 2003**

#### **CHAPTER 33-05-01**

**33-05-01-02. Disinterment.** No person, except a licensed embalmer funeral practitioner, after having obtained a permit from the state registrar of vital statistics, shall disinter the body of a deceased person, providing the authorities in charge of a cemetery may transfer bodies buried therein from one part of such cemetery to another part thereof with the approval of the local health officer. All disinterred remains must be encased in a tight container or strong box. The disinterment permit shall be on the regular burial-transit permit and shall be issued only by the state registrar to embalmers funeral practioners duly licensed in North Dakota.

History: Amended effective August 1, 2003.

General Authority: NDCC 23-01-03 Law Implemented: NDCC 23-01-03

#### 33-05-01-05. Cemeteries.

- 1. All cemeteries must be registered with the state department of health on forms provided by the department.
- All cemeteries must be surveyed by a registered land surveyor prior to filing a plat of the cemetery with the registrar of deeds recorder in the county in which the cemetery is located, as outlined in North Dakota Century Code section 43-19.1-30.
- 3. No body can be accepted for burial without a burial permit issued by the registrar where the death occurred.
- 4. The sexton or other person making burial must endorse on the burial permit the time and place of burial, and file the permit with the registrar having jurisdiction over the territory where the burial was made.
- 5. Sextons must keep permanent records of every burial or disinterment. The following items of record are required:

- a. Full name of deceased.
- b. Age at death and sex.
- c. Date and place of death.
- d. Date of burial.
- e. Place of burial, block, lot, and grave.
- f. Number of burial permit.
- 9. Name and address of embalmer or undertaker funeral practitioner.
- 6. All cemetery authorities must make such reports at such time as the state department of health may from time to time direct.
- 7. The state department of health has recommended a standard uniform record book for cemetery records. It may be obtained from the larger printing concerns in the state.

History: Amended effective February 1, 1984; August 1, 2003.

General Authority: NDCC 23-01-03, 23-06-23

Law Implemented: NDCC 23-01-03, 23-06-21, 23-06-23

#### **CHAPTER 33-05-02**

33-05-02-02. Notification required of death from post-mortem communicable diseases. When any person dies who has been diagnosed or suspected as having a post-mortem communicable disease, a written notice stating "BLOOD AND BODY FLUIDS PRECAUTIONS SHOULD BE OBSERVED" must be securely attached to the body in a prominent location thereon so it can be easily seen when the body is removed for disposition as follows:

- If the person dies in a hospital or other health care facility, the notice must be prepared and placed by the attending physician or other health care professional or representative on behalf of the hospital or health care facility.
- If the person dies outside of a hospital or health care facility, the notice
  must be prepared and placed by the attending physician, or in the
  absence of an attending physician, by the examining coroner.

Any person who removes a dead human body for disposition which has a notice attached pursuant to this chapter shall ensure that such notice remains attached to the dead body until the body is presented to any embalmer funeral practitioner, funeral director, or other person taking possession of the dead body.

History: Effective May 1, 1987; amended effective August 1, 2003.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-01-03

#### **CHAPTER 33-06-15**

# 33-06-15-01. Preparation of bodies with certain communicable diseases and transportation of the dead.

- Communicable diseases. The following requirements shall be met by funeral directors for bodies dead from these contagious or infectious diseases - anthrax, cholera, meningococcus meningitis, plague, smallpox, and tuberculosis:
  - a. Only a licensed embalmer funeral practitioner or an assistant intern embalmer who is closely supervised by a licensed embalmer funeral practitioner shall accept and prepare the body.
  - b. In the preparation of the body, appropriate outer garments and rubber gloves shall be worn.
  - c. The body shall be thoroughly embalmed with an approved disinfecting fluid by arterial and cavity injection, all orifices and any discharging sinuses closed with absorbent cotton, and the body washed with an appropriate disinfecting fluid.
    - No embalming fluid containing compounds of arsenic, mercury, zinc, or other highly poisonous metals shall be sold or used in North Dakota for the embalming of dead human bodies for burial.
  - d. Following the preparation, the instruments shall be sterilized by boiling or placing in an antiseptic solution, and the hands shall be washed with soap and water.
  - e. Without delay, the body shall receive the finishing preparation, placed in a casket, and the casket permanently closed. The casket may be provided with transparent material of sufficient dimensions to disclose the face.
  - f. Bodies prepared as herein stated may be accepted for transportation.

## 2. Embalming and transportation.

- a. A burial-transit permit may be issued for the bodies of those dead from causes listed under subsection 1 only if the body has been embalmed.
- b. A burial-transit permit may be issued for the bodies of those dead from causes other than those listed under subsection 1 without embalming or refrigeration, provided they reach their destination within forty-eight hours from the time of death. If the body cannot

reach its destination within the prescribed forty-eight hours, it must be embalmed.

- A burial-transit permit may be issued for the bodies of those dead from causes other than those listed under subsection 1 without embalming if they are refrigerated to a temperature of between thirty-eight and forty degrees Fahrenheit, provided they reach their destination within seventy-two hours from the time of death. If the body cannot reach its destination within the prescribed seventy-two hours with constant refrigeration, it must be embalmed.
- d. Destination shall be considered the burial, cremation, or final disposition of the body. Storage of a body during the winter months when burial is difficult shall not be considered final disposition.

History: Amended effective February 1, 2000; August 1, 2003.

General Authority: NDCC 23-01-03, 23-06-07

Law Implemented: NDCC 23-01-03, 23-06, 23-07, 23-21

## **CHAPTER 33-11-01**

- **33-11-01-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter.
  - 1. "Advanced first aid ambulance attendant" means a person who meets the requirements of the advanced first aid ambulance attendant program and is certified by the department.
  - 2. "An ambulance Ambulance driver" means an individual who operates a an ambulance vehicle.
  - 2. 3. "An ambulance Ambulance run" means the response of an ambulance vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation or both to someone sick or incapacitated.
    - 3. "An attendant" means a qualified individual responsible for the care of the patient while on an ambulance run.
    - 4. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, and infant obstructed airway.
  - 4. 5. "Department" means the state department of health and consolidated laboratories as defined in North Dakota Century Code chapter 23-01.
  - 5. 6. "Driver's license" means the license as required under North Dakota Century Code section sections 39-06-01 and 39-06-02.
  - 6. 7. "Emergency care technician" means a person who meets the requirements of the state emergency care technician program and is certified as an emergency care technician by the department.
  - 7. 8. "Emergency medical technician-basic" means a person who meets the requirements of the national emergency medical technician-ambulance program and is certified as an emergency medical technician-basic by the national registry of emergency medical technicians.
  - 8. 9. "Emergency medical technician-paramedic" means a person who meets the requirements of the national emergency medical technician-paramedic program and is certified as an emergency medical technician-paramedic by the national registry of emergency medical technicians and licensed by the board of medical examiners under chapter 50-03-03 department.

- 9. 10. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
  - 11. "Licensed health care facilities" means facilities licensed under North Dakota Century Code chapter 23-16.
  - 12. "Nonemergency health transportation" means health care transportation provided on a scheduled basis by licensed health care facilities to their own patients or residents whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during transit or emergency medical treatment upon arrival at the final destination.
  - "Paramedic with additional training" means evidence of successful completion of additional training and appropriate periodic skills verification in such topics as management of patients on ventilators, twelve lead electrocardiograms or other critical care monitoring devices, drug infusion pumps, and cardiac or other critical care medications, or any other specialized procedures or devices determined at the discretion of the paramedics medical director.
- 10. 14. "Personnel" means qualified attendants primary care providers, or drivers, or both, within an ambulance service.
  - 15. "Primary care provider" means a qualified individual responsible for the care of the patient while on the ambulance run.
  - 16. "Scheduled basic life support transfer" means transfers provided on a scheduled basis by an advanced life support service to patients who need no advanced life support procedures en route.
- 11. 17. "Separate location" means separate town, city, or municipality each operation that is headquartered from a separate location.
  - 18. "Specialty care transport" means interfacility transportation, including transfers from a hospital to an aeromedical intercept site, of a critically injured or ill patient by a ground ambulance vehicle, including medically necessary supplies and services, at a level of service beyond the scope of the emergency medical technician-paramedic.
- 12. 19. "State health council" means the council as defined in North Dakota Century Code title 23.
  - 13. "Nonemergency health transportation" means health care transportation provided on a scheduled basis by licensed health care facilities to their own patients or residents whose impaired health condition requires special transportation considerations, supervision, or handling but does not indicate a need for medical treatment during

transit or emergency medical treatment upon arrival at the final destination.

14. "Licensed health care facilities" means facilities licensed under North Dakota Century Code chapter 23-16.

History: Effective September 25, 1979; amended effective March 1,

1985; January 1, 1986; June 1, 1991; August 1, 1994; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

## 33-11-01-02. License required - Fees.

- No surface ground ambulance services, as defined in North Dakota Century Code chapter 23-27, shall be advertised or offered to the public or any person unless the operator of such service shall be is licensed by the state health council department.
- The license shall expire midnight on June thirtieth October thirty-first
  of the year following issuance. License renewal shall be on an annual
  basis. For special licenses, the expiration date shall be in accordance
  with the time period specified.
- 3. A license is valid only for the service for which it is issued. A license may not be sold, assigned, or transferred.
- 4. The license shall be displayed in a conspicuous place inside the patient compartment of the ambulance vehicle. An operator operating more than one ambulance unit out of a town, city, or municipality will be issued duplicate licenses for each unit at no additional charge.
- 5. The annual license fee, including special licenses, shall be twenty-five dollars for each ground ambulance service operated.
- 6. Nonemergency health transportation services may not be required to obtain a license under North Dakota Century Code chapter 23-27 as long as they do not advertise or offer services to the general public.

History: Effective September 25, 1979; amended effective January 1, 1986;

June 1, 1991; August 1, 2003.

General Authority: NDCC 23-27-01 Law Implemented: NDCC 23-27-01

#### 33-11-01-03. Application for license.

 Application for the license shall be made in the manner prescribed by the department.

- 2. The application must be for either basic life support ambulance service as defined in chapter 33-11-02, or for advanced life support ambulance service as defined in chapter 33-11-03.
- 3. Operators operating more than one ambulance service out of from separate locations are required to must apply for a license and pay an annual license fee for each location. However, an operation with a single headquarters site may dispatch vehicles and personnel from more than one location if calls requesting services are received and orders for vehicle dispatch are made at the single headquarters site.

History: Effective September 25, 1979; amended effective March 1, 1985;

August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

#### 33-11-01-04. Issuance and renewal of licenses.

- On receipt of an initial or renewal application, the <u>The</u> department or its authorized agent may inspect the <del>ambulance</del> service. If minimum standards, for either basic life support <u>ground</u> ambulance services or advanced life support <u>ground</u> ambulance services, are met, the department shall issue a license.
- If minimum standards, for either basic life support ambulance services or advanced life support ambulance services, are not met, the department will allow the ambulance service thirty days to comply with the standards. The department will work with the ambulance service to obtain compliance.

History: Effective September 25, 1979; amended effective March 1, 1985;

August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

#### 33-11-01-05. Special licenses and waivers.

- An operator of a <u>surface ground</u> ambulance service intended for industrial site use <u>or other special purpose such as sporting events</u>, tourist gatherings, et cetera, may be issued a special license by the department.
- Based on each individual case, the department may waive any provisions of this chapter.
- 3. The waiver provision shall only be used for a specific period in specific instances provided such a waiver does not adversely affect the health and safety of the person transported, and then only if a nonwaiver would result in unreasonable hardship upon the ambulance service.

4. A waiver consideration at special events will be pursued only after department consultation with the local ambulance service.

History: Effective September 25, 1979; amended effective March 1, 1985;

August 1, 2003.

General Authority: NDCC 23-27-01 Law Implemented: NDCC 23-27-01

**33-11-01-06.** Availability of <u>ground</u> ambulance service. The ambulance service shall be available twenty-four hours per day and seven days per week, except as exempted through waiver by the department.

History: Effective September 25, 1979; amended effective August 1, 2003.

**General Authority:** NDCC 23-27-04 **Law Implemented:** NDCC 23-27-04

**33-11-01-07. Driver's license required.** All drivers of ambulance service vehicles shall have a current valid North Dakota driver's license pursuant to requirements under North Dakota Century Code chapter 39-06 sections 39-06-01 and 39-06-02.

History: Effective September 25, 1979; amended effective August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

**33-11-01-08.** Number of personnel required. The minimum personnel required on each ambulance run shall be one driver and one attendant primary care provider.

History: Effective September 25, 1979; amended effective March 1, 1985;

August 1, 2003.

**General Authority:** NDCC 23-27-04 **Law Implemented:** NDCC 23-27-04

## 33-11-01-09. Other requirements.

- 1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.
- All licensed ambulance services shall keep the ambulance vehicle interior and exterior and other equipment clean and in proper working order.
- 3. All linens, airways, oxygen masks, nasal cannulas, and other equipment coming in direct contact with the patient, must be either a single-use disposable type, or cleaned, laundered, or disinfected after each use.
- When a vehicle has been utilized to transport a patient known to have a communicable disease other than a common cold, the vehicle and all

- exposed equipment shall be disinfected before the transport of another patient.
- 5. Each ambulance run must be reported to the department in the manner and in the form determined by the department.
- 6. All ambulance services must give the receiving licensed health care facility a copy of the run report.
- 7. All equipment must be stowed in cabinets or securely fastened.
- 8. All ambulance services must submit a trauma transport plan to the department.

History: Effective September 25, 1979; amended effective March 1, 1985;

February 1, 1989: August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

#### 33-11-01-14. Specialty care transport.

- Specialty care transport is necessary when a patient's condition requires ongoing care that must be provided by one or more health care professionals in an appropriate specialty area, for example, nursing, emergency medicine, respiratory care, cardiovascular care, or paramedic with additional training.
- 2. Qualifying interventions for specialty care transports are patients with:
  - <u>a.</u> One of the following:
    - (1) Intravenous infusions:
    - (2) Vasopressors;
    - (3) Vasoactive compounds:
    - (4) Antiarrhythmics;
    - (5) Fibrinolytics:
    - (6) Paralytics; or
    - (7) Any other pharmaceutical unique to the patient's special health care needs; and
  - b. One or more of the following special monitors or procedures:
    - (1) Mechanical ventilation;

- (2) Multiple monitors:
- (3) Infusion pumps:
- (4) Cardiac balloon pump;
- (5) External cardiac support such as a ventricular assist device:
- (6) Rapid sequence intubation:
- (7) Surgical airways; or
- (8) Any other specialized devices or procedures unique to the patient's health care needs.
- 3. Minimum required staffing shall be one emergency care technician or its equivalent and at least one of the following: physician, physician assistant, nurse practitioner, registered nurse with special knowledge of the patient's needs, paramedic with additional training, respiratory therapist, or any licensed health care professional designated by the transferring physician.

#### **CHAPTER 33-11-02**

33-11-02-01. Training standards for ambulance driver. The driver shall have a current American heart association, Dakota affiliate, inc. basic rescuer (cardiopulmonary resuscitation) certification, or equivalent, unless there are two attendants primary care providers as defined in section 33-11-02-02 or one attendant primary care provider plus one other person with a current American heart association, Dakota affiliate, inc. basic rescuer cardiopulmonary resuscitation certification, or equivalent, attending providing care to the patient.

**History:** Effective March 1, 1985; amended effective January 1, 1986; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

33-11-02-02. Training standards for attendant primary care provider. The attendant must have a current certification in the American national red cross advanced first aid course or its equivalent and must have a current American heart association, Dakota affiliate, inc. basic rescuer (cardiopulmonary resuscitation) certification or its equivalent. Effective January 1, 1998, the attendant primary care provider must have current emergency care technician certification or national registry emergency medical technician-basic certification or its equivalent and must have a current American heart association, Dakota affiliate, inc. basic rescuer (cardiopulmonary resuscitation) certification or its equivalent.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1,

1994; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

#### 33-11-02-03. Minimum equipment requirements.

- 1. Mounted ambulance cot with retaining straps.
- 2. Stretchers with retaining straps. Vehicle design dictates quantity.
- Piped oxygen system with appropriate regulator and flow meter, or two "E" size bottles for minimum oxygen supply with regulator and flow meter.
- 4. Portable oxygen unit with carrying case. To include one "D" size bottle with another "D" bottle in reserve.
- 5. Three nasal cannulas, three <u>nonrebreather</u> oxygen masks in <del>assorted</del> adult and pediatric sizes, and three sets of oxygen supply tubing.
- Suction <u>wall-mounted and</u> portable capable of achieving 400 mmgh mmhg/4 seconds or less.

- Bag <u>valve</u> mask type resuscitation <u>unit with units in infant</u> child and adult <u>size sizes with appropriate-sized</u> face masks or pocket masks with oxygen inlet in pediatric and adult sizes.
- 8. Spine boards one full-size and one half-size, with retaining straps.
- 9. Commercial fracture splints usable for open and closed fractures, or padded boards usable for pediatric and adult patients.
- 10. Cold packs four minimum.
- 11. Fire extinguisher dry chemical, mounted, five pound [2.27 kilogram] minimum.
- 12. Head-to-board immobilization device.
- 13. Obstetrical kit disposable or sterilizable.
- 14. Activated charcoal.
- 15. Two sterile burn sheets or equivalent.
- 16. Three triangular bandages or commercial slings.
- 17. Two trauma dressings approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].
- 18. Twenty-five sterile gauze pads four inches [10.16 centimeters] by four inches [10.16 centimeters].
- Twelve soft roller self-adhering type bandages five yards [4.57 meters] long.
- 20. One set of nasopharyngeal airways in adult and child sizes.
- 21. One set of oropharyngeal airways in adult, child, and infant sizes.
- 22. Two sterile occlusive dressings approximately three inches [76.2 millimeters] by nine inches [228.6 millimeters].
- 23. Four rolls of adhesive tape assorted sizes.
- 24. Shears blunt two minimum.
- 25. Bedpan, emesis basin, urinal single use or disinfected.
- 26. One gallon [3.79 liters] of distilled water or saline solution.
- 27. Intravenous fluid holder cot mounted or ceiling hooks.

- 28. Flashlights two minimum.
- 29. Sanitary napkins Three sharps containers.
- 30. Cotton tip applicators Three red biohazard bags.
- 31. Small, medium, and large cervical collars.
- 32. Two blankets, four sheets, two pillows, four towels.
- 33. Phenol disinfectant product, such as lystophene or amphyl.
- 34. Reflectorized flares for securing scene set of three minimum.
- 35. One set socket wrenches, crowbar, heavy hammer, screwdriver, hacksaw, pliers Automatic defibrillator.
- 36. Blood pressure manometer, cuff <u>in child, adult, and large adult sizes</u>, and stethoscope.
- 37. Lower extremity traction splint.
- 38. VHF radio Radio with the capability of meeting state emergency medical services standards as determined by the department.
- Glutose or glucose one dose for oral use.
- 40. Disposable gloves one box each of small, medium, and large sizes.
- 41. Four disposable hot packs.
- 42. Personal protection equipment such as mask, nonabsorbent gown, protective eyeware minimum of four.
- 43. Biological fluid cleanup kit.

History: 33-11-01-11; redesignated effective March 1, 1985; amended effective

February 1, 1989; August 1, 1994; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

33-11-02-04. Medical director. Each ground ambulance service shall have a North Dakota licensed physician who shall serve as official medical director and whose duties include, but are not limited to, establishing local medical protocols.

recommending optional equipment, and maintaining current training requirements for personnel.

#### **CHAPTER 33-11-03**

## 33-11-03-01. Minimum standards for personnel.

- 1. The driver must be the equivalent of an emergency medical technician-basic or emergency care technician or its equivalent.
- 2. The attendant primary care provider must be an emergency medical technician-paramedic or its equivalent, or be a registered nurse currently certified as an emergency medical technician-basic or emergency care technician or its equivalent who has a current American heart association, Dakota affiliate, inc. advanced cardiac life support certification or its equivalent.
- 3. For scheduled basic life support transfers, the driver and the primary care provider must be at least emergency care technicians or its equivalent.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1,

1994; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

- **33-11-03-02. Minimum equipment standards.** The ambulance must contain all the equipment requirements as found in section 33-11-02-03, <u>except oral glutose or glucose</u>, plus the following:
  - 1. Cardiac defibrillator with pediatric capabilities.
  - 2. Portable radio. Rechargeable battery operated capable of reaching law enforcement and hospitals.
  - 3. Adult three-chambered medical antishock trousers or second lower extremity traction splint Nebulizer with tubing.
  - 4. Endotracheal airway equipment in pediatric and adult sizes.
  - Intravenous therapy equipment. Catheters, <u>intraosseouss needles</u>, tubing solutions, <u>for both pediatric and adult patients</u> as approved by medical director.
  - Glucose measuring device.
  - 7. Syringes and needles.
  - 8. Alcohol swabs. Betadine swabs.
  - Electrocardiogram supplies. Rolls of electrocardiogram paper, monitor electrodes and defibrillator pads.

10. Pediatric weight and length based drug dosage chart or tape.

History: Effective March 1, 1985; amended effective August 1, 1994; August 1,

<u> 2003</u>.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

**33-11-03-03. Minimum medication requirements.** The ambulance must contain carry the following functional classification of medications in pediatric and adult dosages:

- 1. Sodium bicarbonate Alkalinizer.
- 2. Epinephrine Bronchodilator adrenergic intravenous or subcutaneous.
- 3. Lidocaine Antidysrhythmic.
- 4. Atropine Anticholinergen parasympatholitic.
- 5. Naloxone Opioid antagonist.
- 6. Nitroglycerin Coronary vasodilator, antianginal.
- 7. Diazepam Antianxiety.
- 8. Dextrose fifty percent Caloric.
- 9. Adenosine.
- 10. Magnesium sulfate Anticonvulsant.
- 11. Bretylium.
- 12. 10. Bronchodilator.
  - 11. Narcotic.

History: Effective March 1, 1985; amended effective August 1, 1994; August 1,

2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

**33-11-03-04. Medical director.** Each <u>ground</u> ambulance service shall have a North Dakota licensed physician who shall serve as official medical director and whose duties include, but are not limited to, establishing local medical protocols,

recommending optional equipment for ambulance service, and maintaining current training requirements for personnel.

History: Effective March 1, 1985; amended effective August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

33-11-03-05. Availability on first call. The Unless the advanced life support ambulance service has a system status management program as defined in this chapter in place that is approved by the department, the number of advanced life support ambulances available for first call by the licensed ambulance service is dependent upon the population of the city in which the ambulance is based. For cities with a population less than ten fifteen thousand, one advanced life support ambulance must be available for first call. For cities with populations between ten fifteen thousand one and forty-five fifty-five thousand, two advanced life support ambulances must be available for first call. For cities with populations greater than forty-five fifty-five thousand, three advanced life support ambulances must be available for first call.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1,

1994; August 1, 2003.

General Authority: NDCC 23-27-04 Law Implemented: NDCC 23-27-04

## CHAPTER 33-11-04 NORTH DAKOTA AIR AMBULANCE SERVICES

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33-11-04-12 33-11-04-13 Required Power Source Required Radio Communication Medical Director	33-11-04-10	Aircraft Doors
33-11-04-13 Required Radio Communication 33-11-04-14 Medical Director	33-11-04-11	Required Lighting
33-11-04-14 Medical Director	33-11-04-12	Required Power Source
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33-11-04-15 Other Requirements	33-11-04-14	Medical Director
Other requirements	<u>33-11-04-15</u>	Other Requirements

#### 33-11-04-01. Definitions.

- 1. "Air ambulance run" means the response of an aircraft and personnel to an emergency or nonemergency for the purpose of rendering medical care or transportation or both to someone who is sick or injured.
- 2. "Aircraft" means either an airplane also known as a fixed-wing, or a helicopter also known as a rotor-wing.
- 3. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent, which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, and infant obstructed airway.
- 4. "Department" means the state department of health as defined in North Dakota Century Code chapter 23-01.
- 5. "Emergency care technician" means a person who meets the requirements of the state emergency care technician program and is certified by the department.
- 6. "Emergency medical technician-basic" means a person who is certified by the national registry of emergency medical technicians.
- 7. "Emergency medical technician-paramedic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department.

- 8. "Equivalent" means training or equipment of equal or greater value which accomplishes the same results as determined by the department.
- 9. "Personnel" means qualified primary care providers within an air ambulance service.
- 10. "Primary care provider" means a qualified individual responsible for care of the patient while on an air ambulance run.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

## 33-11-04-02. License required - Fees.

- No air ambulance service as defined in North Dakota Century Code chapter 23-27 shall be advertised or offered to the public or any person unless the operator of such air ambulance service is licensed by the department.
- 2. The license shall expire midnight on October thirty-first of the year following issuance. License renewal shall be on an annual basis.
- 3. A license is valid only for the service for which it is issued. A license may not be sold, assigned, or transferred.
- 4. The license shall be displayed in a conspicuous place inside the patient compartment of the aircraft. An operator operating more than one aircraft out of a town, city, or municipality will be issued duplicate licenses for each aircraft at no additional charge.
- 5. The annual license fee shall be twenty-five dollars for each air ambulance service operated.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

#### 33-11-04-03. Application for license.

1. Application for the license shall be made in the manner prescribed by the department.

2. The application must be made for either basic life support air ambulance service as defined in chapter 33-11-05 or for advanced life support air ambulance service as defined in chapter 33-11-06.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-04. Issuance and renewal of licenses. The department or its authorized agent may inspect the air ambulance service. If minimum standards for either basic life support air ambulance services or advanced life support air ambulance services are met, the department shall issue a license.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-05. Availability of air ambulance services. The air ambulance services shall be available twenty-four hours per day and seven days per week, except as limited by weather or by aircraft maintenance.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-06. Number of personnel required. The minimum personnel required on each air ambulance run is dependent on the level of the service license. For a basic air ambulance service, the minimum is one primary care provider as defined in chapter 33-11-05. For an advanced life support air ambulance service, the minimum is two, one of which must be the primary care provider as defined in chapter 33-11-06.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

### 33-11-04-07. Out-of-state operators.

- Operators from another state may pick up patients within this state for transportation to locations within this state when there is a natural disaster such as a tornado, flood, or other disaster which may require available air ambulances to transport the injured.
- Out-of-state air ambulance services that expect to pick up patients from within this state and transport to locations within this state shall meet

the North Dakota standards and become licensed under North Dakota Century Code chapter 23-27 and this chapter.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-08. Required certificate of airworthiness. An air ambulance service must have a certificate of airworthiness from the federal aviation administration for each aircraft it uses as an air ambulance, which is maintained current by compliance with all required federal aviation administration inspections as defined by federal aviation administration regulation 14 CFR 135.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

<u>33-11-04-09.</u> Securing of equipment. All equipment and materials used in an air ambulance must be secured in accordance with federal aviation administration regulation title 14 Code of Federal Regulations.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

<u>33-11-04-10. Aircraft doors.</u> Aircraft doors must accommodate passage of a patient lying on a stretcher with no more than thirty degrees rotation or forty-five degrees pitch.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-11. Required lighting. Lighting of at least forty foot-candles of illumination must be available in the patient care area to afford observation by medical personnel. Lighting must be shielded from the pilot of the aircraft so as not to interfere with operation of the aircraft.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-12. Required power source. The aircraft will be equipped with a federal aviation administration approved electrical power source that will

accommodate commonly carried medical equipment, both AC and DC powered, and that is not dependent upon a portable battery.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-13. Required radio communication. The aircraft must have a radio communication system that will allow the communications between the aircraft and medical facilities, between the medical crew and the pilot, and between the medical crew on board the aircraft.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-04-14. Medical director. Each air ambulance service shall have a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing local medical protocols, recommending optional equipment, and maintaining current training requirements for personnel.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

#### 33-11-04-15. Other requirements.

- 1. The aircraft shall have sufficient space to accommodate at least one patient on a stretcher, two medical personnel, and the medical equipment required.
- 2. The aircraft must be configured to allow medical personnel to have a good patient view and access to equipment and supplies in order to initiate both basic and advanced life support.
- 3. All licensed air ambulance services shall keep the aircraft and other equipment clean and in proper working order.
- 4. All linens, and all equipment and supplies coming in direct contact with the patient, must be either a single-use disposable type or cleaned, laundered, or disinfected after each use.
- When an aircraft has been utilized to transport a patient known to have a communicable disease other than a common cold, the aircraft and all exposed equipment shall be disinfected before the transport of another patient.

6. Each air ambulance run must be reported to the department in the manner and in the form determined by the department.

## CHAPTER 33-11-05 BASIC LIFE SUPPORT AIR AMBULANCE LICENSE

Section

33-11-05-01

Training Standards for Primary Care Provider

33-11-05-02

Minimum Equipment Requirements

33-11-05-01. Training standards for primary care provider. The primary care provider must have current emergency care technician certification or its equivalent and must have current cardiopulmonary resuscitation certification.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

## 33-11-05-02. Minimum equipment requirements.

- 1. Patient litter or stretcher.
- 2. One stethoscope.
- 3. One blood pressure cuff with aneroid gauge.
- 4. Manual suction device with catheter.
- 5. One set of oropharyngeal airways including six sizes, from infant through adult.
- 6. One set of nasopharyngeal airways.
- 7. Oxygen administration system, including a protective pressure gauge, a nongravity dependent flowmeter, supply tubing, a nonrebreather mask, and a nasal cannula. The unit must be capable of achieving an oxygen delivery flow rate of at least fifteen liters per minute for one hour.
- 8. Mouth-to-mask artificial ventilation device, with a supplemental oxygen inlet port such as a pocket mask, suitable for use on infant through adult patients. This may be replaced with bag valve mask devices with masks for infant, child, and adult patients.

## CHAPTER 33-11-06 ADVANCED LIFE SUPPORT AIR AMBULANCE LICENSE

Section

<u>33-11-06-01</u>

Training Standards for Primary Care Provider

33-11-06-02

Minimum Equipment Requirements

33-11-06-01. Training standards for primary care provider. One of the crew members must be a national registry emergency medical technician-paramedic or its equivalent and must have current cardiopulmonary resuscitation certification.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-06-02. Minimum equipment requirements. All equipment required for a basic life support air ambulance as found in section 33-11-05-02, plus the following:

- A suction unit capable of providing a free airflow of at least twenty liters per minute and achieving a minimum of three hundred millimeters of mercury vacuum within four seconds after clamping the suction tube.
- 2. Intravenous equipment and supplies for both pediatric and adult patients.
- 3. Two intravenous bag holders with straps.
- 4. Endotracheal intubation equipment and supplies for both pediatric and adult patients.
- Cardiac monitor-defibrillator and supplies with pediatric and adult capabilities.
- 6. A drug box that contains drugs that have been ordered by the medical director of the air ambulance service.

#### **CHAPTER 33-33-04**

## **33-33-04-01. Definitions.** For the purpose of this chapter:

- "Additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(s) and 21 CFR 170 and "color additive" has the meaning stated in the federal Food, Drug, and Cosmetic Act, subsection 201(t) and 21 CFR 70.
- 2. "Approved" means acceptable to the department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- 3. "a<sub>w</sub>" means water activity <u>which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol a<sub>w</sub>.</u>
- 4. "Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the national shellfish sanitation program.
- 5. "CFR" or "Code of Federal Regulations" means the compilation of the general and permanent rules published in the federal register by the executive departments and agencies of the federal government which is published annually by the United States government printing office; and contains food and drug administration rules in 21 CFR, United States department of agriculture rules in 7 CFR and 9 CFR, and EPA rules in 40 CFR.

## 6. "Commingle" means:

- <u>a.</u> To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or
- <u>b.</u> To combine shucked shellfish from containers with different container codes or different shucking dates.
- T. "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing and includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats.
- 7. 8. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.

- 8. 9. "Common dining area" means a central location in a group residence where people gather to eat at mealtime. Common dining area does not apply to a kitchenette or dining area located within a resident's private living quarters.
- 9. 10. "Confirmed disease outbreak" means a foodborne disease outbreak in which laboratory analysis or appropriate specimens identifies a causative organism and epidemiological analysis implicates the food as the source of the illness.
- 40. 11. "Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.
- 41. 12. "Corrosion-resistant materials" means those materials that maintain acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, normal use of cleaning compounds and sanitizing solutions, and other conditions-of-use environment.
- 12. 13. "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
- 13. 14. "Critical item" means a provision of this code that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation health hazard.
- 14. 15. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.
- 15. 16. "Department" means the state department of health or its designated agent.
- 16. 17. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be removed effectively by normal cleaning methods.
- 47. 18. "Easily movable" means weighing thirty pounds [14 kilograms] or less; mounted on casters, gliders, or rollers; or provided with a mechanical means requiring no more than thirty pounds [14 kilograms] of force to safely tilt a unit of equipment for cleaning; and having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

- 19. "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.
- 18. 20. "Employee" means the licenseholder, person in charge, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.
- 19. 21. "EPA" means the United States environmental protection agency.
- 20. 22. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables, and similar items other than utensils, used in the operation of a food establishment.
  - 23. "Exclude" means to prevent a person from working as a food employee or entering a food establishment except for those areas open to the general public.
- 21. 24. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.
- 22. 25. "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption, or chewing gum.
- 23. 26. "Foodborne disease outbreak" means an incident in which two or more persons experience a similar illness after ingestion of a common food and epidemiological analysis implicates the food as the source of the illness. Foodborne disease outbreak includes a single case of illness such as one person ill from botulism or chemical poisoning.
- 24. 27. "Food-contact surface" means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces from which food may drain, drip, or splash back onto surfaces normally in contact with food.
- 25. 28. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- 26. 29. "Food establishment":
  - a. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption:

- (1) Such as a restaurant, satellite or catered feeding location, catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people, market, vending location, conveyance used to transport people, institution, or food bank; and
- (2) That relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

#### b. "Food establishment" includes:

- (1) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the department; and
- (2) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

#### C. "Food establishment" does not include:

- An establishment that offers only prepackaged foods that are not potentially hazardous;
- (2) A produce stand that only offers whole, uncut fresh fruits and vegetables;
- A food processing plant;
- (4) A kitchen in a private home if the food is prepared for sale or service at a function such as a religious or charitable organization's bake sale;
- (5) A private home that receives catered or home-delivered food.
- 27. 30. "Food processing plant" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food establishment, retail food store, or commissary operation.
- 28. 31. "Game animal" means an animal, the products of which are food, that is not classified as cattle, sheep, swine, or goat in 9 CFR subchapter A mandatory meat inspection, part 301, as poultry in 9 CFR subchapter 9C mandatory poultry products inspection, part 381, or as fish as defined in subparagraph 1-201.10(B)(26).

Game animal includes animals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, bear, and muskrat; aquatic and nonaquatic birds such as wild ducks and geese, quail, and pheasant; nonaquatic reptiles such as rattlesnakes; aquatic mammals; exotic animals as defined in 9 CFR subchapter A - animal welfare, part 1, such as lion, tiger, leopard, elephant, camel, antelope, anteater, kangaroo, and water buffalo; and species of foreign domestic cattle, such as ankole, gayal, and yak.

- 29. 32. "Group residence" means a private or public housing corporation or institutional facility that provides living quarters and meals. Group residence includes a domicile for unrelated persons such as a retirement home or long-term health care facility.
- 30. 33. "HACCP plan" means a written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the national advisory committee on microbiological criteria for foods.
- 31. 34. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
- 32. 35. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.
- 33. 36. "Highly susceptible population" means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults and in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.
- 34. 37. "Injected" means manipulating a meat so that infectious or toxigenic micro-organisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices which may be referred to as "injecting", "pinning", or "stitch pumping".
- 35. 38. "Kitchenware" means food preparation and storage utensils.
- 36. 39. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.
- 37. 40. "License" means the document issued by the department that authorizes a person to operate a food establishment.

- 38. 41. "Licenseholder" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and possesses a valid license to operate a food establishment.
- 39. 42. "Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.
- 40. 43. "Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish and poultry, that is offered for human consumption.
- 41. 44. "Mobile food unit" means a vehicle-mounted food establishment designed to be readily movable.
- 42. 45. "Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.
- 43. 46. "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged does not include a wrapper, carryout box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.
- 44. 47. "Person" includes any individual, partnership, corporation, association, or other legal entity.
- 45. 48. "Person in charge" means the individual present in a food establishment who is responsible for the operation at the time of inspection.
- "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance. Personal care items include items such as medications; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
- 47. 50. "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.
- 48. 51. "Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers

and attachments such as light fixtures and heating or air-conditioning system vents.

- 49. 52. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
  - Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
  - b. Pesticides, which include substances such as insecticides and rodenticides;
  - c. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and
  - d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- 50. 53. "Potentially hazardous food".
  - a. "Potentially hazardous food" means a food that is a natural or synthetic and is in a form capable of supporting:
    - The rapid and progressive growth of infectious or toxigenic micro-organisms;
    - (2) The growth and toxin production of clostridium botulinum; or
    - (3) In shell eggs, the growth of salmonella enteritidis.
  - b. "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures.
  - c. "Potentially hazardous food" does not include:
    - (1) A food with a water activity (Aw (a<sub>w</sub>)) value of 0.85 or less;
    - (2) A food with a hydrogen ion concentration (PH(pH)) level of 4.6 or below when measured at seventy-five degrees Fahrenheit [24 degrees Celsius];
    - (3) A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain

- commercial sterility under conditions of nonrefrigerated storage and distribution; and
- (4) A food for which a variance granted by the department is based upon laboratory evidence demonstrating that rapid and progressive growth of infectious and toxigenic micro-organisms or the slower growth of C. botulinum cannot occur.
- 51. 54. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, or guineas, whether live or dead.
- 52. 55. "Premises" means the physical facility, its contents, and the contiguous land or property under the control of the licenseholder; or the physical facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the licenseholder that may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger organization such as a health care facility, motel, school, recreational camp, or prison.
- 53. 56. "Pushcart" means a non-self-propelled vehicle limited to serving potentially hazardous foods or commissary-wrapped food maintained at proper temperatures, or limited to the preparation and service of frankfurters.
- 54. 57. "Ready-to-eat food".
  - a. "Ready-to-eat food" means food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form.
  - b. "Ready-to-eat food" includes:
    - (1) Unpackaged potentially hazardous food that is cooked to the temperature and time required for the specific food under section 33-33-04-11;
    - (2) Raw, washed cut fruits and vegetables;
    - (3) Whole, raw cut fruits and vegetables that are presented for consumption without the need for further washing, such as at a buffet; and
    - (4) Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed.

- 55. 58. "Reconstituted" means dehydrated food products recombined with water or other liquids.
- 56. 59. "Reduced oxygen packaging" means the reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is twenty-one percent oxygen. Reduced oxygen packaging includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen, and vacuum packaging including sous vide.
- 57. 60. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food establishment.
  - 61. "Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.
- 58. 62. "Safe material" means an article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of food; an additive that is used as specified in subsection 409 or 706 of the federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the food and drug administration.
- 59. 63. "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, yield a reduction of five logs, which is equal to 99.999 percent reduction, of representative disease micro-organisms of public health importance.
- 60. 64. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
- 61. 65. "Servicing area" means an operating base location to which a mobile establishment or transportation vehicle returns regularly for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.
- 62. 66. "Shellstock" or "shucked shellfish" means raw, in-shell molluscan shellfish or molluscan shellfish that have one or both shells removed.
- 63. 67. "Single-service articles" means tableware, carryout utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-person use.

64. 68. "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number ten cans which do not meet the materials, durability, strength, and cleanability specifications contained in sections 33-33-04-32 and 33-33-04-38 for multiuse utensils.

### 69. "Smooth" means:

- <u>A food-contact surface having a surface free of pits and inclusions</u> with a cleanability equal to or exceeding that of one hundred grit (number 3) stainless steel;
- b. A nonfood-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and
- <u>C.</u> A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.
- 65. 70. "Support animal" means a trained animal such as a seeing eye dog that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform.
- "Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons and hollowware including bowls, cups, serving dishes, tumblers, and plates.
- 67. 72. "Temporary food establishment" means a food establishment that operates at a fixed location for a period of time of not more than fourteen consecutive days in conjunction with a single event or celebration.
- 68. 73. "Thermometer" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
- 69. 74. "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; and thermometers.
- 70. 75. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.
- 71. 76. "Water activity" means a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the

vapor pressure of pure water at the same temperature, and is indicated by the symbol  $AW(a_s)$ .

77. "Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997;

August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-01.1. Intent - Scope. The purpose of this chapter is to safeguard public health and to provide consumers with food that is safe, unadulterated, and honestly presented. This chapter establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, license issuance, inspection, and employee restrictions. If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this code that are authorized by law. The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the license applicant or licenseholder and a copy shall be maintained in the regulatory authority's file for the food establishment.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-02. General care of food supplies. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

- 1. Food shall be obtained from sources that comply with law.
- 2. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.
- 3. Food shall be safe, unadulterated, and honestly presented.
  - <u>a.</u> Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.
  - <u>b.</u> Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

- <u>Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR subpart C section 424.21(b) food ingredients and sources of radiation, or pesticide residues that exceed provisions specified in 40 CFR 185 tolerances for pesticides in food.</u>
- 4. Food prepared in a private home may not be used or offered for human consumption in a food establishment.
- 5. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-02.1. Additional safeguards. In a food establishment that serves a highly susceptible population:

- 1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR section 101.17(g) food labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision b of subsection 17 of section 33-33-04-03 may not be served or offered for sale; and
  - C. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under an HACCP plan that contains the information specified in sections 33-33-04-142 and 33-33-04-143 and as specified under 21 CFR part 120 hazard analysis and critical control point (HACCP) systems, section 120.24 process controls.
- 2. Pasteurized shell eggs or pasteurized liquid, frozen, or dry eggs or egg products shall be substituted for raw shell eggs in the preparation of:
  - <u>a.</u> Foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages; and

- b. Except as specified in subsection 5, recipes in which more than one egg is broken and the eggs are combined.
- 3. Food in an unopened original package may not be re-served.
- 4. The following foods may not be served or offered for sale in a ready-to-eat form:
  - <u>a.</u> Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare:
  - <u>A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and</u>
  - c. Raw seed sprouts.
- 5. Subdivision b of subsection 2 does not apply if:
  - a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under subdivision a of subsection 1 of section 33-33-04-11, and served immediately, such as an omelet, souffle, or scrambled eggs;
  - b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or
  - <u>C.</u> The preparation of the food is conducted under an HACCP plan that:
    - (1) Identifies the food to be prepared;
    - (2) Prohibits contacting ready-to-eat food with bare hands:
    - (3) Includes specifications and practices that ensure:
      - (a) Salmonella enteritidis growth is controlled before and after cooking; and
      - (b) Salmonella enteritidis is destroyed by cooking the eggs according to the temperature and time specified in subdivision b of subsection 1 of section 33-33-04-11;
    - (4) Contains the information specified in subsection 3 of section 33-33-04-143 including procedures that:
      - (a) Control cross-contamination of ready-to-eat food with raw eggs; and

- (b) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- (5) Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-03. Special requirements.

- Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
- 2. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag or label that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency. Shell stock tags or labels shall be retained for ninety days from the date the container is emptied. Molluscan shellfish that are recreationally caught may not be received for sale or service.
- 3. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.
- 4. Raw eggs may not be used as an ingredient in the preparation of uncooked, ready-to-eat menu items. Commercially pasteurized eggs and egg products may be substituted for shell eggs in such items. Pasteurized eggs are also potentially hazardous and must also be protected against contamination and time or temperature abuses.
- 5. Pasteurized liquid, frozen, or dry eggs or egg products must be substituted for shell eggs in the preparation of eggs for a highly susceptible population if the eggs are broken, combined in a container, and not cooked immediately or if the eggs are held before service following cooking.

- 6. Individually prepared eggs and pooled eggs shall be cooked to heat all parts to one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds.
- 7. Cooked eggs requiring holding before service shall be held at an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
- 8. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection 2 of section 33-33-04-11 must be obtained from a supplier that freezes the fish or shall be frozen on the premises as specified in section 33-33-04-11.5.
- 9. Fish may not be received for sale or service unless they are commercially and legally caught and harvested.
- 10. Mushroom species picked in the wild must be obtained from sources where each mushroom is individually inspected and found to be safe by a mushroom identification expert.
- 11. Game animals and exotic species may be received for sale or service if raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction. The inspection of game animals and exotic species must include an antemortem and postmortem examination by a veterinarian.
- 12. Ice for use as a food or a cooling medium must be made from drinking water. After use as a cooling medium, ice may not be used as food.
- 1. Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified by law.
- Packaged food shall be labeled as specified in law, including 21 CFR 101 food labeling, 9 CFR 317 labeling, marking devices, and containers, and 9 CFR 381 subpart N labeling and containers, and as specified in sections 33-33-04-03.1 and 33-33-04-03.2.
- 3. Fish, other than molluscan shellfish, that are intended for consumption in their raw form and allowed as specified under subsection 4 of section 33-33-04-11 must be obtained from a supplier that freezes the fish or shall be frozen on the premises as specified in section 33-33-04-11.5.
- 4. Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in section 33-33-04-07.4 shall be:
  - <u>a.</u> Obtained from a food processing plant that, upon request by the purchaser, packages the steaks and labels them, to indicate that the steaks meet the definition of whole-muscle, intact beef; or

- <u>b.</u> Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef; and
- C. If individually cut in a food establishment:
  - (1) Cut from whole-muscle intact beef that is labeled by a food processing plant as specified in subdivision a or identified as specified in subdivision b;
  - (2) Prepared so they remain intact; and
  - (3) If packaged for undercooking in a food establishment, labeled as specified in subdivision a or identified as specified in subdivision b.
- <u>Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(I) and 9 CFR 381.125(b).</u>
- 6. Shell eggs that have not been specifically treated to destroy all viable salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h).
- 7. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used. Shell eggs shall be received clean and sound and may not exceed the restricted egg tolerances for United States consumer grade B as specified in 7 CFR part 56 "Voluntary Grading of Shell Eggs and United States Standards, Grades, and Weight Classes for Shell Eggs", and 9 CFR part 590 inspection of eggs and egg products.
- 8. Raw eggs may not be used as an ingredient in the preparation of uncooked, ready-to-eat menu items. Pasteurized eggs or egg products shall be substituted for raw shell eggs in the preparation of foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, eggnog, ice cream, and egg-fortified beverages. Commercially pasteurized eggs and egg products may be substituted for shell eggs in such items. Pasteurized eggs are also potentially hazardous and must also be protected against contamination and time or temperature abuses.
- 9. Pasteurized liquid, frozen, or dry eggs or egg products must be substituted for shell eggs in the preparation of eggs for a highly susceptible population if the eggs are broken, combined in a container,

- and not cooked immediately or if the eggs are held before service following cooking.
- 10. Individually prepared eggs and pooled eggs shall be cooked to heat all parts to one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds.
- 11. Cooked eggs requiring holding before service shall be held at an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
- 12. Fish may not be received for sale or service unless they are commercially and legally caught and harvested. Molluscan shellfish that are recreationally caught may not be received for sale or service.
- 13. Except as specified in this subsection, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved mushroom identification expert. This subsection does not apply to:
  - <u>a.</u> <u>Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or</u>
  - b. Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.
- 14. If game animals are received for sale or service, they shall be:
  - a. Commercially raised for food and:
    - (1) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or
    - (2) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and
    - (3) Raised, slaughtered, and processed according to:
      - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
      - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration

- of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee;
- b. Under a voluntary inspection program administered by the United States department of agriculture for game animals such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and approved" in accordance with 9 CFR 352 voluntary exotic animal program or rabbits that are "inspected and certified" in accordance with 9 CFR 354 rabbit inspection program;
- <u>C.</u> As allowed by law, for wild game animals that are live-caught:
  - (1) Under a routine inspection program conducted by a regulatory agency such as the agency that has animal health jurisdiction; and
  - (2) Slaughtered and processed according to:
    - (a) Laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
    - (b) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an approved veterinarian or veterinarian's designee; or
- d. As allowed by law, for field-dressed wild game animals under a routine inspection program that ensures the animals:
  - (1) Receive a postmortem examination by an approved veterinarian or veterinarian's designee; or
  - (2) Are field-dressed and transported according to requirements specified by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and
  - (3) Are processed according to laws governing meat and poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program.
- e. A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 endangered and threatened wildlife and plants.

- 15. lce for use as a food or a cooling medium must be made from drinking water. After use as a cooling medium, ice may not be used as food.
- 16. Prepackaged juice shall:
  - <u>a.</u> <u>Be obtained from a processor with an HACCP system as specified in 21 CFR part 120;</u>
  - <u>Be obtained, pasteurized or otherwise treated to attain a 5-log reduction of the most resistant micro-organism of public health significance as specified in 21 CFR part 120.24; or
    </u>
  - C. Bear a warning label as specified in 21 CFR 101.17(g).
- 17. Juice packaged in a food establishment shall be:
  - a. Treated under an HACCP plan as specified in section 33-33-04-143 to attain a 5-log reduction, which is equal to a 99.999 percent reduction, of the most resistant micro-organism of public health significance; or
  - <u>b.</u> <u>Labeled, if not treated to yield a 5-log reduction of the most resistant micro-organism of public health significance:</u>
    - (1) As specified under section 33-33-04-04.3; and
    - (2) As specified in 21 CFR 101.17(g) with the phrase, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems."

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997;

August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-03.1. Shucked shellfish - Packaging and identification.

- 1. Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:
  - <u>a.</u> Name, address, and certification number of the shucker-packer or repacker of the molluscan shellfish; and
  - b. The sell by date for packages with a capacity of less than 1.87 L (one-half gallon) or the date shucked for packages with a capacity of 1.87 L (one-half gallon) or more.

2. A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under subsection 1 shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D - specific administrative decisions regarding interstate shipments, section 1240.60(d).

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-03.2. Shellstock identification.

- Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester and each dealer that depurates, ships, or reships the shellstock, as specified in the national shellfish sanitation program guide for the control of molluscan shellfish, and that list:
  - <u>a.</u> Except as specified under subsection 3, on the harvester's tag or label, the following information in the following order:
    - (1) The harvester's identification number that is assigned by the shellfish control authority;

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- (2) The date of harvesting;
- (3) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested;
- (4) The type and quantity of shellfish; and
- (5) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days"; and
- <u>b.</u> Except as specified in subsection 4, on each dealer's tag or label, the following information in the following order:
  - (1) The dealer's name and address and the certification number assigned by the shellfish control authority;
  - (2) The original shipper's certification number, including the abbreviation of the name of the state or country in which the shellfish are harvested;

- (3) The same information as specified for a harvester's tag under paragraphs 2 through 4 of subdivision a of subsection 1; and
- (4) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for 90 days."
- 2. A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under subsection 1 shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR subpart D specified administrative decisions regarding interstate shipments, section 1240.60(2).
- 3. If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.
- 4. If the harvester's tag or label is designed to accommodate each dealer's identification as specified under paragraphs 1 and 2 of subdivision b of subsection 1, individual dealer tags or labels need not be provided.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-03.3. Shellstock - Condition. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

**History:** Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

### 33-33-04-03.4. Molluscan shellfish - Original container.

- Except as specified in subsections 2 and 3, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.
- 2. For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:
  - <u>a.</u> The source of the shellstock on display is identified as specified in section 33-33-04-03.2 and recorded as specified in section 33-33-04-03.5; and

- b. The shellstock are protected from contamination.
- 3. Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:
  - <u>The labeling information for the shellfish on display as specified in section 33-33-04-03.1 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and</u>
  - b. The shellfish are protected from contamination.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-03.5. Shellstock - Maintaining identification.

- 1. Except as specified in subdivision b of subsection 2, shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty.
- 2. The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety calendar days from the date the container is emptied by:
  - <u>Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and</u>
  - b. If shellstock are removed from their tagged or labeled container:
    - (1) Preserving source identification by using a recordkeeping system as specified in subdivision a; and
    - (2) Ensuring that shellstock from one tagged or labeled container are not commingled with the shellstock from another container before being ordered by the consumer.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-04. General food protection. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be forty-one degrees Fahrenheit [5 degrees Celsius] or below

or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above at all times, except as otherwise provided in this chapter. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage, or overhead drippage from condensation. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants.

- 1. Except as specified in subsection 2, refrigerated, potentially hazardous food shall be at a temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below when received.
- 2. If a temperature other than forty-one degrees Fahrenheit [5 degrees Celsius] for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.
- 3. Raw shell eggs shall be received in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit [7 degrees Celsius] or less.
- 4. Potentially hazardous food that is cooked to a temperature and for a time specified in sections 33-33-04-11 through 33-33-04-11.2 and received hot shall be at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above.
- A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen.
- 6. Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse.
- 7. The temperature of potentially hazardous food shall be forty-one degrees Fahrenheit [5 degrees Celsius] or below or one hundred thirty-five degrees Fahrenheit [60 degrees Celsius] or above at all times, except as otherwise provided in this chapter.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-04.1. Packaged and unpackaged food - Separation, packaging, and segregation.

- 1. Food shall be protected from cross-contamination by:
  - <u>a.</u> Separating raw animal foods during storage, preparation, holding, and display from:

- (1) Raw ready-to-eat food, including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as vegetables; and
- (2) Cooked ready-to-eat food;
- b. Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:
  - (1) Using separate equipment for each type; or
  - (2) Arranging each type of food in equipment so that cross-contamination of one type with another is prevented; and
  - (3) Preparing each type of food at different times or in separate areas;
- <u>C.</u> Cleaning and sanitizing equipment and utensils as specified in subsection 2 of section 33-33-04-50;
- <u>Except as specified in subsection 2, storing the food in packages, covered containers, or wrappings;</u>
- <u>e.</u> <u>Cleaning hermetically sealed containers of food of visible soil before opening;</u>
- f. Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
- 9. Storing damaged, spoiled, or recalled food being held in the food establishment as specified in subsection 8 of section 33-33-04-06; and
- h. Separating fruits and vegetables before they are washed as specified under section 33-33-04-10 from ready-to-eat food.
- Subdivision d of subsection 1 does not apply to:
  - <u>a.</u> Whole, uncut, raw fruits and vegetables and nuts in the shell that require peeling or hulling before consumption;
  - <u>b.</u> <u>Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;</u>
  - <u>Whole, uncut processed meats such as country hams and smoked or cured sausages that are placed on clean, sanitized racks;</u>

- d. Food being cooled as specified in subdivision b of subsection 2 of section 33-33-04-07.6; or
- e. Shellstock.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-04.2. Discarding or reconditioning unsafe, adulterated, or contaminated food.

- A food that is unsafe, adulterated, or not honestly presented as specified in section 33-33-04-02 shall be reconditioned according to an approved procedure or discarded.
- 2. Food that is not from an approved source as specified in section 33-33-04-02 shall be discarded.
- 3. Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified in sections 33-33-04-28 through 33-33-04-28.2 shall be discarded.
- 4. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-04.3. Food labels.

- Food packaged in a food establishment shall be labeled as specified in law, including 21 CFR 101 - food labeling and 9 CFR 317 - labeling, marking devices, and containers.
- 2. Label information shall include:
  - <u>a.</u> The common name of the food, or absent of a common name, an adequately descriptive identity statement;
  - b. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;
  - c. An accurate declaration of the quantity of contents;

- d. The name and place of business of the manufacturer, packer, or distributor; and
- Except as exempted in the federal Food, Drug, and Cosmetic Act section 403(Q)(3)-(5), nutrition labeling as specified in 21 CFR 101 food labeling and 9 CFR 317 subpart B nutrition labeling.
- f. For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.
- 3. Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:
  - <u>a.</u> The manufacturer's or processor's label that was provided with the food; or
  - b. A card, sign, or other method of notification that includes the information specified under subdivisions a, b, and e of subsection 2.
- 4. Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:
  - <u>a.</u> A health, nutrient content, or other claim is not made;
  - b. There are no state or local laws requiring labeling; and
  - <u>C.</u> The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.
- 5. If required by law, consumer warnings shall be provided.
- 6. Food establishment or manufacturers' dating information on foods may not be concealed or altered.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-06. General food storage.

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service.

Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

- 2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
  - Metal pressurized beverage containers, and cased food packaged in cans, glass, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
  - b. Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
- Food and containers of food shall not be stored under exposed or unprotected sewerlines or waterlines except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.
- 4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking. Food employees shall avoid contact with exposed ready-to-eat food with their bare hands and shall use suitable utensils, such as deli tissue, spatulas, tongs, or single-use gloves, except when washing fruits and vegetables as specified in section 33-33-04-10 or as otherwise authorized by the department.
- 5. Packaged food shall not be stored in contact with water or drained ice. Wrapped sandwiches shall not be stored in direct contact with ice.
- 6. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, or flour, not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.
- 1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Linens and napkins may not be used in contact with food unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer. Solid cuts of meat shall be protected by being covered in storage, except that the quarters or sides of meat may be

- hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
- 2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
  - <u>a.</u> Metal pressurized beverage containers, and cased food packaged in cans, glass, and milk containers in plastic crates, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
  - <u>b.</u> Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
- 3. Food may not be stored:
  - a. In locker rooms:
  - b. In toilet rooms:
  - <u>C.</u> <u>In dressing rooms</u>;
  - d. In garbage rooms;
  - e. In mechanical rooms:
  - f. Under sewerlines that are not shielded to intercept potential drips;
  - <u>Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water had condensed;</u>
  - h. Under open stairwells; or
  - i. Under other sources of contamination.
- 4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.
- 5. <u>During preparation, unpackaged food shall be protected from environmental sources of contamination.</u>
- 6. Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

- <u>a.</u> Except as specified in subdivisions b and c, unpackaged food may not be stored in direct contact with undrained ice.
- Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.
- <u>C.</u> Raw chicken and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.
- 7. Working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar, shall be identified with the common name of the food except that containers holding food that can be readily and unmistakably recognized such as dry pasta need not be identified.
- 8. Products that are held by the licenseholder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-07. Refrigerated storage Potentially hazardous foods - Hot and cold holding.

- 1. Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius], located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius], may be used in lieu of indicating thermometers.
- 2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling, or water circulation external to the food container so that the food cools

from one hundred forty degrees Fahrenheit [60 degrees Celsius] to seventy degrees Fahrenheit [21 degrees Celsius] within two hours and from seventy degrees Fahrenheit [21 degrees Celsius] to forty-one degrees Fahrenheit [5 degrees Celsius] or below within four hours. Potentially hazardous food to be transported shall be prechilled and held at a temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below unless maintained in accordance with subsection 2 of section 33-33-04-08.

- 3. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [17.78 degrees Celsius] or below.
- 4. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food.
- 1. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified in section 33-33-04-07.3, and except as specified in subsection 2, potentially hazardous food shall be maintained:
  - <u>At one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above, except that roasts cooked to a temperature and for a time specified under subdivision b of subsection 2 of section 33-33-04-11 or reheated as specified in subsection 5 of section 33-33-04-14 may be held at a temperature of one hundred thirty degrees Fahrenheit [54 degrees Celsius]; or</u>
  - b. Forty-one degrees Fahrenheit [5 degrees Celsius] or less for a maximum of seven days.
- Shell eggs that have not been treated to destroy all viable salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.
- 3. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [-17.78 degrees Celsius] or below.
- 4. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food. This section does not apply to cold plates that are constructed integrally with an ice storage bin.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

- 33-33-04-07.1. Ready-to-eat, potentially hazardous food Date marking.
  - 1. Except as specified in subsection 3, refrigerated, ready-to-eat, potentially hazardous food prepared and held for more than twenty-four hours in a food establishment must be marked with the date of preparation and consumed by date as specified under subsection 1 of section 33-33-04-07.2.
  - 2. Except as specified in subsections 3 and 4, a container of refrigerated, ready-to-eat, potentially hazardous food prepared and packaged by a food processing plant must be marked to indicate the date, as specified under subsection 3 of section 33-33-04-07.2, by which the food shall be consumed.
  - 3. Subsections 1 and 2 do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
  - 4. Subsection 2 does not apply to whole, unsliced portions of a cured and processed product with original casing maintained on the remaining portion, such as bologna, salami, or other sausage in a cellulose casing.
  - 1. Except as specified in subsection 4, refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection 1 of section 33-33-04-07. The day of preparation shall be counted as day one.
  - 2. Except as specified in subsections 4 and 5, refrigerated, ready-to-eat, potentially hazardous food commercially prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than twenty-four hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in subsection 1 of section 33-33-04-07 and:
    - <u>a.</u> The day the original container is opened in the food establishment shall be counted as day one; and
    - <u>b.</u> The day or date marked by the food establishment may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on food safety.
  - A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine,

may be marked as specified in subsection 1 or 2, or by an alternative method acceptable to the regulatory authority. Subsections 1 and 2 do not apply to specific cheeses containing certain moisture content meeting the aging standards of 21 CFR part 133 and maintained under refrigeration as specified in subsection 1 of section 33-33-04-07.

- Subsections 1 and 2 do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.
- 5. Subsection 2 does not apply to the following when the face has been cut, but the remaining portion is whole and intact:
  - <u>a.</u> Fermented sausages produced in a federally inspected food processing plant that are not labeled "keep refrigerated" and which retain the original casing on the product:
  - b. Shelf-stable, dry, fermented sausages; and
  - <u>C.</u> Shelf-stable salt-cured products such as proscuitto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "keep refrigerated".
- 6. A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-07.2. Ready-to-eat, potentially hazardous food - Disposition.

- A food specified in subsection 1 of section 33-33-04-07.1 must be discarded if not consumed within ten calendar days from the date of preparation; or if maintained at forty-five degrees Fahrenheit [7 degrees Celsius], must be discarded after three days for ready-to-eat potentially hazardous foods.
- 2. Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control that is activated at a temperature of:
  - a. Forty-one degrees Fahrenheit [5 degrees Celsius] must be discarded if not sold within ten days, or
  - b. Forty-five degrees Fahrenheit [7 degrees Celsius] must be discarded if not sold within three days; and

- 3. A food specified in subsection 2 of section 33-33-04-07.1 must be discarded if not consumed within ten calendar days after the original package is opened in a food establishment.
- A food specified in subsection 1 or 2 of section 33-33-04-07.1 shall be discarded if it:
  - <u>a.</u> Exceeds either of the temperature and time combinations specified in subdivision b of subsection 1 of section 33-33-04-07, except that the product is frozen;
  - b. Is in a container or package that does not bear a date or day; or
  - <u>c.</u> Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subdivision b of subsection 1 of section 33-33-04-07.
- Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in subdivision b of subsection 1 of section 33-33-04-07.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.3. Time as a public health control. Time only, rather than time in conjunction with temperature, may be used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption, if:

- 1. The food is marked or otherwise identified with the time within which it must be cooked, served, or discarded;
- 2. The food is served or discarded within four hours from the point in time when the food is removed from temperature control;
- 3. Food in unmarked containers or packages, or for which the time expires, is discarded: and
- 4. Written procedures are maintained in the food establishment and made available to the regulatory authority upon request, to ensure compliance with:
  - a. Subsections 1 through 3; and

- b. Section 33-33-04-07, for food that is prepared, cooked, and refrigerated before time is used as a public health control.
- 5. In a food establishment that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs.

History: Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-07.4. Consumption of raw or undercooked animal foods Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens. If a raw or undercooked animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the licenseholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. See appendix A. Except as specified in subsection 3 of section 33-33-04-11 and subdivision c of subsection 4 of section 33-33-04-11 and in subsection 4 of section 33-33-04-02.1, if an animal food such as beef, eggs, fish, lamb, milk, pork, poultry, or shellfish that is raw, undercooked, or not otherwise processed to eliminate pathogens is offered in a ready-to-eat form as a deli, menu, vended, or other item; or as a raw ingredient in another ready-to-eat food, the licenseholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in raw or undercooked form. See appendix A.

History: Effective July 1, 1997; amended effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-07.5. Cooling.

- 1. Cooked potentially hazardous food shall be cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to forty-one degrees Fahrenheit [5 degrees Celsius] or less, as specified in subdivision b of subsection 1 of section 33-33-04-07 in six hours, provided that the food is cooled from one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] to seventy degrees Fahrenheit [21 degrees Celsius] within the first two hours.
- Potentially hazardous food shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less as specified in subdivision b of subsection 1 of section 33-33-04-07 if prepared from

- ingredients at ambient temperature, such as reconstituted foods and canned tuna.
- 3. Except as specified in subsection 4, a potentially hazardous food received in compliance with laws allowing a temperature above forty-one degrees Fahrenheit [5 degrees Celsius] during shipment from the supplier as specified in subsection 2 of section 33-33-04-02, shall be cooled within four hours to forty-one degrees Fahrenheit [5 degrees Celsius] or less.
- 4. Raw shell eggs shall be received as specified in subsection 3 of section 33-33-04-02 and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or less.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-07.6. Cooling methods.

- Cooling shall be accomplished in accordance with the time and temperature criteria specified in section 33-33-04-07.5 by using one or more of the following methods based on the type of food being cooled:
  - Placing the food in shallow pans;
  - b. Separating the food into smaller or thinner portions;
  - c. Using rapid cooling equipment;
  - d. Stirring the food in a container placed in an ice water bath;
  - e. Using containers that facilitate heat transfer;
  - f. Adding ice as an ingredient; or
  - Other effective methods.
- 2. When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:
  - <u>a.</u> Arranged in the equipment to provide maximum heat transfer through the container walls; and
  - <u>b.</u> <u>Loosely covered, or uncovered if protected from overhead contamination as specified in subsection 3 of section 33-33-04-06, </u>

during the cooling period to facilitate heat transfer from the surface of the food.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-08. Hot and cold storage.

- 4. Enough conveniently located hot <u>and cold</u> food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. <del>Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer, accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius], located to measure the air temperature in the coolest part of the facility and located to be easily readable. Where it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.</del>
- 2. The internal temperature of potentially hazardous food requiring hot storage shall be one hundred forty degrees Fahrenheit [60 degrees Celsius] or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above unless maintained in accordance with subsection 2 of section 33-33-04-07.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-09.1. Preventing contamination when tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served.

History: Effective August 1, 2003.

General Authority: NDCC 23-01-03(3), 23-09.1-02

Law Implemented: NDCC 23-09.1-02

#### 33-33-04-10. Washing raw fruits and vegetables.

1. Raw fruits and vegetables must be thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form except as specified in subsection 2 and except that whole, raw fruits and vegetables that are intended for washing by the

consumer before consumption need not be washed before they are sold.

2. Fruits and vegetables may be washed by using chemicals as specified in subsection 5 of section 33-33-04-107.

**History:** Effective August 1, 1988; amended effective July 1, 1997; <u>August 1, 2003</u>. **General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-11. Cooking potentially hazardous foods raw animal foods.

- 1. Except as specified in subsections 2 and 3, raw animal foods such as eggs, fish, poultry, meat, and foods containing these raw animal foods, must be cooked to heat all parts of the food to a temperature and for a time that are at least:
  - a. One hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds for:
    - (1) Shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and
    - (2) Fish and meat that are not specified in subdivision b;
  - b. For pork and exotic species of game animals, comminuted fish and meats, injected meats, and eggs that are not prepared as specified in subdivision a, one hundred fifty-five degrees Fahrenheit [68 degrees Celsius] for fifteen seconds or the temperature specified in section 33-33-04-11.1 that corresponds to the cooking time;
  - As specified in section 33-33-04-11.3 for roasts of beef and corned beef; or
  - d. One hundred sixty-five degrees Fahrenheit [74 degrees Celsius] or above for fifteen seconds for wild game animals, poultry, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish, meat, or poultry.

#### 2. Subsection 1 does not apply if:

- Except for food establishments serving a highly susceptible population, the food is a raw animal food such as raw, marinated fish; raw molluscan shellfish; steak tartare; or a partially cooked food such as lightly cooked fish, rare meat, and soft cooked eggs that is served or offered for sale in a ready-to-eat form, and the consumer is informed as specified under section 33-33-04-07.4 that to ensure its safety, the food should be cooked as specified under subsection 1: or
- b. The regulatory authority grants a variance from subsection 1 as specified in section 33-33-04-138 based on an HACCP plan that:
  - (1) Is submitted by the licenseholder and approved by the regulatory authority as specified under section 33-33-04-139;
  - (2) Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and

(3) Verified that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

#### 3. Beef roasts must be cooked:

- a. In an oven that is preheated to the temperature specified for their weight in section 33-33-04-11.2 and that is held at or above that temperature; and
- b. To a food temperature as specified in section 33-33-04-11.3 for the corresponding amount of time specified in section 33-33-04-11.3 for that temperature.
- 4. When ordered by the immediate consumer, whole muscle-intact beef steaks, which have been seared on both sides, shall be exempted from minimum cooking temperatures.

Minimum Cooking Times and Temperatures		
<del>Temperatures</del>	Time	Food
<del>145°F [63°C]</del>	15 seconds	shell eggs for individual order, immediate service, fish, seafood, beef, veal, lamb, mutton, etc. not specified below
155°F [68°C] 150°F [66°C] 145°F [63°C]	15 seconds, or 1 minute, or 3 minutes	pork, game animals, ground, chopped meat and fish, injected meats, eggs in multi-serving batches

- 1. Except as specified under subsections 2, 3, and 4, raw animal foods such as eggs, fish, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:
  - <u>a.</u> One hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above for fifteen seconds for:
    - (1) Raw shell eggs that are broken and prepared in response to a consumer's order and for immediate service; and
    - (2) Except as specified under subdivisions b and c of subsection 1 and subsection 2, fish, meat, and pork, including game animals commercially raised for food as specified in subsection 14 of section 33-33-04-03 and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03;

b. One hundred fifty-five degrees Fahrenheit [68 degrees Celsius] for fifteen seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified in subsection 14 of section 33-33-01-03, and game animals under a voluntary inspection program as specified in subsection 14 of section 33-33-04-03; and raw eggs that are not prepared as specified under paragraph 1 of subdivision a of subsection 1; or

<u>Minimum</u>		
Temperature °F [°C]	<u>Time</u>	
<u>145 [63]</u>	3 minutes	
<u>150 [66]</u>	1 minute	
<u>158 [70]</u>	<1 second (instantaneous)	

- One hundred sixty-five degrees Fahrenheit [74 degrees Celsius] or above for fifteen seconds for poultry, wild game animals as specified in subsection 14 of section 33-33-04-03, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites.
- 2. Whole beef roasts, corned beef roasts, pork roasts, and cured pork roasts such as ham shall be cooked:
  - a. In an oven that is prepared to the temperature specified for the roast's weight in the following chart and that is held at that temperature; and

Oven Type	Oven Temperature Based on Roast Weight		
	Less than 4.5 kb [10 lbs]	4.5 kb [10 lbs] or more	
Still Dry	350°F [177°C] or more	250°F [121°C] or more	
Convection	325°F [163°C] or more	250°F [121°C] or more	
High Humidity	250°F [121°C] or more	250°F [121°C] or more	

Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

b. As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature:

Temperature °F		Temperature °F	
[°C]	Time in Minutes	[°C]	Time in Seconds
130 [54.4]	112	<u>147 [63.9]</u>	<u>134</u>
131 [55.0]	<u>89</u>	<u>149 [65.0]</u>	<u>85</u>
133 [56.1]	<u>56</u>	<u>147 [63.9]</u>	<u>54</u>
135 [57.2]	<u>36</u>	<u>149 [65.0]</u>	<u>34</u>
136 [57.8]	<u>28</u>	<u>151 [66.1]</u>	<u>22</u>
138 [58.9]	<u>18</u>	<u>153 [67.2]</u>	<u>14</u>
140 [60.0]	<u>12</u>	<u>155 [68.3]</u>	<u>0</u>
142 [61.1]	<u>8</u>	<u>157 [69.4]</u>	
144 [62.2]	<u>5</u>	<u>158 [70.0]</u>	
145 [62.8]	4		
Holding time may include postoven heat rise.			

- 3. A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:
  - <u>a.</u> The food establishment serves a population that is not a highly susceptible population:
  - <u>b.</u> The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified in subsection 4 of section 33-33-04-03; and
  - <u>C.</u> The steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five degrees Fahrenheit [63 degrees Celsius] or above and a cooked color change is achieved on all external surfaces.
- 4. A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft-cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in subsection 3, may be served or offered for sale in a ready-to-eat form upon consumer request if:
  - <u>a.</u> The food establishment serves a population that is not a highly susceptible population; and
  - <u>b.</u> The consumer is informed as specified in section 33-33-04-07.4 that to ensure its safety, the food should be cooked as specified under subsection 1 or 2; or

- <u>C.</u> The regulatory authority grants a variance from subsection 1 or 2 as specified in section 33-33-04-18.1 based on an HACCP plan that:
  - (1) <u>Is submitted by the licenseholder and approved as specified in section 33-33-04-142;</u>
  - (2) Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food; and
  - (3) Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions of the variance.

History: Effective August 1, 1988; amended effective June 1, 1991; July 1, 1997;

August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.1. Minimum food temperature and holding time. Repealed effective August 1, 2003. Minimum food temperature and holding time required under subdivision b of subsection 1 of section 33-33-04-11 for cooking all parts of pork and exotic species of game animals, comminuted fish and meats, and injected meats.

Minimum			
<del>Temperature</del>	Time		
<del>145°F [63°C]</del>	<del>3 minutes</del>		
150°F [66°C]	1 minute		

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.2. Oven parameters required for destruction of pathogens.

Repealed effective August 1, 2003. Oven parameters required for destruction of pathogens on the surface of roasts of beef and corned beef.

	Oven Temperature  Roast Weight		
Oven Type			
	Less than or equal to 4.5 kg (10 lbs)	Greater than 4.5 kg (10 lbs)	
Still Dry	350°F [177°C]	250°F [121°C]	
Convection	325°F [163°C]	325°F [163°C]	

High Humidity <sup>1</sup> less than 250°F [121°C]	less than 250°F [121°C]
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<sup>1</sup>Relative humidity greater than 90% for at least 1 hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.3. Minimum holding times required at specified temperatures. Repealed effective August 1, 2003. Minimum holding times required at specified temperatures for cooking all parts of roasts of beef and corned beef.

Temperature	Time <sup>1</sup>	<del>Temperature</del>	Time	Temperature	Time <sup>1</sup>
130°F   121   154°C]   minutes		136°F [58°C]	32 minutes	<del>142°F</del> <del>[61°C]</del>	8 minutes
<del>132°F</del> <del>[56°C]</del>	77 minutes	138°F [59°C]	19 minutes	<del>144°F</del> <del>[62°C]</del>	5 minutes
<del>134°F</del> <del>[57°C]</del>	47 minutes	140°F [60°C]	12 minutes	<del>145°F</del> <del>[63°C]</del>	3 minutes
1 Holding time	may include	postoven heat	rise.	[ <del>63°C]</del>	minute

History: Effective July 1, 1997.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-11.4. Microwave cooking.** Raw animal foods cooked in a microwave <del>must</del> shall be:

- 1. Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat.
- Covered to retain surface moisture.
- 3. Heated an additional twenty-five degrees Fahrenheit [14 degrees Celsius] above the temperature specified in subdivisions a, b, and d of subsection 1 of section 33-33-04-11. Heated to a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] in all parts of the food.

4. Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.5. Parasite destruction. Before service or sale in ready-to-eat form, raw, marinated, raw marinated, lightly cooked-marinated, or partially cooked fish other than molluscan shellfish must be frozen throughout to a temperature of:

- 1. Minus four degrees Fahrenheit [-20 degrees Celsius] or below for one hundred sixty-eight hours (seven days) in a freezer; or
- 2. Minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below for fifteen hours in a blast freezer.
- 1. Except as specified in subsection 2, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated partially cooked fish other than molluscan shellfish shall be:
  - <u>a.</u> Frozen and stored at a temperature of minus four degrees Fahrenheit [-20 degrees Celsius] or below for one hundred sixty-eight hours [seven days] in a freezer; or
  - b. Frozen at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below until solid and stored at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] for fifteen hours.
- 2. If the fish are tuna of the species Thunnus alalunga, Thunnus albacares (yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (bluefin tuna, southern), Thunnus obesus (bigeye tuna), or Thunnus thynnus (bluefin tuna, northern), the fish may be served or sold in a raw, raw-marinated, or partially cooked ready-to-eat form without freezing as specified under subsection 1.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.6. Plant food cooking for hot holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius].

History: Effective August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

### 33-33-04-11.7. Records - Creation and retention.

- 1. Except as specified in subsection 2 of section 33-33-04-11.5 and subsection 2, if raw, raw-marinated, partially cooked, or marinated partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish.
- If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified in section 33-33-04-11.5 may substitute for the records specified under subsection 1.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-11.8. Re-serving cooked and refrigerated food. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-12. Dry milk and dry milk products Milk products - Pasteurized. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products or for cooking and baking purposes.

- 1. Fluid and dry milk and milk products complying with grade A standards as specified in law shall be obtained pasteurized.
- 2. Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 frozen desserts.
- Cheese shall be obtained pasteurized unless alternative procedures to pasteurization are specified in the Code of Federal Regulations, such as 21 CFR 133 - cheeses and related cheese products, for curing certain cheese varieties.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-13. Liquid, frozen, dry eggs and egg products Egg products - Pasteurized. Liquid, frozen, dry eggs and egg products shall be used only for

cooking and baking purposes. Liquid, frozen, and dry eggs and egg products shall be obtained pasteurized.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-14. Reheating for hot holding. Potentially hazardous foods that have been cooked and then refrigerated, must be reheated rapidly to one hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius] or higher for fifteen seconds throughout before being served or before being placed in a hot food storage facility. The use of steamtables, bainmaries, warmers, and similar hot food holding facilities for the rapid reheating of potentially hazardous foods is prohibited. Food reheated for hot holding in a microwave must be heated to a temperature of at least one hundred ninety degrees Fahrenheit [88 degrees Celsius] and allowed to stand two minutes after reheating. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, must be heated to a temperature of at least one hundred forty degrees Fahrenheit [50 degrees Celsius] for hot holding. Heating for hot holding must be done rapidly and the minimum temperature must be reached within two hours. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature.

- Except as specified under subsections 2, 3, and 5, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] for fifteen seconds.
- Except as specified under subsection 3, potentially hazardous food reheated in a microwave oven for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] and the food is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.
- 3. Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] for hot holding.
- 4. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified in section 33-33-04-18 and one hundred sixty-five degrees Fahrenheit [74 degrees Celsius] may not exceed two hours.

5. Remaining unsliced portions of roasts of beef that are cooked as specified in subsection 2 of section 33-33-04-11 may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified in subsection 2 of section 33-33-04-11.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-17. Thawing potentially hazardous foods. Potentially Except as specified in subsection 5, potentially hazardous foods shall be thawed in any one of the following ways:

- 1. In refrigerated units at a temperature not to exceed forty-one degrees Fahrenheit [5 degrees Celsius].
- 2. Under potable running water of a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius] or below, with sufficient water velocity to agitate and float off loose food particles into the overflow for a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit [5 degrees Celsius] or for a period of time that does not allow thawed portions of raw animal food requiring cooking to be above forty-one degrees Fahrenheit [5 degrees Celsius] for more than four hours including the time needed for preparation for cooking or the time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit [5 degrees Celsius].
- In a microwave oven only when the food will be immediately transferred
  to conventional cooking facilities as part of a continuous cooking
  process or when the entire, uninterrupted cooking process takes place
  in the microwave oven.
- As part of the conventional cooking process.
- Using any procedure if a portion of ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-18. Food display and service of potentially hazardous foods. Potentially hazardous foods shall be kept at an internal temperature of forty-one degrees Fahrenheit [5 degrees Celsius] or below or an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above during display and service.

except that rare roast beef shall be held for service at a temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius].

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-18.1. Variance requirement. A food establishment shall obtain a variance from the department as specified in section 33-33-04-138 and under section 33-33-04-139 before smoking or curing food; brewing alcoholic beverages; using food additives as a method of food preservation rather than as a method of flavor enhancement; using a reduced oxygen method of packaging food except as specified in section 33-33-04-18.2 where a barrier to clostridium botulinum exists; custom processing animals that are for personal use as food and not for sale or service in a food establishment; or preparing food by another method that is determined by the department to require a variance. A food establishment shall obtain a variance from the department as specified in section 33-33-04-139 and under section 33-33-04-140 before:

- 1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;
- 2. Curing food:
- 3. Using food additives or adding components such as vinegar:
  - <u>a.</u> As a method of food preservation rather than as a method of flavor enhancement; or
  - b. To render a food so that it is not potentially hazardous;
- 4. Packaging food using a reduced oxygen packaging method except as specified in section 33-33-04-18.2 where a barrier to clostridium botulinum in addition to refrigeration exists;
- Operating a molluscan shellfish life support system display tank used to store and display shellfish that are offered for human consumption;
- 6. Custom processing animals that are for personal use as food and not for sale or service in a food establishment; or
- 7. Preparing food by another method that is determined by the regulatory authority to require a variance.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-18.2. Reduced oxygen packaging - Criteria.

- A food establishment that packages food using a reduced oxygen packaging methods shall have an HACCP plan that contains the information specified under subsection 3 of section 33-33-04-142 which:
  - a. Identifies the food to be packaged;
  - b. Limits the food packaged to a food that does not support the growth of clostridium botulinum because it complies with one of the following:
    - (1) Has an Aw (a<sub>w</sub>) of 0.91 or less;
    - (2) Has a PH (pH) of 4.6 or less;
    - (3) Is a meat product cured at a food processing plant regulated by the United States department of agriculture, using a combination of nitrites, nitrates, and salt that at the time of processing consists of one hundred twenty MG/L or higher concentration of sodium nitrite and a brine concentration of at least 3.50 percent and is received in an intact package or in 9 CFR 318.7 approval of substances for use in the preparation of products and 9 CFR 381.147 restrictions on the use of substances in poultry products and is received in an intact package; or
    - (4) Is a food with a high level of competing organisms such as raw meat or raw poultry;
  - Specifies methods for maintaining food at forty-one degrees
     Fahrenheit [5 degrees Celsius] or below;
  - d. Describes how the packages must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
    - (1) Maintain the food at forty-one degrees Fahrenheit [5 degrees Celsius] or below; and
    - (2) Discard For food held at refrigeration temperatures, discard the food if within fourteen calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off-premises consumption;
  - Limits the <u>refrigerated</u> shelf life to no more than fourteen calendar days from packaging to consumption or the original manufacturer's "sell by" or "use by" date, whichever occurs first;
  - f. Includes operational procedures that:

- (1) Limit contacting food with bare hands;
- (2) Identify a designated area and the method by which:
  - (a) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross-contamination; and
  - (b) Access to the processing equipment is restricted to responsible trained personnel familiar with the potential hazards of the operation; and
- (3) Delineate cleaning and sanitization procedures for food-contact surfaces; and
- 9. Ensure that the individual responsible for the reduced oxygen packaging operation understands the:
  - (1) Concepts required for a safe operation;
  - (2) Equipment and facilities; and
  - (3) Procedures specified in subdivision f of subsection 1 and subsection 4 of section <del>33-33-04-142</del> 33-33-04-143.
- Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-19. Milk and cream dispensing.

Milk and milk products for drinking purposes must be provided to the consumer in an unopened, commercially filled package not exceeding one pint [0.473 liters liter] in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch [2.54 centimeters] protruding from the chilled dispensing head. Where a dispenser for milk and milk products is not available and portions of less than one-half pint [0.236 liters liter] are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half gallon [1.892 liters] capacity.

2. Cream of half and half must be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-19.2. Molluscan shellfish tanks.** Molluscan shellfish life-support system display tanks that are used to store and display shellfish that are offered for human consumption must be operated and maintained to ensure that:

- 1. Water used with fish other than molluscan shellfish does not flow into the molluscan tanks.
- 2. The safety and quality of the shellfish as they were received are not compromised by use of the tank.
- 3. The identity of the source of the shell stock is retained as specified in subsection 2 of section <del>33-33-04-03</del> 33-33-04-03.2.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-21. Condiment dispensing.

- Condiments, seasonings, and dressings for self-service use must be provided in individual packages, from dispensers, or from containers protected shall be protected from contamination by being kept in dispensers that are designed to provide protection. Protected food displays shall be provided with the proper utensils in accordance with section sections 33-33-04-23 and 33-33-04-25.
- Condiments provided for table or counter service must be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use must be provided in individual packages or in pour-type dispensers.
- 3. Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

4. Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-21.1. Vending machine dispensing. The dispensing compartment of a vending machine, including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels, shall be equipped with a self-closing door or cover if the machine is:

- Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or
- 2. Available for self-service during hours when it is not under the full-time supervision of a food employee.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-21.2. Vending machines - Automatic shutoff.

- 1. A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:
  - <u>a.</u> If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified in section 33-33-04-04; and
  - b. If a condition specified under subdivision a occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified in section 33-33-04-04.
- 2. When the automatic shutoff within a machine vending potentially hazardous food is activated:
  - a. In a refrigerated vending machine, the ambient temperature may not exceed any time and temperature combination as specified under subdivision b of subsection 1 of section 33-33-04-07 for more than thirty minutes immediately after the machine is filled, serviced, or restocked; or
  - b. In a hot holding vending machine, the ambient temperature may not be less than one hundred thirty-five degrees Fahrenheit

# [57.2 degrees Celsius] for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-23. Dispensing utensils.** To avoid unnecessary manual contact with food, suitable dispensing utensils must be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils must be stored in any one of the following ways:

- 1. Stored in the food with the dispensing utensil handle extended out of the food.
- 2. Stored clean and dry.
- 3. Stored in running water.
- 4. Stored either in a running water dipper well, or clean and dry in the case of dispensing utensils and malt collars used in preparing frozen desserts.

A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

- 1. Except as specified under subsection 2, in the food with their handles above the top of the food and the container;
- 2. In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;
- 3. On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified in subsection 2 of section 33-33-04-50;
- 4. In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;
- 5. In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or
- 6. In a container of water if the water is maintained at a temperature of at least one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius]

and the container is cleaned at a frequency specified under subsection 2 of section 33-33-04-50.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-24. Re-serving. Once served to a consumer, portions of leftover food may not be served again, except that packaged food, other than potentially hazardous food, that is still packaged and is still in sound condition, may be re-served.

- 1. Except as specified in subsection 2, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption.
- Except as specified under subsection 3 of section 33-33-04-02.1, a container of food that is not potentially hazardous may be transferred from one consumer to another if:
  - <u>a.</u> The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce; or
  - b. The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-25. Display equipment Food display. Food on display must be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or other effective means. Enough hot or cold food facilities must be available to maintain the required temperature of potentially hazardous food on display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food quards; display cases; or other effective means.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-25.1. Consumer self-service operations.

1. Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. This subsection does

not apply to consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish; ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or raw, frozen, shell-on shrimp or lobster.

- Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination.
- 3. Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

History: Effective August 1, 2003

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-26. Reuse of tableware. Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses may be reused by self-service consumers if refilling is a contamination-free process.

- Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip contact area of the drinking cut or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.
- 2. Except as specified in subsection 3, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.
- 3. Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under section 33-33-04-19.1.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-28.** Employee health. (See appendix B (1)). The licenseholder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subsection 3, if the food employee or applicant:

1.	ls c	iagnosed with an illness due to:		
	a.	Saln	nonella typhi;	
	b.	Shig	ella spp.;	
	C.	Esch	nerichia Shiga toxin-producing E. coliO157:H7; or	
	d.	Нера	atitis A virus;	
2.	Has	s a sy	mptom caused by illness, infection, or other source that is:	
	a.	Asso	ociated with an acute gastrointestinal illness such as:	
		(1)	Diarrhea;	
		(2)	Fever;	
		(3)	Vomiting;	
		(4)	Jaundice; or	
		(5)	Sore throat with fever; or	
	b.		sion containing pus such as a boil or infected wound that is n or draining and is:	
		(1)	On the hands or wrists, unless an impermeable cover such as a finger cot or stall protects the lesion and a single-use glove is worn over the impermeable cover;	
		(2)	On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or	
		(3)	On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;	
3.	Ha	d a pa	st illness from an infectious agent specified in subsection 1; or:	
	<u>a.</u>	<u>S. ty</u>	phi within the past three months;	
	<u>b.</u>	Shig	gella spp. within the past month:	
	<u>C.</u>	Shio	a toxin-producing E. coli within the past month; or	

Meets one or more of the following high-risk conditions:

d. Hepatitis A virus; or

- a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., shiga toxin-producing E. coliO157:H7, or hepatitis A virus illness including an outbreak at an event such as a family meal, church supper, or ethnic festival because the food employee or applicant:
  - (1) Prepared food implicated in the outbreak;
  - (2) Consumed food implicated in the outbreak; or
  - (3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a carrier of the infectious agent; or
- Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., <u>shiga toxin-producing</u>
   E. coliO157:H7, or hepatitis A virus infection;
- c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by S. typhi, Shigella spp., <u>shiga toxin-producing</u> E. coliO157:H7, or hepatitis A virus infection; or
- d. Traveled out of the United States within the last fifty calendar days.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-28.1. Employee exclusions and restrictions.** The person in charge shall:

- 1. Exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subsection 1 of section 33-33-04-28.
- Except as specified under subsection 3, restrict a food employee from working with exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles, in a food establishment if the food employee is:
  - a. Suffering from a symptom specified in subsection 2 of section 33-33-04-28; or
  - b. Is not experiencing a symptom of acute gastrointestinitis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or shiga toxin-producing E. coli.

- 3. If the population served is a highly susceptible population, exclude a food employee who:
  - a. Is experiencing a symptom of acute gastrointestinal illness specified in subdivision a of subsection 2 of section 33-33-04-28 and meets a high-risk condition specified in subdivisions a through d of subsection 4 of section 33-33-04-28-;
  - ls not experiencing a symptom of acute gastroenteritis specified in subdivision a of subsection 2 of section 33-33-04-28 but has a stool that yields a specimen culture that is positive for S. typhi, Shigella spp., or Escherichia shiga toxin-producing E. coliO157:H7÷;
- (1) c. Had a past illness from S. typhi within the last three months; or
- (2) d. Had a past illness from Shigella spp. or shiga toxin-producing E. coliO157:H7 within the last month.
- 4. For a food employee who is jaundiced:
  - If the onset of jaundice occurred within the last seven calendar days, exclude the food employee from the food establishment; or
  - b. If the onset of jaundice occurred more than seven calendar days before:
    - (1) Exclude the food employee from a food establishment that serves a highly susceptible population; or
    - (2) Restrict the food employee from activities specified in subsection 2, if the food establishment does not serve a highly susceptible population.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-28.2. Removal of exclusions and restrictions. (See appendix B-2)

1. The person in charge may remove an exclusion specified in subsection 1 of section 33-33-04-28.1 if the person in charge obtains approval from the regulatory authority and if the person excluded as specified in subsection 1 of section 33-33-04-28.1 provides to the person in charge written medical documentation from a physician licensed to practice medicine that specifies that the excluded person:

- a. May work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of:
  - (1) The infectious agent of concern as specified in section 33-33-04-28.8; or
  - (2) Symptoms, if hepatitis A virus is the infectious agent of concern; or
- b. May only work in an unrestricted capacity in a food establishment that does not serve a highly susceptible population because the person is free of the symptoms specified in subdivision a of subsection 2 of section 33-33-04-28.
- 2. The person in charge may remove a restriction specified in:
  - a. Subdivision a of subsection 1 of section 33-33-04-28.1 if the restricted person:
    - (1) Is free of the symptoms specified in subsection 2 of section 33-33-04-28; and
    - (2) Provides written medical documentation from a physician licensed to practice medicine stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or causing foodborne illness, as specified in subsection 2 of section 33-33-04-28; or
    - (3) Provides written medical documentation from a physician licensed to practice medicine stating that the symptoms experienced result from a chronic noninfectious condition such as ulcerative colitis or irritable bowel syndrome; or
  - b. Subdivision b of subsection 2 of section 33-33-04-28.1 if the restricted person provides written medical documentation according to the criteria specified in section 33-33-04-28.8 that indicates the stools are free of Salmonella typhi.
- 3. The person in charge may remove an exclusion specified under subsection 3 of section 33-33-04-28.1 if the excluded person provides written medical documentation from a physician licensed to practice medicine that the person is free of S. typhi, Shigella spp., shiga toxin-producing E. coliO157:H7, or hepatitis A virus infection, whichever is the infectious agent of concern, as specified in section 33-33-04-28.8.
- 4. The person in charge may remove an exclusion specified in subdivisions a and b of subsection 4 of section 33-33-04-28.1

and a restriction specified in subdivision b of subsection 4 of section 33-33-04-28.1 if:

- a. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person:
  - (1) Provides written medical documentation from a physician licensed to practice medicine stating that the person is free of hepatitis A virus as specified in subdivision b of subsection 4 of section 33-33-04-28.8-;
  - (2) Is no longer jaundiced; or
- b. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision a.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-28.8.** Release of employee from restriction or exclusion. The department shall release an employee from restriction or exclusion according to law and the following conditions:

- An employee who was infected with salmonella typhi if the employee's stools are negative for salmonella typhi based on testing of at least three consecutive stool specimen cultures that are taken:
  - a. Not earlier than one month after onset:
  - b. At least forty-eight hours after discontinuance of antibiotics; and
  - c. At least twenty-four hours apart; and.
- If one of the cultures taken as specified in subsection 1 is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.
- An employee who was infected with Shigella spp. or Escherichia shiga toxin-producing E. coliO157:H7 if the employee's stools are negative for Shigella spp., or Escherichia shiga toxin-producing E. coliO157:H7 based on testing of two consecutive stool specimen cultures that are taken:
  - Not earlier than forty-eight hours after discontinuance of antibiotics;
     and
  - b. At least twenty-four hours apart.

- 4. An employee who was infected with hepatitis A virus if:
  - a. Symptoms cease; or
  - b. At least two blood tests show falling liver enzymes.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-29. General personal cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water for at least twenty seconds before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking, or using the toilet, contacting body fluids and discharges, and when switching between working with raw foods and ready-to-eat foods. Food employees handling edible fish in aquariums, shellfish or crustacea in display tanks shall wash their hands before handling exposed food, cleaning equipment, utensils, and linens, or unwrapped single-service and single-use articles. Employees shall keep their fingernails clean and trimmed.

- Except as specified in subsection 2, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least twenty seconds, using a cleaning compound in a handsink that is equipped as specified in section 33-33-04-77.
- 2. Food employees shall use the following cleaning procedure:
  - <u>Vigorous friction on the surfaces of the lathered fingers, fingertips, areas between the fingers, hands, and arms or by vigorously rubbing the surrogate prosthetic devices for hands or arms for at least twenty to thirty seconds, followed by:</u>
  - b. Thorough rinsing under clean, running warm water; and
  - <u>C.</u> Immediately follow the cleaning procedure with thorough drying of cleaned hands and arms or surrogate prosthetic devices using a method as specified in section 33-33-04-77.
- 3. Food employees shall pay particular attention to the areas underneath the fingernails during the cleaning procedure.

4. If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-29.1. Preventing contamination from hands - When to wash.

- 1. Food employees shall wash their hands as specified in section 33-33-04-29.
- Except when washing fruits and vegetables as specified in section 33-33-04-10, food employees shall limit direct hand contact with exposed, ready-to-eat food when deli tissue, spatulas, tongs, dispensing equipment, or other utensils can be used.
- 3. Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-29.2. Hand sanitizer.

- 1. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall:
  - <u>a.</u> Be applied only to hands that are cleaned as specified in section 33-33-04-29:
  - b. Comply with one of the following:
    - (1) Be an approved drug that is listed with the food and drug administration publication "Approved Drug Products With Therapeutic Equivalence Evaluations" as an approved drug based on safety and effectiveness; or
    - (2) Have active antimicrobial ingredients that are listed in the food and drug administration monograph for over-the-counter health care antiseptic drug products as an antiseptic handwash; or
  - C. Comply with one of the following:
    - (1) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in

21 CFR 170.39 - threshold of regulation for substances used in food-contact articles; or

- (2) Comply with and be listed in:
  - (a) 21 CFR 178 indirect food additives: adjuvants, production aids, and sanitizers as regulated for use as a food additive with conditions of safe use; or
  - (b) 21 CFR 182 substances generally recognized as safe, 21 CFR 184 direct food substances affirmed as generally recognized as safe, or 21 CFR 186 indirect food substances affirmed as generally recognized as safe for use in contact with food;
- If a hand sanitizer or a chemical hand sanitizing solution used as a hand dip does not meet the criteria specified under subdivision b of subsection 1, use shall be:
  - <u>a.</u> Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or
  - b. Limited to situations that involve no direct contact with food by the bare hands; and
- 3. A chemical hand sanitizing solution used as a hand dip shall be maintained clean and at a strength equivalent to at least one hundred milligrams per liter chlorine.

**History:** Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-29.3. Where to wash. Food employees shall clean their hands in a handsink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-29.4. Fingernail maintenance. Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable

and not rough. Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-30. General clothing and jewelry. The outer clothing of all employees must be clean. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles. While preparing food, food employees may not wear jewelry, including medical information jewelry, on their arms and hands. This section does not apply to a plain ring such as a wedding band.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-31. General employee practices.

- Employees may consume food only in designated dining areas. An employee dining area may not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.
- 2. Employees may not use tobacco in any form while engaged in food preparation or service, or while in areas used for equipment or utensil washing or food preparation. Employees may use tobacco only in designated areas. An employee tobacco-use area may not be designated for that purpose if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.
- 3. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
- Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food establishment.
- A food employee may drink from a closed beverage container if the container is handled to prevent contamination of the employee's hands, the container, and exposed food, equipment, utensils, linens, and single-service articles.
- 6. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may

not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-32. General equipment and utensils materials. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use and withstand repeated warewashing. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles shall not allow the migration of deleterious substances or impart odors, color, or taste. Specific materials limitations are as follows:

- Cast iron may not be used for utensils or food-contact surfaces of equipment except as a surface for cooking and in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.
- 2. Ceramic, china, crystal utensils, and decorative utensils such as hand-painted ceramic or china that are used in contact with food must be lead-free or contain levels of lead not excluding the following limits:

Utensil Categoryee	Description	Maximum Land
Hot Beverage Mugs	Coffee Mugs	0.5 mg/L
Large Hollowware	Bowls > 1.1L [1.16 QT]	1 mg/L
Small Hollowware	Bowls < 1.1L [1.16 QT]	2.0 mg/L
Flat Utensils	Plates, Saucers	3.0 mg/L

 Copper and copper alloys such as brass may not be used in contact with a food that has a pH below six such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator. Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation and fermentation steps of a beer brewing operation such as a brew pub or microbrewery.

Galvanized metal may not be used for utensils or food-contact surfaces
of equipment that are used for beverages, acidic food, moist food, or
hygroscopic food.

History: Effective August 1, 1998; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-33. Solder and pewter alloys. If solder is used, it must be composed of safe materials and be corrosion resistant. Solder and flux containing lead in excess of 0.2 percent may not be used on surfaces that contact food. Pewter alloys containing lead in excess of 0.05 percent may not be used as a food-contact surface.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-34. Wood. Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in section 33-33-04-32 may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances is prohibited.

- 1. Except as specified in subsections 2, 3, 4, and 5, wood and wood wicker may not be used as a food-contact surface.
- 2. Hard maple or an equivalent hard, close-grained wood may be used for:
  - <u>a.</u> <u>Cutting boards, cutting blocks, baker's tables, and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and</u>
  - b. Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty degrees Fahrenheit [110 degrees Celsius] or above.
- 3. Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.
- 4. If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:
  - a. Untreated wood containers; or

- <u>b.</u> Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 CFR 178.3800 preservatives for wood.
- 5. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

<u>33-33-04-35.1. Sponges.</u> Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-35.2. Nonstick coatings. Multiuse kitchenware such as frying pans, griddles, saucepans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-36.1. Slash-resistant gloves. Slash-resistant gloves that are used to protect hands during operations requiring cutting, may be used in direct contact only with food that is subsequently cooked. Slash-resistant gloves may be used with ready-to-eat foods that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface or are covered with a smooth, durable, nonabsorbent glove, or single-use glove. If used, single-use gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

History: Effective July 1, 1997; amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-37. Single-service articles.** Reuse of single-service articles is prohibited. <u>Materials that are used to make single-service and single-use articles:</u>

### 1. May not:

- <u>Allow the migration of deleterious substances; or</u>
- b. Impart colors, odors, or tastes to food; and

### 2. Shall be:

- a. Safe; and
- b. Clean.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-38. General design and fabrication. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and must be resistant to denting, buckling, pitting, chipping, and crazing, and must meet the following standards as applicable constructed to be durable and to retain their characteristic qualities under normal use conditions and must be resistant to denting, buckling, pitting, chipping, crazing, distortion, and decomposition. Equipment shall be maintained in a state of repair and components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications and must meet the following standards as applicable:

- Food-contact surfaces shall be easily cleanable, smooth, and free of breaks, open seams, cracks, chips, pits, and similar imperfections, and free of difficult-to-clean internal corners and crevices and finished to have smooth welds and joints. Threads must be designed to facilitate cleaning, ordinary "V"-type threads may not be used in food-contact surfaces, except that in equipment such as icemakers or hot oil cooking equipment and hot oil filtering systems where such threads must be minimized.
- Equipment containing bearings and gears requiring unsafe lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces. Only safe lubricants may be used on equipment designed to receive lubrication of bearings and gears on or within food-contact surfaces.
- 3. Tubing conveying beverages or beverage ingredients to dispensing heads may be in contact with stored ice provided such tubing is fabricated from safe materials, is grommeted at entry and exit points to preclude moisture (condensation) from entering the ice machine or the ice storage bin, and is kept clean. Drainage or drainage tubes from dispensing units may not pass through the ice machine or the ice storage bin.
- 4. Sinks and drainboards must be self-draining.

5. Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-42. Thermometers <u>- Food</u>. Thermometers may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used. Thermometers that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to plus or minus one point eight degrees Fahrenheit [plus or minus 1 degree Celsius]. Thermometers that are scaled only in Fahrenheit must be accurate to plus or minus two degrees Fahrenheit [plus or minus 1.1 degrees Celsius]. Ambient air and water thermometers that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be readable and accurate to plus or minus two point seven degrees Fahrenheit [plus or minus 1.5 degrees Celsius] at the use range. Ambient air and water thermometers that are scaled only in Fahrenheit must be accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius] at the use range. Thermometers must be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

- 1. Thermometers that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius in the intended range of use.
- 2. Thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit in the intended range of use.
- 3. Thermometers shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified in sections 33-33-04-11 through 33-33-04-11.2. Thermometers with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.
- 4. Each hot and cold food storage facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer. If it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-42.1. Thermometers - Ambient air and water. Ambient air and water thermometers that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and one-half degrees Celsius in the intended range of use. Ambient air and water thermometers that are scaled only in Fahrenheit shall be accurate to plus or minus three degrees Fahrenheit in the intended range of use.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-43. Nonfood-contact surfaces. Surfaces of equipment not intended for contact with food, but which are exposed to splash or food debris or which otherwise require frequent cleaning, must be designed and constructed to be smooth, washable, corrosion-resistant, free of unnecessary ledges, projections, or crevices, and readily accessible for cleaning, and must be of such material and in such repair as to be easily maintained in a clean and sanitary condition. Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being removable without being disassembled, by disassembling without the use of tools, or by easy disassembling with use of tools kept near the equipment and are accessible for use. Nonfood-contact surfaces of equipment must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-44. Ventilation hoods. Ventilation hoods and devices must be designed to prevent grease or condensation from collecting on walls and ceilings and from dripping into food or onto food-contact surfaces. Filters or other grease-extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place. Exhaust ventilation hood systems in food preparation and warewashing areas, including components such as hoods, fans, guards, and ducting, shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils, linens, and single-service and single-use articles. Filters or other grease-extracting equipment must be readily removable for cleaning and replacement if not designed to be cleaned in place and must be kept clean. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-45.** Existing equipment. Equipment installed in a food service establishment prior to July 1, <del>1997</del> 2003, that does not fully meet all of the design and construction requirements of this chapter, must be deemed acceptable in

that establishment if it is in good repair, capable of being maintained in a sanitary condition, and if the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after July 1, 1997 2003, must meet the requirements of this chapter.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-50. Cleaning frequency of equipment and utensils cleaning and sanitizing.

- 1. Tableware must be washed, rinsed, and sanitized after each use.
- To prevent cross-contamination, kitchenware and food-contact surfaces
  of equipment must be washed, rinsed, and sanitized after each use and
  following any interruption of operations during which time contamination
  may have occurred.
- 3. Where equipment and utensils are used for the preparation of potentially hazardous foods on a continuous or production line basis, utensils and the food-contact surfaces of equipment must be washed, rinsed, and sanitized before each use with a different type of raw animal food or each time there is a change from working with raw foods and ready-to-eat foods.
- 4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens must be cleaned at least once a day. However, this does not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment must be kept free of encrusted grease deposits and other accumulated soil.
- 5. Nonfood-contact surfaces of equipment must be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

### 33-33-04-50.1. Returnables - Cleaning and refilling.

- Except as specified in subsections 2 and 3, returned empty containers intended for cleaning and refilling with food must be cleaned and refilled in a regulated food processing plant.
- 2. A food-specific container for beverages may be refilled at a food establishment if:

- a. Only a beverage that is not a potentially hazardous food;
- b. The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;
- c. Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
- The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and
- e. The container is refilled by:
  - (1) An employee of the food establishment; or
  - (2) The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.
- Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.
- 4. A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.
- Except as specified in subsection 6, a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified in subsection 2.
- 6. Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process.

**History:** Effective July 1, 1997: amended effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-51. Wiping cloths and working containers - Use limitation.

- Cloths used for wiping food spills on tableware, such as plates or bowls, being served to the consumer, must be clean, dry, and used for no other purpose.
- 2. Moist cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment must be clean and rinsed frequently in one of

the sanitizing solutions permitted in section 33-33-04-52 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.

- Moist cloths used for cleaning nonfood-contact surfaces of equipment, such as counters, dining tabletops, and shelves, must be clean and rinsed as specified in subsection 2 and used for no other purpose. These cloths must be stored in the sanitizing solution between uses.
- 4. Working containers of sanitizing solutions for storage of in-use wiping cloths may be stored above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-52. Manual <del>cleaning and sanitizing</del> <u>warewashing - Sink</u> <u>compartment requirements</u>.

- 1. For manual washing, rinsing, and sanitizing of utensils and equipment, a sink with not fewer than three compartments must be provided and used. Sink compartments must be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink must be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments must be washed manually or cleaned through pressure spray methods.
- 2. Drainboards or easily movable dish tables of adequate size must be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing and must be located so as not to interfere with the proper use of the dishwashing facilities.
- 3. Equipment and utensils must be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
- 4. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing must be conducted in the following sequence:
  - a. Sinks must be cleaned prior to use.
  - b. Equipment and utensils must be thoroughly washed in the first compartment with a hot detergent solution that is kept clean and maintained at not less than one hundred ten degrees Fahrenheit [43 degrees Celsius].

- Equipment and utensils must be rinsed free of detergent and abrasives with clean water in the second compartment.
- d. Equipment and utensils must be sanitized in the third compartment according to one of the methods included in subdivisions a through d of subsection 5.
- Equipment and utensils may be air-dried and used only after adequate draining.
- 5. The food-contact surfaces of all equipment and utensils must be sanitized by any of the following methods:
  - a: Immersion for at least one-half minute in clean, hot water at a temperature of at least one hundred seventy degrees Fahrenheit [76.67 degrees Celsius].
  - b. Immersion for at least one minute in a clean solution containing at least fifty parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius].
  - Immersion for at least one minute in a clean solution containing at least twelve point five parts per million of available iodine and having a pH not higher than five point zero at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius].
  - d. Immersion in a clean solution containing any other chemical sanitizing agent allowed under 21 CFR 178.1010 that will provide the equivalent bactericidal effect of a solution at least fifty parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit [23.89 degrees Celsius] for one minute.
  - e. Treatment with steam which is free from materials or additives other than those specified in 21 CFR 173.310, in the case of equipment too large to sanitize by immersion, but in which steam can be confined.
  - f. Rinsing, spraying, or swabbing with a chemical sanitizing solution at least twice the strength required for that particular sanitizing solution under subdivision d in the case of equipment too large to sanitize by immersion.
- 6. When hot water is used for sanitizing, all of the following facilities must be provided and used:

- a. An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least one hundred seventy-one degrees Fahrenheit [76.67 degrees Celsius] or above.
- b. A numerically scaled indicating thermometer, accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius], convenient to the sink for frequent checks of water temperature.
- C: Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
- 7. When chemicals are used for sanitization, they may not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.
- 8. A warewashing sink may not be used for handwashing or dumping mop water.
- 9. A warewashing sink may be used to wash wiping cloths, wash produce, or thaw food if the sink is cleaned and sanitized before and after each time it is used to wash wiping cloths, wash produce, or thaw food.
- A sink with at least three compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.
- 2. Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink or a warewashing machine, alternative equipment as specified in subsection 3 shall be used.
- 3. Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved.

  Alternative manual warewashing equipment may include:
  - <u>August 1</u>
     <u>August 2</u>
     <l>
  - b. Low-pressure or line-pressure spray detergent foamers;
  - C. Other task-specific cleaning equipment; or

# d. Brushes or other implements.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-52.1. Warewashing equipment - Cleaning frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards shall be cleaned:

#### 1. Before use;

- 2. Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and
- 3. If used, at least every twenty-four hours.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# <u>33-33-04-52.2.</u> Warewashing machines - Manufacturers' operating instructions.

- A warewashing machine and its auxiliary components shall be operated in accordance with the machine's data plate and other manufacturer's instructions.
- 2. A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with the manufacturer's specifications.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-52.3. Warewashing sinks - Use limitations.

- 1. A warewashing sink may not be used for handwashing as specified in section 33-33-04-29.
- 2. If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified in section 33-33-04-52.1 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food

shall be sanitized before and after using the sink to wash produce or thaw food.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-52.4. Warewashing equipment - Cleaning agents. When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

<u>33-33-04-52.5.</u> Warewashing equipment - Clean solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-52.6. Manual warewashing equipment - Wash solution temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than forty-three degrees Celsius [110 degrees Fahrenheit] or the temperature specified on the cleaning agent manufacturer's label instructions.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53. Mechanical <del>cleaning and sanitizing</del> <u>warewashing</u> <u>equipment - Wash solution temperature</u>.

1. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device, if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices must be properly installed and maintained in good repair. The machines must be provided with an easily accessible and readable data plate that indicate the machines design and operating specifications. These machines and devices must be operated in accordance with manufacturers' instructions, and utensils and equipment placed in these machines must be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting

- agent dispensers, and liquid sanitizer injectors, if any, must be properly installed and maintained.
- 2. The pressure of final rinse water supplied to spray-type dishwashing machines may not be less than fifteen nor more than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] measured in the waterline immediately adjacent to the final rinse control valve. A one-fourth inch [6.35 millimeters] IPS valve must be provided immediately downstream or upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
- 3. Machine or waterline mounted numerically scaled indicating thermometers, accurate to plus or minus three degrees Fahrenheit [plus or minus 1.7 degrees Celsius], shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.
- 4. Rinse water tanks must be protected by baffles, curtains, or other effective means, to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines must be accurately timed to assure proper exposure times in wash and rinse cycles, in accordance with manufacturers' specifications attached to the machines.
- 5. Drainboards must be provided and be of adequate size for the proper handling of soiled utensils prior to washing and cleaned utensils following sanitization, and must be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of clean or soiled utensils following sanitization.
- 6. Equipment and utensils must be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine, unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils must be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.
- 7. Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used if the following requirements are met:
  - The temperature of the wash water may not be less than one hundred twenty degrees Fahrenheit [49 degrees Celsius].
  - The wash water must be kept clean.
  - Chemicals added for sanitization purposes must be automatically dispensed.

- d. Utensils and equipment must be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.
- A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation must be used in accordance with the EPA-approved manufactuer's label use instructions, and must be used as follows:
  - (1) A chlorine solution must have a minimum temperature based on the concentration and PH (pH) of the solution as listed in the following chart:

Minimum Concentration	Minimun	1 Temperature
MC/L [mg/L]	PH [pH] 10 or less	PH [pH] 8 or less
<del>25</del>	120°F [49°C]	<del>120°F [49°C]</del>
<del>50</del>	100°F [38°C]	75°F [24°C]
<del>100</del>	55°F [13°C]	55°F [13°C]

Equipment and utensils may be sanitized using a chlorine solution that is applied as the final step in a commercial spray-type warewashing machine and that, upon completion of the machine operation, results in a minimum residual concentration of fifty parts per million free available chlorine on the wetted surfaces and utensils. This method is acceptable only when the complete cycle of the warewashing machine has been demonstrated to be effective in rendering utensils free of soil and micro-organisms of public health significance.

- (2) An iodine solution must have a:
  - (a) Minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];
  - (b) PH (pH) of 5.0 or less, unless the manufacturer's use directions included in the labeling specify a higher PH (pH) limit of effectiveness; and
  - (c) Concentration between 12.5 MG/L(mg/L) and twenty-five MG/L(mg/L);
- (3) A quaternary ammonium compound solution must:
  - (a) Have a minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];

- (b) Have a concentration as specified by the manufacturer's use directions included in the labeling; and
- (c) Be used only in water with five hundred MG/L(mg/L) hardness or less:
- (4) Other solutions of the chemicals specified in paragraphs 1 through 3 may be used if demonstrated to the regulatory authority to achieve sanitization and approved by the regulatory authority; or
- (5) Other chemicals sanitizers may be used if they are applied in accordance with the manufacturer's use directions included in the labeling.
- f. Chemical sanitizers used must meet the requirements of 21 CFR 178.1010.
- 9. A test kit or other device that accurately measures the parts per million concentration of the solution must be available and used.
- 8. Machines using hot water for sanitization may be used if the wash water and pumped rinse water is kept clean and the water is maintained at not less than the temperature stated in this section.
  - a: Single-tank, stationary-rack, dual temperature machine:

Wash temperature	One hundred fifty degrees Fahrenheit
	[66 degrees Celsius]
Final rinse temperature	One hundred eighty degrees
	Fahrenheit [82.22 degrees Celsius]

b. Single-tank, stationary-rack, single-temperature machine:

Wash temperature	One hundred sixty-five degrees
[73.88 degrees Celsius]	Fahrenheit
Final rinse temperature	One hundred sixty-five
	degrees Fahrenheit
	[73.88 degrees Celsius]

c. Single-tank, conveyor machine:

Wash temperature	One hundred sixty degrees
	Fahrenheit
	[71 degrees Celsius]
Final rinse temperature	One hundred eighty degrees

		<del>Fahrenheit</del>
[82.22 degree	es Celsius)	
<del>d.</del>	Multitank, conveyor machine:	
fifty degree:	Wash temperature s Fahrenheit	One hundred
		[66 degrees Celsius]
sixty degree:	Pumped rinse temperature	One hundred
Sixcy degree:	s rantennett	[71 degrees Celsius]
eighty degree	Final rinse temperature es Fahrenheit	One hundred
		[82.22 degrees Celsius]
<del>e.</del>	Single-tank, pot, pan, and umoving rack):	tensil washer (either stationary or
forty degree	Wash temperature s Fahrenheit	One hundred
	· · · · · · · · · · · · · · · · · · ·	[60 degrees Celsius]
eighty degre	Final rinse temperature es Fahrenheit	One hundred
		[82:22 degrees Celsius]

- 9. All dishwashing machines must be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.
- 1. The temperature of the wash solution in spray-type warewashers that use hot water to sanitize may not be less than:
  - <u>a.</u> For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius];
  - b. For a stationary rack, dual temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius];
  - <u>C.</u> For a single-tank, conveyor, dual temperature machine, one hundred sixty degrees Fahrenheit [71 degrees Celsius]; or
  - d. For a multi-tank, conveyor, multi-temperature machine, one hundred fifty degrees Fahrenheit [66 degrees Celsius].

2. The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than one hundred twenty degrees Fahrenheit [49 degrees Celsius].

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53.1. Manual warewashing equipment - Hot water sanitization temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at seventy-seven degrees Celsius [171 degrees Fahrenheit] or above.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# <u>33-33-04-53.2. Mechanical warewashing equipment - Hot water sanitization temperatures.</u>

- 1. Except as specified in subsection 2, in a mechanical operation the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than one hundred ninety-four degrees Fahrenheit [90 degrees Celsius], or less than:
  - <u>a.</u> For a stationary rack, single-temperature machine, one hundred sixty-five degrees Fahrenheit [74 degrees Celsius]; or
  - b. For all other machines, one hundred eighty degrees Fahrenheit [82 degrees Celsius].
- 2. The maximum temperature specified in subsection 1 does not apply to the high pressure and temperature systems with wand-type, handheld, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53.3. Mechanical warewashing equipment - Sanitization pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine may not be less than one hundred kilopascals [15 pounds per square inch] or more than one hundred seventy kilopascals [25 pounds per

square inch] as measured in the waterline immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53.4. Manual and mechanical warewashing equipment - Chemical sanitization - Temperature, pH, concentration, and hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at exposure times specified in subsection 3 of section 33-33-04-53.6 shall be listed in 21 CFR 178.1010 sanitizing solutions shall be used in accordance with the environmental protection agency-approved manufacturer's label use instructions, and shall be used as follows:

1. A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Minimum Concentration	Minimum Temperature	
mg/L	pH 10 or less °F [°C]	pH 8 or less °F [°C]
<u>25</u>	120 [49]	120 [49]
<u>50</u>	100 [38]	75 [24]
100	55 [13]	55 [13]

# 2. An iodine solution shall have a:

- <u>a. Minimum temperature of seventy-five degrees Fahrenheit</u> [24 degrees Celsius];
- b. pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
- <u>C.</u> Concentration between twelve and one-half and twenty-five milligrams per liter;

#### 3. A quaternary ammonium compound solution shall:

- <u>a.</u> Have a minimum temperature of seventy-five degrees Fahrenheit [24 degrees Celsius];
- <u>b.</u> Have a concentration as specified in 21 CFR 178.1010 sanitizing solutions and as indicated by the manufacturer's use directions included in the labeling; and
- <u>C.</u> Be used only in water with five hundred milligrams per liter hardness or less or in water having a hardness no greater than specified by the manufacturer's label;

- 4. If another solution of a chemical specified in subsections 1 through 3 is used, the licenseholder shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; or
- 5. If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the manufacturer's use directions included in the labeling.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53.5. Warewashing equipment - Determining chemical sanitizer concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-53.6. Hot water and chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

- 1. Hot water manual operations by immersion for at least thirty seconds and as specified in section 33-33-04-53.1;
- 2. Hot water mechanical operations by being cycled through equipment that is set up as specified in sections 33-33-04-53.2 and 33-33-04-53.3 and achieving a utensil surface temperature of one hundred sixty degrees Fahrenheit [71 degrees Celsius] as measured by an irreversible registering temperature indicator; or
- 3. Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified in section 33-33-04-53.4 by providing:
  - <u>Except as specified under subdivision b, an exposure time of at least ten seconds for a chlorine solution specified in subsection 1 of section 33-33-04-53.4;</u>
  - b. An exposure time of at least seven seconds for a chlorine solution of fifty milligrams per liter that has a pH of ten or less and a temperature of at least one hundred degrees Fahrenheit [38 degrees Celsius] or a pH of eight or less and a temperature of at least one hundred seventy-five degrees Fahrenheit [24 degrees Celsius];

- <u>C.</u> An exposure time of at least thirty seconds for other chemical sanitizing solutions; or
- d. An exposure time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in section 33-33-04-01.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20; 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-54. Drying. After sanitization, all equipment and utensils must be air dried. After cleaning and sanitizing, equipment and utensils:

- 1. Shall be air dried or used after adequate draining as specified in 21 CFR 178.1010(a), sanitizing solutions, before contact with food; and
- 2. May not be cloth dried except that utensils that have been air dried may be polished with cloths that are maintained clean and dry.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-55.** Handling of equipment and utensil storage. Cleaned and sanitized equipment and utensils must be handled in a way that protects them from contamination. Equipment shall be reassembled so that food-contact surfaces are not contaminated. Spoons, knives, and forks may be touched only by their handles. Cups, glasses, bowls, plates, and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-59. General water supplies.** Drinking water must be obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.:

- 1. Water from a public water system shall meet 40 CFR 141 national primary drinking water regulations and state water quality standards.
- Water from a noncommunity water system shall meet state drinking water quality standards.
- 3. Nondrinking water shall be used only for nonculinary purposes such as air-conditioning, nonfood equipment cooling, fire protection, and irrigation.

- 4. Except when used as specified in subsections 2 and 3, water from a noncommunity water system shall be sampled and tested at least annually and as required by state water quality regulations.
- 5. The most recent sample report for the noncommunity water system shall be retained on file in the food establishment or the report shall be maintained as specified by state water quality regulations.
- 6. The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment.
- 7. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment.
- 8. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-59.1. System flushing and disinfection. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-61. Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - processing and bottling of bottled drinking water and shall be handled and stored in a way that protects it from contamination. Bottled and packaged water shall be dispensed from the original container.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-65. General plumbing.** Plumbing shall be sized, installed, and maintained according to law. A plumbing system shall be repaired according to law and maintained in good repair. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply or

any source of pollution through which the potable water supply might become contaminated.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-66. Nonpotable water system. Repealed effective August 1, 2003. Use of a nonpotable water system is permitted only for purposes such as air-conditioning and fire protection, and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

History: Effective August 1, 1988; amended effective July 1, 1997.

**General Authority: NDCC 19-02.1-20, 23-01-03(3)** 

Law Implemented: NDCC 19-02.1-09

33-33-04-73. Toilet rooms. Toilet rooms shall be completely enclosed and shall have tight-fitting, self-closing, solid doors, which shall be closed except during cleaning or maintenance unless otherwise provided by law except that this requirement does not apply to a toilet room that is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# 33-33-04-75. Lavatory Handsink facility installation.

- Lavatories shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
- 2. Lavatories shall be accessible to employees at all times.
- 3. Lavatories shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.
- Handsinks shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
- 2. Handsinks shall be accessible to employees at all times.
- 3. Handsinks may not be used for purposes other than handwashing.

- 4. Handsinks shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.
- 5. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handsinks in a food establishment that has at least one handsink.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-76. Lavatory Handsink faucets. Each lavatory handsink shall be provided with hot and cold water tempered to at least one hundred ten degrees Fahrenheit [43 38 degrees Celsius] by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Use of steam-mixing valves is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-77. Lavatory Handsink supplies. A supply of hand-cleansing soap or detergent shall be available at each lavatory handsink. A supply of disposable towels, clean continuous towel system, or a hand-drying device providing heated air shall be conveniently located near each lavatory handsink. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities handsinks.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-78. Lavatory <u>Handsink</u> maintenance. Lavatories <u>Handsinks</u>, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-83. Openings. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and

exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than sixteen mesh to the inch [2.54 centimeters].

- Except as specified in subsections 2, 3, 4, and 5, outer openings of a food establishment shall be protected against the entry of insects and rodents by:
  - <u>a.</u> <u>Filling or closing holes and other gaps along floors, walls, and ceilings;</u>
  - b. Closed, tight-fitting windows; and
  - C. Solid, self-closing, tight-fitting doors.
- Subsection 1 does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.
- 3. Exterior doors used as exits need not be self-closing if they are:
  - <u>a.</u> Solid and tight-fitting:
  - b. Designed for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
  - <u>C.</u> <u>Limited-use so they are not used for entrance or exit from the building or purposes other than the designated emergency exit use.</u>
- 4. Except as specified in subsections 2 and 5, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified in subsection 1, the openings shall be protected against the entry of insects and rodents by:
  - <u>a.</u> <u>Sixteen mesh to one inch [16 mesh to 25.4 millimeters] screens:</u>
  - <u>b.</u> <u>Properly designed and installed air curtains to control flying insects:</u> or
  - C. Other effective means.

 Subsection 4 does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-88. Mats and duckboards.** Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of such size, design, and construction as to facilitate easy cleaning be removable and easily cleanable. Duckboards shall not be used as storage racks.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-91. Wall and ceiling maintenance.** Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

**History:** Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-92.** Construction. The walls, including nonsupporting partitions, wall coverings, and the ceilings of walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface. The physical facilities shall be maintained in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-93.** Exposed construction. Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules and in areas subject to moisture. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-97. General cleaning physical facilities. The physical facilities shall be cleaned as often as necessary to keep them clean. Cleaning of floors and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-98. Utility facility sinks. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mopwater or similar liquid wastes. The use of lavatories, utensil or equipment-washing, or food preparation sinks for this purpose is prohibited in new or extensively remodeled establishments.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

## 33-33-04-100. Protective shielding.

- 1. Shielding to protect against broken glass falling onto food must be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities.
- 2. Infrared or other heat lamps must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.
- Except as specified in subsection 2, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food, clean equipment, utensils, and linens, or unwrapped single-service and single-use articles.
- 2. Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages if:
  - <u>a.</u> The integrity of the packages cannot be affected by broken glass falling into them; and
  - <u>b.</u> The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

3. Infrared or other heat lamps must be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-101. General ventilation. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge. Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

**General Authority:** NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-104.** Locker area. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing, their personal care items, and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-107. Storage of materials.

- 1. Poisonous or toxic materials consist of the following four categories:
  - a. Pesticides.
  - b. Detergents, sanitizers, and related cleaning or drying agents.
  - C. Substances necessary for the operation and maintenance of the establishment such as nonfood-grade lubricants and personal care items that may be deleterious to health.
  - d. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
- Each of the four categories set forth in subsection 1 must be stored and physically located separate from each other. All poisonous or toxic

materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall be separated by spacing or partitioning and shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.

- 3. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, food equipment, utensils, linens, and single-service and single-use articles by:
  - <u>a.</u> <u>Separating the poisonous or toxic materials by spacing or partitioning; and</u>
  - <u>Locating the poisonous or toxic materials in an area that is not above food, food equipment, utensils, linens, and single-service or single-use articles.</u>

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-108. Use of materials.

- Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
- 2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, in a way that constitutes a hazard to employees or other persons, or in a way other than in full compliance with the manufacturer's labeling.
- 3. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food.
- 4. Drying agents used in conjunction with sanitization may contain only components that are listed in 21 Code of Federal Regulations.
- 5. Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 chemicals used in washing or to assist in the lye peeling of fruits and vegetables.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-109. Personal medications. Only those medicines necessary for the health of employees are allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale. Medicines for employees' use must be labeled as specified in section 33-33-04-106 and located to prevent the contamination of food, equipment, utensils, linens, and single-service articles. Medicines belonging to employees or to children in a day care center that require refrigeration and are stored in a food refrigerator shall be stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines and located so they are inaccessible to children.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-111. General premises.

- Food establishments and all property used in connection with their operations shall be kept free of litter.
- The walking and driving surfaces of all exterior areas of food establishments shall be surfaced with concrete or asphalt, or with gravel or similar material effectively treated to facilitate maintenance and minimize dust. These surfaces shall be graded to prevent pooling and shall be kept free of litter.
- 4. The traffic of unnecessary persons through the food preparation and utensil-washing areas is prohibited.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-115. Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner. After use, mops shall be placed in a position that allows them to air dry without soiling walls, equipment, or supplies.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

#### 33-33-04-116. Prohibiting animals.

- 1. Except as specified in subsections 2 and 3, live animals may not be allowed on the premises of a food establishment.
- 2. Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:
  - Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
  - b. Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas:
  - c. In areas that are not used for food preparation such as dining and sales areas, support animals such as guide dogs that are trained to assist an employee or other person who is handicapped, are controlled by the handicapped employee or person, and are not allowed to be on seats or tables; and
  - d. Pets in the common dining areas of group residences at times other than during meals if:
    - (1) Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas;
    - (2) Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present; and
    - (3) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service.
  - e. In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.
- Live or dead fish bait must be stored so that contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.

4. Food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in subsection 2.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

33-33-04-133. Handwashing. A convenient handwashing facility shall be available for employee handwashing. At a minimum, this facility shall consist of warm running water, soap, and individual paper towels. If approved, when food exposure is limited and handwashing sinks are not conveniently available, such as in some mobile or temporary food establishments or at some vending machine locations, employees may use chemically treated towelettes for handwashing.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

<u>33-33-04-138.1.</u> Routine inspections. The department shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with this code and the establishment's potential as a vector of foodborne illness evaluating:

- 1. Past performance, for nonconformance with code or HACCP plan requirements that are critical:
- 2. Past performance, for numerous or repeat violations of code or HACCP plan requirements that are noncritical;
- 3. Past performance, for complaints investigated and found to be valid:
- 4. The hazards associated with the particular foods that are prepared, stored, or served:
- 5. The type of operation, including the methods and extent of food storage, preparation, and service;
- 6. The number of people served; and
- 7. Whether the population served is a highly susceptible population.

History: Effective August 1, 2003.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

**33-33-04-143.** Contents of an HACCP plan. For a food establishment that is required under section 33-33-04-142 to have an HACCP plan, the plan and specifications must indicate:

- A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the department;
- 2. A flow diagram by specific food or category type identifying critical control points and providing information on the following:
  - Ingredients, materials, and equipment used in the preparation of that food; and
  - b. Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
- 3. A statement of standard operating procedures for the plan under consideration including clearly identifying:
  - a. Each critical control point;
  - b. The critical limits for each critical control point;
  - c. The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge;
  - The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points;
  - e. Action to be taken by the person in charge if the critical limits for each critical control point are not met; and
  - f. Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
- 4. Additional scientific data or other information, as required by the department, supporting the determination that food safety is not compromised by the proposal.

History: Effective July 1, 1997.

General Authority: NDCC 19-02.1-20, 23-01-03(3)

Law Implemented: NDCC 19-02.1-09

# **Consumer Advisories**

Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry or shelifish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.

#### **EXCLUSIONS & RESTRICTIONS**

Note: These tables are not a replacement to reading sections 33-33-04-28 through 33-33-04-28.8, but are viewed only as a learning aid.

Note: A diagnosis can only be made after an individual has been examined by a physician. The code does not mandate that an individual see a physician, but because of the severity of an illness with the "Big 4", most of those afficied will visit their

Key for Abbraviations: FBI - foodborne liness; GL - gastrointestrial; HAV - hapatitis A virus; IgG - Immune game globulin; MD - medical doctor; PIC - person in charge

GENERAL POPULATION FACILITIES		REMSTATINGE
EXCLUDE	If discensed with "Big 4": S. Typhi, Shapete spp., E. Coll 0157:H7 & HAV (per 33-33-04-28-1(1), agents listed in 35-33-04-28(1)).	Regulatory approval & MO clearance: free of symptoms and regative stool for \$. typhil (per 33-33-04-28.2(1) vs 33-35-04-28.8). Asymptometic & positive stools for Shigele & 0157:H7 ere GK. (per 33-33-04-28.2(1)(b)).
	Jaundice : 7 days (per 33-33-04-28.1(4)(a)) (Cause of jaundice may not be HAV)	1) If <u>clistmosted</u> as HAV, then requistory approval 8 MD clearance; jaundice beases or at least 2 blood tests show falling liver enzymes, (ser 33-33-04-28.2(1)(a)(i) 8 ii) vis 33-33-04-28.8(ii)). 2) If not seen by 8ID, then vis the PIC when jaundice coases par 23-33-04-28.2(4)(a)(i)). 3) Free offer not HAV vis MD documentation (ser 33-33-04-28.2(4)(a)(i)). 4) If suspected of causing FIR, then MD clearance: not shedding the virus 8 jaundice ceases, (ser 33-33-04-28.2(4)(b))).
RESTRICT	Experiencing GI symptoms (feled in 33-33- 04-28(2)(a), no diagnosis of "Big 4)", OR exposed itsion, boil or wound (per 33-33-84- 28.1(2)(x)).	1) Once symptoms cause & ne FBI, via the PIC (per 33-33 04-28.20)(state). 2) If FBI is suspected, then MD clearance: free of symptoms & agent (per 33-33-04-28.2(2)(s)(8) via 33-33-04-28.2(2)(s)(8)). 3) Chronic no ninfectious condition exists, then MD documentation. (per 33-33-04-28.2(2)(s)(8)).
	Asymptometic & positive atool for S. typhii (shedder) (per 33-35-04-38 \$(2)(b)).	MD clearance (par 33-33-04-31.2(2)(b)) via 3 consecutive negative stools (via 33-23-84-31.8(1)).
	Jaundios > 7 days (per 33-33-04-28.1(4)(b) (f)) (Cause of jaundios may not be HAV)	1) If <u>discreted</u> as HAM, then requisitory approved & MD clearance; guardice cesses or at least 2 blood tests show falling liver enzymes, (per 23-23-04-28.2(1)(a)(iii) we 33-33-04-28.8(4)). 2) If not sees by MD, then via the PIC when joundles cases (per 33-23-04-28.2(4)(a)(ii). 3) Free offer not HAV via MD documentation (per 33-33-04-28.2(4)(a)(ii). 4) If exerpected of casesing FBI, then MD clearance; not shedding the virus & joundles cases, (per 33-33-04-28.2(4)(b)).
	Persistent eneszing, coughing or runny nose	Once symptoms cases, visithe PIC
NOT ROUTINELY RESTRICTED	Asymptomatic & blood tests indicative of current HAV infection	RATIONALE: Dependent on duties, personal hygiens, previous exposure & recipient of IgG.

GENERAL POPULATION FACILITIES		REINSTATING	
NOT RESTRICTED	Prior illness from 5. typhi when stoots are regative (per 33-33-04-28.6(1)).		
	Asymptomatic & positive stool for Shigelia spp. or E. coli 0157:H7 (per 33-33-04. 28.2(1)(8)(880).		
	Other prior limesees and/or other asymptometic conditions		
HIGHLY BUSCEPT	TIBLE POPULATIONS	REINSTATING	
EXCLUDE	If discreased with "Big 8": S. typhi, Shigers spp. E. coli 0157:17 8 HAV (per 33-33-04-28.1(1), agents field in (33-33- 04-28(1)).	Regulatory approval and MD clearance: free of symptoms & negative stocks for agent, (per 33-35-04-28,2(1) vis (33-35-04-28,2).	
	Jaundice : 7 days (per 33-33-04-28.1(4)(s)) Jaundice > 7 days (per 33-33-04-28.1(4)(b)(l)) (Cause of jaundice may not be HAV)	1) If <u>districted</u> as MAV, then regulatory approval & MD clearance: jaunolice cases or at least 2 blood tests show falling liver enzymes, (per 33-33-04-28.2(1)(a)(M6) wa 33-33-04-28.2(1)(a)(M6) was 33-33-04-28.2(4)(a)(B).  3) Pre-e office set MAV via MO documentation (per 33-33-04-28.2(4)(a)(B).  4) If suspected of causing PSI, then MD descrance not shedding the was and jaunolice cosess, (per 33-33-04-28.2(4)(b)).	
	Asymptomatic & positive stool for S, typhi, Shipelie app. or E, coli O157:M7 (shedder) (or 33-33-04-38.1(3)(6)	MD clearance: free of agent, (per 33-33-04-28.2(3) via 33-33-04-28.8(1-3) negative stocks.	
	Prior timess with: S. typhi within heat 3 months (per 33-33-64-26.1(3)(ct), Shipelis or E. coli (0-157:917 within test month (per 36-33-04-26.1(3)(dt))	Free of agent by MID clearance (per 15-33-04-28.2(2) vis 33-33-04-28.5(1-3), negative stocks).	
	Experiencing GI symptoms (per 33-33-04- 28(21) AMD meets high risk conditions (per 33-33-04-28(4)), (seeking per 33-33-04- 28.1(3(46)).	Free of "Big 4" by MD clearance (per 33-33-04-28.2(3) via 33-33-04-28.8(1-4) negative atools or falling liver ensymmes).	
RESTRICT	Experiencing Gil symptoms (fisted in 33-33-04-28/2(a), se diagnosis of "Big 4"). OR exposed lession, boil or wound (per 33-32-04-28.1(2)(a)).	1) Once symptoms cases & no FBI, via the PIC-(per 33-33 04-28.2(2)(a)(8). 2) If FBI is suspected, then ND clearance: free of symptoms & agent (per 53-53-04-28.2(2)(a)(8) via 33-35-04- 28.6). 3) Chronic noninlections condition skillets, then MD documentation, (per 33-33-04-28.2(2)(a)(8)).	
	Persistent sneeding, coughing or runny nose	Once symptome cesse, vie the PIC	
NOT ROUTINGLY	Asymptomatic & blood teets indicative of current HAV infection	RATIONALE: Dependent on duties, personal hygiene, previous exposure & recipient of IgG.	
NOT RESTRICTED	Other prior illnessee and/or other		

The tables above will be deleted. The new table is below:

	water that the state of the sta	Appendix B-1
Exclusions and Restrictions for Food Employees and Applicants		
<u>Health Status</u>	Facilities Serving Highly Susceptible Population	Facilities Not Serving Highly Susceptible Population
1. Diagnosed with illness due to Salmonella Typhi, Shigella spp., Shiga toxin-producing E. coli, or hepatitis A virus	<u>Exclude</u> 33-33-04-28(1)	<u>Exclude</u> 33-33-04-28(1)
2. Experiencing a symptom listed in 33-33-04-28(2)	Restrict 33-33-04-28.1(2)	Restrict 33-33-04-28.1(2)
3. Experiencing a symptom listed in 33-33-04-28(2)(a) and meets a high-risk condition* of 33-33-04-28(4)(a-c)	<u>Exclude</u> 33-33-04-28.1(3)(a)	<u>Restrict</u> 33-33-04-28.1(2)(a)
4. Asymptomatic but stools positive for S. Typhi, Shigella spp., or Shiga-producing E. coli	<u>Exclude</u> 33-33-04-28.1(3)(b)	Restrict 33-33-04-28.1(2)(b)
5. Past illness from Salmonella Typhi within the last three months	<u>Exclude</u> 33-33-04-28.1(3)(c)	No Restrictions
6. Past illness from Shigella spp. or Shiga toxin-producing E. coli within the last month	<u>Exclude</u> 33-33-04-28.1(3)(d)	No Restrictions
7. Onset of jaundice within the last seven days *High-risk conditions apply onl	Exclude 33-33-04-28.1(4)(a)	<u>Exclude</u> 33-33-04-28.1(4)(a)

Appendix B			
Removal of Exclusions and Restrictions for Food Employees and Applicants			
Health Status 33-33-04-28 & 33-33-04-28.1	Facilities Serving Highly Susceptible Population 33-33-04-28.2	Facilities Not Serving Highly Susceptible Population 33-33-04-28.2	
1. Diagnosed with illness due to Salmonella Typhi, Shigella spp., Shiga toxin-producing E. coli, or hepatitis A virus 33-33-04-28(1)	1. RA Approval + 2. Doctor* - Stool-free or blood-free or symptom-free 33-33-04-28.2(1)	1. RA Approval + 2. Doctor* - Stool-free or blood-free or symptom-free 33-33-04-28.2(1)(b)	
2. Experiencing a symptom listed in 33-33-04-28(2)	No illness results +     no symptoms or	1. No illness results + no symptoms or	
	Suspect cause of illness + no symptoms     + Doctor* - Stool- or blood-free or	Suspect cause of illness     + no symptoms + Doctor*     - Stool- or blood-free or	
	3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)	3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)	
3. Experiencing a symptom listed in 33-33-04-28(2)(a) and meets a high-risk condition 33-33-04-28(4)(a-c) 33-33-04-28.1(3)(a)	1. Doctor* - Stools- or blood-free or	No illness results + no symptoms or	
	2. No jaundice per 33-33-04-28.2(4)	Suspect cause of illness     + no symptoms + Doctor*     Stool- or blood-free or	
	3. 33-33-04-28.1(3)(a) Noninfectious condition 33-33-04-28.2(3)	3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)	

4. Asymptomatic by stools positive for S. Typhi, Shigella spp., or Shiga toxin-producing E. coli 33-33-04-28.1(2)(b) and (3)(b)	<u>Doctor* - Stools-free</u> 33-33-04-28.2(3)	<u>Doctor* - Stools-free</u> 33-33-04-28.2(2)(b)
5. Past illness from Salmonella Typhi within the last three months 33-33-04-28(3)	<u>Doctor* - Stools-free</u> 33-33-04-28.2(3)	<u>NA</u>
6. Past illness from Shigella spp., or Shiga toxin-producing E. coli within last month 33-33-04-28(3)	<u>Doctor* - Stools-free</u> 33-33-04-28.2(3)	<u>NA</u>
7. Onset of jaundice within last seven days 33-33-04-28.1(4)(a)	1. No illness results +  Doctor* - Blood-free or Doctor* - No jaundice or	1. No illness results + Doctor* - Blood-free or Doctor* - No jaundice or
	2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)
8. Onset of jaundice more than seven days ago 33-33-04-28.1(4)(b)	1. No illness results +  Doctor* - Blood-free or Doctor* - No jaundice or	No illness results +     Doctor* - Blood-free or     Doctor* - No jaundice or
	2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)
	dicated, nurse practitioner provide documentation.	or physician assistant, if

#### **CHAPTER 33-36-01**

**33-36-01-01. Definitions.** Words defined in North Dakota Century Code chapter 23-27 have the same meaning in this chapter.

- 1. "Cardiopulmonary resuscitation", initial and refresher, means the American heart association health care provider standards or its equivalent which includes the following skills: adult one and two person cardiopulmonary resuscitation, adult obstructed airway, child one and two person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, and infant obstructed airway.
- 2. "Certification scope enhancement programs" means those certification programs which add additional skills to or refresh existing skills obtained from the primary certification programs.
- 2. 3. "Department" means the state department of health and consolidated laboratories.
- 3. 4. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
- 4. <u>5.</u> "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.
- 5. 6. "Prehospital emergency medical services personnel" are those persons certified under the programs defined in this chapter.
- 6. 7. "Primary certification programs" means those certification programs which integrate a broad base of skills necessary to perform within a level of the emergency medical services system as determined by the department.

History: Effective April 1, 1992; amended effective August 1, 2003.

General Authority: NDCC 23-27-04.3 Law Implemented: NDCC 23-27-04.3

**33-36-01-02.** Emergency medical services training programs. The department shall establish training, testing, and certification requirements for the following emergency medical services programs:

- 1. Primary certification programs:
  - a. First responder;
  - Emergency care technician;
  - c. Emergency medical technician-basic;

d.	Emergency	medical	technician-intermediate
	technician-interm	ediate/85:	

- e. Emergency medical technician-intermediate/99:
- e. f. Emergency medical technician-paramedic; and
- f. g. Advanced first aid ambulance attendant.
  - h. Emergency vehicle operations;
  - i. Emergency medical dispatch; and
  - i. Automobile extrication.
- 2. Certification scope enhancement programs:
  - Emergency medical services instructor;
  - b. Automatic defibrillation;
  - c. Manual defibrillation;
  - d. Intravenous maintenance;
  - e. Flight medical crew;
  - f. Automobile extrication;
  - 9. Automobile extrication instructor;
  - h. First responder-refresher;
  - i. Emergency medical technician-basic refresher;
  - j. Emergency medical technician-intermediate refresher;
  - k. Emergency medical technician-paramedic refresher;
  - H. g. Epinephrine administration; and
- m. h. Dextrose administration.;
  - i. Nitroglycerin administration;
  - i. Bronchodilator/nebulizer administration;
  - k. Multi-lumen airway insertion;

- I. Cardiac monitoring; and
- <u>m.</u> <u>Emergency vehicle operations instructor.</u>
- 3. Certification refresher programs:
  - a. First responder-refresher;
  - b. Emergency medical technician-basic refresher;
  - <u>C.</u> <u>Emergency medical technician-intermediate/85 refresher;</u>
  - d. Emergency medical technician-intermediate/99 refresher; and
  - <u>e.</u> <u>Emergency medical technician-paramedic refresher.</u>

History: Effective April 1, 1992; amended effective October 1, 1992; August 1,

1994; August 1, 2003.

General Authority: NDCC 23-27-04.3 Law Implemented: NDCC 23-27-04.3

33-36-01-03. Training, testing, and certification standards for primary certification programs. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

#### 1. First responder:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Services: First Responder Training Course", in the edition specified by the department.
- Textbooks. The department shall <del>publish a list of approved</del> <u>approve</u> textbooks.
- c. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.

- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until <del>December March</del> thirty-first of the <del>following second</del> year. Persons passing the testing process between July first and December thirty-first must be certified until <del>December March</del> thirty-first of the <del>second</del> third year.
- f. Recertification. The department shall recertify for a two-year period expiring on <del>December</del> <u>March</u> thirty-first those persons who have met one of the following requirements:
  - Completion of a sixteen-hour North Dakota first responder refresher course.
  - (2) Completion of a twenty-four hour emergency medical technician-basic refresher course.
  - (3) Audit lessons two, three, four, five, seven, ten, fourteen, and twenty-one of an emergency medical technician-basic course consisting of twenty-five hours.
- 2. Emergency care technician and emergency medical technician-basic:
  - a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Ambulance National Standard Curriculum", in the edition specified by the department.
  - b. Textbooks. The department shall <del>publish a list of approved</del> <u>approve</u> textbooks.
  - Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency care technician or its equivalent.
  - d. Testing. Students must pass the national registry's written examination and a practical examination provided specified by the department which meets the national registry's standards or its equivalent in order to be eligible for certification. The content of the practical examination must be determined by the department, and the department shall establish policies regarding retesting of failed written and practical examinations consistent with those established by the national registry.
  - e. Emergency care technician initial certification. The department shall issue initial certification as an emergency care technician

to persons under the age of eighteen who have completed an authorized course and passed the testing process or those who have requested reciprocity from another state with equivalent training. Persons passing the testing process between January first and June thirtieth must be certified until December March thirty-first of the following second year. Persons passing the testing process between July first and December thirty-first must be certified until December March thirty-first of the second third year.

- f. Emergency medical technician-basic initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.
- 9- Recertification of emergency care technicians. The department shall recertify for a two-year period expiring on <del>December</del> <u>March</u> thirty-first those persons who have met all of the following requirements:
  - (1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes the American heart association's a cardiopulmonary resuscitation course c health care provider refresher or its equivalent, answering correctly at least seventy percent of the questions on a written examination provided by the department and passing a local practical examination meeting the department's requirements.
  - (2) Completion of forty-eight hours of continuing education as approved by the department or the national registry.
- h. Recertification of emergency medical technicians-basic. Emergency medical technician-basics technicians-basic must be recertified by the national registry recertification policies.
- 3. Emergency medical technician-intermediate technician-intermediate/85:
  - Student prerequisite certification. Students must be certified as an emergency care technician or its equivalent prior to testing.
  - b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Intermediate National Standard Curriculum", in the edition specified by the department.

- C. Textbooks. The department shall <del>publish a list of approved</del> <u>approve</u> textbooks.
- d. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate technician-intermediate/85 or its equivalent.
- e. Testing. Students must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification.
- f. Emergency medical technician-intermediate technician-intermediate/85 initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.
- 9. Recertification of emergency medical technician-intermediate technician-intermediate/85. Emergency medical technician-intermediate technician-intermediate technician-intermediate/85 must be recertified by the national registry recertification policies.
- 4. Emergency medical technician-intermediate/99:
  - <u>a.</u> Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent prior to testing.
  - b. Curriculum. The course curriculum shall be that issued by the United States department of transportation, national highway traffic safety administration, in the addition specified by the department.
  - C. Textbooks. The department shall approve textbooks.
  - d. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate/99 or its equivalent.
  - <u>e.</u> <u>Testing. Students must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification.</u>
  - f. Emergency medical technician-intermediate/99 initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.

9. Recertification of emergency medical technician-intermediate/99. An emergency medical technician-intermediate/99 must be recertified by the national registry recertification policies.

# 5. Emergency medical technician-paramedic:

- Student prerequisite certification. Students must be certified as an emergency care technician or its equivalent prior to testing.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Paramedic National Standard Curriculum", in the edition specified by the department.
- c. Textbooks. The department shall <del>publish a list of approved</del> <u>approve</u> textbooks.
- d. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.
- e. Field internship. Courses must be required to provide a minimum of three hundred hours of field internship experience based on the curriculum requirements for patient contacts with a licensed advanced life support ambulance service paramedic preceptor.
- f. Testing. A student must pass the written and practical examinations as provided by the national registry and administered by the department in order to be eligible for certification.
- 9- Emergency medical technician-paramedic initial certification. A person eighteen years of age or older who has completed an authorized course and passed the testing process shall obtain certification from the national registry.
- h. Recertification of emergency medical technician-paramedic. An emergency medical technician-paramedic must be recertified by the national registry recertification policies.

#### 6. Advanced first aid ambulance attendant:

5. a. Advanced first aid ambulance attendant initial certification. The department shall issue initial certification to persons currently certified in American national red cross advanced first aid and who demonstrate a minimum of two years experience with a North

- Dakota licensed ambulance service as evidenced by North Dakota ambulance service license application personnel rosters.
- b. Recertification of advanced first aid ambulance attendants. The department shall recertify for a three-year period, expiring on March thirty-first, those persons who have completed a twenty-four hour emergency medical technician-basic refresher course, which includes the American heart association's a cardiopulmonary resuscitation course c refresher or its equivalent, answering correctly at least seventy percent of the questions on a written examination provided by the department and passing a local practical examination meeting the department's requirements.

#### 7. Emergency vehicle operations:

- <u>a.</u> <u>Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.</u>
- b. Course coordinator. The course coordinator must be certified by the department as an emergency vehicle operation instructor.
- <u>C.</u> Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical exam provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- <u>Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course.</u>

# 8. Emergency medical dispatch:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
- b. Course coordinator. The course coordinator must be approved by the department as an emergency medical dispatch instructor.

- <u>C.</u> Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- <u>e.</u> Recertification. The department shall recertify for a two-year period those persons who have completed a seven-hour refresher as designated by the department.

# 9. Automobile extrication:

- <u>a.</u> <u>Curriculum. The course curriculum must be approved by the department.</u>
- b. Course coordinator. The course coordinator must be certified by the department as an automobile extrication instructor.
- <u>C.</u> Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- <u>e.</u> Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course and pass the department's written examination.

History: Effective April 1, 1992; amended effective August 1, 1994; August 1, 2003.

**General Authority:** NDCC 23-27-04.3 **Law Implemented:** NDCC 23-27-04.3

33-36-01-04. Training, testing, and certification standards for certification scope enhancement programs. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

#### 1. Automatic defibrillation:

- a. Student prerequisite certification. Students must be certified as a first responder or its equivalent, with oxygen and suction training in cardiopulmonary resuscitation.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Automatic Defibrillator: Coordinator Handbook" the cardiovascular emergencies section of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department or its equivalent.
- C. Textbooks. The textbook must be chapter twenty from the advanced cardiac life support textbook published by the American heart association department shall approve textbooks.
- d. Course instructor coordinator. The course instructor coordinator must be a physician, registered nurse, or paramedic and must be currently certified by the American heart association in advanced cardiac life support certified by the department as an emergency medical services instructor, and currently certified in automatic defibrillation or its equivalent.
- e. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination conducted provided by the department. The practical examination must consist of the automatic defibrillation of a simulated cardiac arrest patient.
- f. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. The certification must expire one year from the date the practical and written tests were passed. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- 9. Recertification. The department shall recertify for a one-year two-year period those persons who have met all of the following requirements:
  - (1) Quarterly review of the automatic defibrillation process conducted by a person trained at least to the emergency care technician level and certified in automatic defibrillation.

- (2) Demonstration of skill competence to the squad's medical director five to seven months after becoming certified.
- (3) Successful completion of the department's written and practical examinations.

#### 2. Manual defibrillation:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".
- Course instructor coordinator. The course instructor coordinator must be a physician, registered nurse, or paramedic certified by the department as an emergency medical services instructor and must be currently certified by the American heart association in advanced cardiac life support or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination conducted provided by the department. The practical examination must consist of the manual defibrillation of a simulated cardiac arrest patient and correctly identify eleven out of thirteen static cardiac strips.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. The certification must expire one year from the date the practical and written tests were passed. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a one-year two-year period those persons who have met all of the following requirements:
  - (1) Quarterly review of the manual defibrillation process conducted by a person trained at least to the emergency care technician level and certified in manual defibrillation.
  - (2) Demonstration of skill competence to the squad's medical director five to seven months after becoming certified.

(3) Successful completion of the department's written and practical examinations.

# 3. Intravenous therapy maintenance:

- a. Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT IV Maintenance Module".
- Course instructor coordinator. The course instructor coordinator must be an emergency medical technician-intermediate certified by the department as an emergency medical services instructor, and currently certified in intravenous therapy maintenance, or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of performing intravenous maintenance skills on a manikin.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until <del>December March</del> thirty-first of that the second year. Persons passing the testing process between July first and December thirty-first must be certified until <del>December March</del> thirty-first of the following third year.
- f. Recertification. The department shall recertify for a one-year two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

#### 4. Flight medical crew:

- a. Student prerequisite certification. An individual A student must be enrolled as an emergency medical technician-paramedic student or certified as an emergency medical technician-paramedic an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "Air Medical Crew National Standard Curriculum", in the edition specified by the department or its equivalent.

- Course instructor coordinator. The department shall provide approve the course instructor coordinator.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course. A person who has completed an authorized course between January first and June thirtieth must be certified until December March thirty-first of the following second year. Persons passing the testing process between July first and December thirty-first must be certified until December March thirty-first of the second third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's four-hour refresher course or complete eight hours of air medical related education <u>as approved by the department</u>.

#### 5. Automobile extrication:

- a: Curriculum. The course curriculum must be that issued by transportation rescue consultants, inc. entitled "The Carbusters: Principles, Techniques and Handtools".
- b. Course instructor. The course instructor must be certified by the department as an automobile extrication instructor.
- C: Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December thirty-first of the following year. Persons passing the testing process between July first and December thirty-first must be certified until December thirty-first of the second year.
- e: Recertification. The department shall recertify for a two-year period those persons who complete the department's six hour refresher course or audit eight hours of an initial course and pass the department's written examination.

#### 6. Automobile extrication instructor:

a. Curriculum. The course curriculum must be that issued by transportation rescue consultants, inc. entitled "The Carbusters: Principles, Techniques and Handtools" approved by the department.

- b. Student prerequisite. The candidate for this course must be certified for at least two years in automobile extrication.
- <u>C.</u> Course <u>instructor</u> <u>coordinator</u>. The department shall <del>provide</del> <u>designate</u> the course <u>instructor</u> <u>coordinator</u>.
- e. d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department.
- d. e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December March thirty-first of the following second year. Persons passing the testing process between July first and December thirty-first must be certified until December March thirty-first of the second third year.
- e. <u>f.</u> Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an automobile extrication course or have audited eight hours of an automobile extrication instructor course.

# 7. 6. Emergency medical services instructor:

- a. Student prerequisite. An individual must be at least eighteen years of age, and certified for at least two years as a patient care provider, in order to be certified.
- b. Curriculum. The course curriculum must consist of thirty-two hours of training based on the curriculum be that issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Services Instructor Training Program, A National Standard Curriculum", in the edition specified by the department. The department shall determine which training topics must be extracted from the curriculum to comprise the thirty-two hours of training or its equivalent.
- c. Course instructor coordinator. The course instructor coordinator must be provided by the department certified by the department as an emergency medical services instructor.
- d. Initial certification. The curriculum must be divided into two 16-hour blocks of instruction and the department shall issue initial certification to persons for each sixteen-hour block. Persons completing the first block of instruction between January first and June thirtieth must be certified until December thirty-first of that year. Persons completing the first block of instruction between July first and December thirty-first must be certified until

December thirty-first of the following year. Persons completing the second block of instruction must be certified for an additional year beyond the expiration date of the first block. The department may determine equivalencies for either block of instruction. The department shall issue initial certification to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth must be certified until March thirty-first of the second year. Persons completing the course between July first and December thirty-first must be certified until March thirty-first of the third year.

e. Recertification. The department shall recertify for a two-year period those persons who have completed the department's eight-hour refresher recertification course or have audited eight hours of an initial emergency medical services instructor course.

#### 8. First responder refresher:

- a. Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "First Responder Refresher Training Program National Standard Curriculum", in the edition specified by the department.
- b. Textbooks. The department shall publish a list of approved textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the course coordinator and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.

# 9. Emergency medical technician-basic refresher:

- a: Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "EMT Ambulance Refresher Training Program National Standard Curriculum", in the edition specified by the department.
- b. Textbooks. The department shall publish a list of approved textbooks.

- e. Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency care technician or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator.

# 10. Emergency medical technician-intermediate refresher:

- a. Curriculum. The course coordinator shall select topics consisting of twelve hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety administration entitled "Emergency Medical Technician-Intermediate National Standard Curriculum", in the edition specified by the department.
- b. Textbooks. The department shall publish a list of approved textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate or its equivalent.

# 11. Emergency medical technician-paramedic refresher:

- a: Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration entitled "EMT Paramedic Refresher Training Program National Standard Curriculum", in the edition specified by the department.
- b. Textbooks. The department shall publish a list of approved textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.

#### <del>12.</del> <u>7.</u> Epinephrine administration:

a. Student prerequisite certification. A student must be certified as an emergency care technician a first responder or its equivalent.

- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT/ECT Epinephrine Administration Module".
- Course instructor coordinator. The course instructor coordinator must be a physician, registered nurse, or paramedic certified by the department as an emergency medical services instructor and must be currently certified in epinephrine administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must consist of performing subcutaneous injection of epinephrine with the use of a preloaded, self-injecting device such as the epipen trainer.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until <a href="December March">December March</a> thirty-first of that the second year. Persons passing the testing process between July first and December thirty-first must be certified until <a href="December March">December March</a> thirty-first of the following third year.
- f. Recertification. The department shall recertify for a one-year two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

# 13. 8. Dextrose administration:

- a. Student prerequisite certification. A student must be certified as an emergency medical technician-intermediate or its equivalent.
- Curriculum. The course curriculum must be that issued by the department entitled "EMT-I -- 50% Dextrose Administration Module".
- Course instructor coordinator. The course instructor coordinator must be a physician, registered nurse, or paramedic certified by the department as an emergency medical services instructor and must be certified in dextrose administration or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all portions of a practical examination provided by the department. The practical examination must

- consist of administration of the drug by aseptic injection into intravenous administration tubing.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until December March thirty-first of that the second year. Persons passing the testing process between July first and December thirty-first must be certified until December March thirty-first of the following third year.
- f. Recertification. The department shall recertify for a one-year two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

# 9. Nitroglycerin administration:

- <u>a.</u> Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be the general pharmacology and the cardiovascular emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department.
- <u>Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and be certified in nitroglycerin administration or its equivalent.</u>
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

#### 10. Bronchodilator/nebulizer administration:

- <u>a.</u> <u>Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.</u>
- b. Curriculum. The course curriculum must be the general pharmacology and the respiratory emergencies sections of the curriculum issued by the United States department of transportation, national highway traffic safety administration, for emergency medical technicians-basic, in the edition specified by the department, or its equivalent.
- <u>Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and be certified in bronchodilator administration or its equivalent.</u>
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

#### 11. Multi-lumen airway insertion:

- <u>a.</u> Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Multi-Lumen Airway Module".
- Course coordinator. The course coordinator must be certified as an emergency medical services instructor and must be currently certified in multi-lumen airway insertion or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.

- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's two-hour refresher course, written examination, and practical examination.

# 12. Cardiac monitoring:

- <u>a.</u> Student prerequisite certification. A student must be certified as an emergency care technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Cardiac Monitoring".
- <u>Course coordinator. The course coordinator must be certified as an emergency medical services instructor and must be certified in cardiac monitoring or its equivalent.</u>
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- e. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- f. Recertification. The department shall recertify for a two-year period those persons who have completed the department's one-hour refresher course, written examination, and practical examination.

#### 13. Emergency vehicle operations instructor:

- <u>a.</u> Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
- <u>b.</u> Course instructor. The department shall designate the course instructor.

- <u>C.</u> Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination provided by the department.
- d. Initial certification. The department shall issue initial certification to persons who have completed an authorized course and passed the testing process. Persons passing the testing process between January first and June thirtieth must be certified until March thirty-first of the second year. Persons passing the testing process between July first and December thirty-first must be certified until March thirty-first of the third year.
- e. Recertification. The department shall recertify for a two-year period those persons who have satisfactorily conducted an emergency vehicle operations course or have audited eight hours of an emergency vehicle operator's course.

History: Effective April 1, 1992; amended effective October 1, 1992; August 1,

1994: August 1, 2003.

General Authority: NDCC 23-27-04.3 Law Implemented: NDCC 23-27-04.3

33-36-01-04.1. Training, testing, and certification standards for certification refresher programs. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms provided and in the manner specified by the department contingent on the following requirements:

#### 1. First responder refresher:

- <u>a.</u> <u>Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.</u>
- b. Textbooks. The department shall approve textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator. The practical examination must consist of no less than one medical, one cardiopulmonary resuscitation, and one trauma station.

# Emergency medical technician-basic refresher:

- <u>a.</u> <u>Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.</u>
- b. Textbooks. The department shall approve textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency care technician or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination provided by the department and pass all stations of a practical examination conducted by the course coordinator.
- 3. Emergency medical technician-intermediate/85 refresher:
  - <u>a.</u> Curriculum. The course coordinator shall select topics consisting of twelve hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Textbooks. The department shall approve textbooks.
  - <u>C.</u> Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate/85 or its equivalent.
- <u>4.</u> <u>Emergency medical technician-intermediate/99 refresher:</u>
  - <u>a.</u> Curriculum. The course coordinator shall select topics consisting of thirty-six hours of training from the curriculum issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
  - b. Textbooks. The department shall approve textbooks.
  - Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-intermediate/99 or its equivalent.
- <u>5.</u> <u>Emergency medical technician-paramedic refresher:</u>

 Has attempted to obtain by fraud or deceit a certification or license or has submitted to the department any information that is fraudulent, deceitful, or false.

History: Effective April 1, 1992: amended effective August 1, 2003.

General Authority: NDCC 23-27-04.3 Law Implemented: NDCC 23-27-04.3

**33-36-01-06.** Revocation process. The department may revoke an individual's certification only after the individual has been making a diligent effort to:

- 1. Informed Inform the individual by the department of the allegations.
- 2. Informed Inform the individual of the department's investigation results.
- 3. Informed Inform the individual of the department's intent to revoke and provided provide a notice of right to request hearing.
- 4. Provided Provide the individual opportunity to request a hearing and rebut the allegations.

History: Effective April 1, 1992; amended effective August 1, 2003.

General Authority: NDCC 23-27-04.3 Law Implemented: NDCC 23-27-04.3

- <u>a.</u> Curriculum. The course curriculum must be that issued by the United States department of transportation, national highway traffic safety administration, in the edition specified by the department.
- b. <u>Textbooks</u>. The department shall approve textbooks.
- Course coordinator. The course coordinator must be certified by the department as an emergency medical services instructor and must be currently certified as an emergency medical technician-paramedic or its equivalent.

History: Effective August 1, 2003.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

**33-36-01-05. Revocation of certification.** The department may revoke the certification of a person who:

- 1. Has represented themselves to others as a physician, nurse, or health care provider other than the highest level for which they are certified.
- 2. Is incapable of properly performing the skills for which the individual has been certified.
- 3. Performs a skill which exceeds those allowed by the individual's level of certification.
- 4. Has been convicted of charged with a felony, misdemeanor, or an infraction for an offense which has a direct bearing upon the person's ability to serve the public in a capacity certified by this chapter. Persons certified who have been charged with a felony, misdemeanor, or an infraction must report the information to the department.
- 5. Has been found by a court of law to be mentally incompetent.
- 6. Failure to follow examination policies as a student, instructor, or course coordinator.
- 7. Diversion of drugs for personal or unauthorized use.
- 8. Performance of care in a manner inconsistent with acceptable standards.

TITLE 48
STATE BOARD OF ANIMAL HEALTH

#### SEPTEMBER 2003

#### **CHAPTER 48-09-01**

**48-09-01-02. Brand inspection.** For the purpose of complying with North Dakota Century Code chapters 36-05, 36-09, and 36-22:

- When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
- 2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
- No claim for feed, pasture, or gathering shall be allowed at market.
   All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
- Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
- All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers, and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.
- 6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under

emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications; and to extend or remove such approval.

- It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
- 8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.
- 9. A buying station is a point where cattle, horses, or mules are gathered for sale.
- A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.
- 11. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
- 12. A fee of sixty seventy-five cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor; at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee. A permanent transportation inspection permit

may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.

13. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Baker livestock auction, inc., Baker, Montana; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana.

History: Amended effective April 1, 1980; July 1, 1982; June 1, 1983; April 1, 1988;

September 1, 1988; July 1, 1995; September 1, 2003.

General Authority: NDCC 36-22-03

Law Implemented: NDCC 36-05-10, 36-09-15, 36-09-23, 36-22-02, 36-22-03

# TITLE 50 STATE BOARD OF MEDICAL EXAMINERS

#### **AUGUST 2003**

#### **CHAPTER 50-01-01**

# 50-01-01. Organization of board of medical examiners.

- History and function. The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medical examiners. The board, generally speaking, stands between the medical school graduate and the public. It is the responsibility of the board to protect the public against poorly trained physicians.
- 2. **Executive secretary and treasurer**. The executive secretary and treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
- 3. Credentials committee. A credentials committee is appointed by the chairman of the board and is responsible for issuing provisional temporary licenses authorizing the practice of medicine in the intervals between board meetings. The credentials committee will consist of at least three active members of the board appointed by the president and will act only pursuant to specific authority granted and under periodic directives of the board.
- 4. **Inquiries**. Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. Rolf P. Sletten Executive Secretary and Treasurer State Board of Medical Examiners 418 East Broadway, Suite 12 Bismarck, ND 58501

History: Amended effective December 1, 1980; September 1, 1983; July 1, 1988;

November 1, 1993; December 1, 1993; August 1, 2003.

General Authority: NDCC 28-32-02.1 Law Implemented: NDCC 28-32-02.1

# **CHAPTER 50-02-01**

50-02-01-01. License for interval between board meetings. A provisional temporary license may be granted by the chairman and the executive secretary to be in effect in the interval between board meetings. This license will be effective only when the holder thereof is practicing within the state, who is otherwise qualified to receive a North Dakota license. An officer of the board and the board's executive secretary or administrative assistant may issue a provisional temporary license to an applicant who is seeking a permanent North Dakota medical license if in their judgment the applicant meets all of the requirements for licensure. A provisional temporary license is valid from the date of issue until the time of the next regularly scheduled meeting of the board.

History: Amended effective December 1, 2000: August 1, 2003.

**General Authority:** NDCC 43-17-13 **Law Implemented:** NDCC 43-17-21

# CHAPTER 50-02-11 EXAMINATIONS

Section	
50-02-11-01	Eligibility for Examination
50-02-11-02	Successful Completion of Examination - Time Limitation
50-02-11-03	Limitation on Attempts at Examination Passage [Repealed]
50-02-11-04	Examination Combinations Acceptable

50-02-11-03. Limitation on attempts at examination passage. Repealed effective August 1, 2003. An applicant must be allowed four attempts to pass each part or step or component of a licensing examination approved by the board without being required to obtain additional educational experience. Parts, steps, and components of examinations may not be combined so as to enlarge the number of attempts permitted under this rule.

History: Effective November 1, 1993.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-17-18

# TITLE 69 PUBLIC SERVICE COMMISSION

#### **NOVEMBER 2003**

#### **CHAPTER 69-09-03**

**69-09-03-02. Adoption of regulations.** The following parts of title 49, Code of Federal Regulations in effect as of <del>January 1, 2001</del> <u>March 1, 2003</u>, are adopted by reference:

- 1. Part 190 Department of Transportation Pipeline Safety Enforcement Procedures.
- Part 191 Department of Transportation Regulations for Transportation of Natural Gas by Pipeline; Reports of Leaks.
- 3. Part 192 Transportation of Natural and Other Gas by Pipeline: Minimum Safety Standards.
- 4. Part 199 Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquids Pipelines.

Copies of these regulations may be obtained from:

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

**History:** Effective June 1, 1984; amended effective July 1, 1986; January 1, 1988; March 1, 1990; February 1, 1992; August 1, 1993; August 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; September 1, 1999; August 1, 2000; January 1, 2002; November 1, 2003.

General Authority: NDCC 28-32-02 Law Implemented: NDCC 49-02-01.2

#### CHAPTER 69-10-01

#### **69-10-01-01. Definitions.** As used in article 69-10:

- "Automatic bulk weighing system" means a weighing system which weighs grain in successive drafts, automatically records the no-load and loaded weight values, and accumulates the net weight of each draft.
- "Batching scale" means a noncommercial weighing or measuring device used to determine, in part, the amount of an ingredient in a finished, manufactured commodity.
- "Certify" means to seal, if upon testing and inspection, a weighing or measuring device is within the permitted tolerance and properly installed.
- "Commerce" means the distribution or consumption of quantities, things, produce, commodities, or articles which may be offered or submitted by any person for sale or hire.
- 5. "Equipment repair notice tag" means a tag that allows a device to be operated for thirty sixty days from its inspection date pending correction of cited defects relating to the device or any of its required peripheral equipment. The tag defaults to a rejection tag if the device is not in compliance within thirty sixty days.
- 6. "Liquid or LPG computing pump" means a device that provides fuel or LPG to a consumer.
- 7. "NIST" means the United States department of commerce, national institute of standards and technology.
- "Not sealed" means a sticker or seal applied to a device which has
  not been inspected and tested, does not meet applicable design or
  tolerance requirements, or is no longer being used commercially. A
  device that is not sealed shall not be used in commerce.
- 9. "Random testing" means the random retesting and recertification by a weights and measures inspector of any weighing or measuring device being tested under the self-certification rules.
- "Registered service person" means a person or agency authorized by the commission to remove an official rejection seal placed on a weighing or measuring device or to repair and certify weighing and measuring devices described in North Dakota Century Code section 64-02-13.
- 11. "Rejected for repair" means a sticker or seal applied to a device which has been inspected and tested and does not meet applicable design

or tolerance requirements. A device that is rejected for repair shall be modified or repaired by a registered service person within thirty days of the date it was rejected and may not be used in commerce until placed into service.

- 12. "Retail fuel device" means a commercial, indicating fuel pump used to deliver fuel to individual highway vehicles in quantities of one hundred gallons [378.54 liters] or less per transaction.
- 13. "Seal" means marking a weighing or measuring device to show certification or rejection.
- 14. "Security seal" means either a lead and wire pressure-sensitive seal, a plastic and wire pressure-sensitive seal, or a sealing sticker, permanently attached to a weighing or measuring device to prevent unauthorized access to the tolerance-adjusting mechanisms of that device.
- 15. "Single draft weighing" means simultaneously weighing each end of a vehicle or individual elements of coupled combination vehicles.
- 16. "Split-weighing" means determining the weight of a vehicle, combination vehicle, or a commodity by adding together the results obtained by separately and not simultaneously weighing each end of such vehicle or individual elements of such coupled combinations.
- 17. "Standard" means test equipment used for certifying weighing or measuring devices.
- 18. "Variance" means a temporary or permanent suspension of a particular rule granted to an owner or operator of a commercial weighing or measuring device because of an economic hardship, a site restriction requiring modification to the design or installation of a device, or a special installation or operational condition, to be determined by the commission on a case-by-case basis.
- 19. "Weights and measures inspector" means a commission employee in the testing and safety division performing duties set by the commission.

**History:** Amended effective April 1, 1992; August 1, 1993; September 1, 1994; February 1, 1996; July 1, 1997; July 1, 1998; August 1, 2000; January 1, 2002; March 1, 2003; November 1, 2003.

General Authority: NDCC 64-02-03 Law Implemented: NDCC 64-02-03

**69-10-01-03.2.** Equipment repair notice - Applicable usage. An equipment repair notice tag may be used if a commercial device is in the following circumstances:

- 1. No more than two-tenths of one percent outside of applicable tolerance, for all measuring devices;
- 2. No more than one scale division outside of applicable tolerance, for all weighing devices;
- 3. Waiting for a response to a variance request;
- 4. Waiting for completion of design requirements; or
- 5. Waiting for repair of required peripheral equipment.
- 1. During the period any one of the following is pending:
  - a. Response to a variance request;
  - b. Completion of design requirements; or
  - C. Repair of required peripheral equipment;
- 2. When a point of sale measuring device:
  - a. Is a retail meter that is no more than two cubic inches [32.77 milliliters] outside of the applicable tolerance for over-registration or ten cubic inches [163.87 milliliters] outside the applicable tolerance for under-registration, using a five gallon [18.93 liter] test measure;
  - b. Is a vehicle tank meter that is no more than twenty-two cubic inches [360.52 milliliters] outside of the applicable tolerance for over-registration or one hundred cubic inches [1638.71 milliliters] outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] prover; or
  - <u>Is an LPG vehicle tank meter that is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or five percent outside the applicable tolerance for under-registration, using a one hundred gallon [378.54 liter] test with either a one hundred gallon [378.54 liter] prover or a certified master meter, and the:</u>
    - (1) Allowable error difference between an activated and not activated mechanical automatic temperature compensator is no more than five-tenths of one percent outside of the applicable tolerance for over-registration or under-registration; or
    - (2) Allowable error difference between an activated and not activated electronic automatic temperature compensator

is no more than two-tenths of one percent outside of the applicable tolerance for over-registration or under-registration;

- 3. When a point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or two scale divisions outside the applicable tolerance for under-registration; or
- 4. When a point of purchase or point of sale weighing device is no more than one scale division outside of applicable tolerance for over-registration or under-registration.

History: Effective March 1, 2003; amended effective November 1, 2003.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

**69-10-01-11. Device adjustments.** State weights and measures inspectors may not make adjustments to a commercial weighing or measuring device other than to replace meter factor change gears, zero a device, adjust LP meter temperature compensator, or adjust the level on certain counter, dormant, and platform scales.

History: Effective September 1, 1994; amended effective July 1, 1997;

November 1, 2003.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-02, 64-02-13

# TITLE 75 DEPARTMENT OF HUMAN SERVICES

#### **AUGUST 2003**

#### **CHAPTER 75-02-04.1**

#### 75-02-04.1-01. Definitions.

- "Child" means any child, by birth or adoption, to whom a parent owes a duty of support.
- 2. "Child living with the obligor" means the obligor's child who lives with the obligor most of the year.
- 3. "Children's benefits" means a payment, to or on behalf of a child of the person whose income is being determined, made by a government, insurance company, trust, pension fund, or similar entity, derivative of the parent's benefits or a result of the relationship of parent and child between such person and such child. Children's benefits do not mean benefits received from means tested public assistance programs.
- 4. "Custodial parent" means a parent who acts as the primary caregiver on a regular basis for a proportion of time greater than the obligor, regardless of custody descriptions such as "shared" or "joint" custody given in relevant judgments, decrees, or orders.
- 5. a. "Gross income" means income from any source, in any form, but does not mean:
  - Benefits received from means tested public assistance programs such as temporary assistance to for needy families, supplemental security income, and food stamps;
  - (2) Employee benefits over which the employee does not have significant influence or control over the nature or amount unless:
    - (a) That benefit may be liquidated; and

- (b) Liquidation of that benefit does not result in the employee incurring an income tax penalty; or
- (3) Child support payments.
- b. Examples of gross income include salaries, wages, overtime wages, commissions, bonuses, employee benefits, currently deferred income, dividends, severance pay, pensions, interest, trust income, annuities income, gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, distributions of retirement benefits, receipt of previously deferred income to the extent not previously considered in determining a child support obligation for the child whose support is under consideration, veterans' benefits (including gratuitous benefits), gifts and prizes to the extent they annually exceed one thousand dollars in value, spousal support payments received, earned income refundable tax credits, value of in-kind income received on a regular basis, children's benefits, income imputed based upon earning capacity, military subsistence payments, and net income from self-employment.
- For purposes of this subsection, income tax due or paid is not an income tax penalty.
- 6. "In-kind income" means the receipt <u>from employment or income-producing activity</u> of any valuable right, property or property interest, other than money or money's worth, including forgiveness of debt (other than through bankruptcy), use of property, including living quarters at no charge or less than the customary charge, and the use of consumable property or services at no charge or less than the customary charge.
- 7. "Net income" means total gross annual income less:
  - a. A hypothetical federal income tax obligation based on the obligor's gross income, reduced by that part of the obligor's gross income that is not subject to <u>federal</u> income tax <u>and reduced by deductions</u> <u>allowed in arriving at adjusted gross income</u> under the Internal Revenue Code, and applying:
    - (1) The standard deduction for the tax filing status of single;
    - (2) One exemption for the obligor;
    - (3) (a) One additional exemption for each child actually claimed on a disclosed income tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and, as defined in this section, that the obligor is allowed to claim

- pursuant to a court order unless the obligor and obligee alternate claiming the exemption for the child pursuant to the court order, in which case, an amount equal to one-half of the exemption; or
- (b) If there is no court order allocating the exemption, or if it is unknown whether there is such a court order, then one additional exemption for each child, as defined in this section, actually claimed on a disclosed tax return or one additional exemption for each child, as defined in this section, if a tax return is not disclosed; and
- (4) Tax tables for a single individual for the most recent year published by the internal revenue service, reduced by one child tax credit for each child's exemption considered under paragraph 3, provided such child is a qualifying child for purposes of the child tax credit;
- b. A hypothetical state income tax obligation equal to fourteen percent of the amount determined under subdivision a without reduction for child tax credits:
- c. A hypothetical obligation for Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA) tier I and tier II, and medicare deductions or, and self-employment tax obligations based on that part of the obligor's gross income that is subject to FICA, RRTA, or medicare, or self-employment tax under the Internal Revenue Code:
- d. A portion of premium payments, made by the person whose income is being determined, for health insurance policies or health service contracts, intended to afford coverage for the child or children for whom support is being sought, determined by dividing the payment by the total number of persons covered and multiplying the result times the number of such children:
  - (1) If the cost of single coverage for the obligor and the number of persons associated with the premium payment are known:
    - (a) Reducing the premium payment by the cost for single coverage for the obligor;
    - (b) Dividing the difference by the total number of persons, exclusive of the obligor, associated with the premium payment; and
    - (c) Multiplying the result times the number of insured children for whom support is being sought; or

- (2) If the cost of single coverage for the obligor is not known:
  - (a) Dividing the payment by the total number of persons covered; and
  - (b) <u>Multiplying the result times the number of insured</u> children for whom support is being sought;
- e. Payments made on actual medical expenses of the child or children for whom support is sought to the extent it is reasonably likely similar expenses will continue;
- f. Union dues and occupational license fees if required as a condition of employment;
- 9. Employee retirement contributions, deducted from the employee's compensation and not otherwise deducted under this subsection, to the extent required as a condition of employment;
- Employee expenses for special equipment or clothing required as a condition of employment or for lodging expenses incurred when engaged in travel required as a condition of employment (limited to thirty dollars per night); and
- Employer reimbursed out-of-pocket expenses of employment, if included in gross income, but excluded from adjusted gross income on the obligor's federal income tax return.
- 8. "Obligee" includes, for purposes of this chapter, an obligee as defined in subsection 8 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to be owed a duty of support.
- 9. "Obligor" includes, for purposes of this chapter, an obligor as defined in subsection 9 of North Dakota Century Code section 14-09-09.10 and a person who is alleged to owe a duty of support.
- 10. "Self-employment" means employment that results in an obligor earning income from any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control. For purposes of this chapter, it also includes any activity that generates income from rental property, royalties, business gains, partnerships, trusts, corporations, and any other organization or entity regardless of form and regardless of whether such activity would be considered self-employment activity under the Internal Revenue Code.

"Split custody" means a situation where the parents have more than one child in common, and where each parent has sole custody of at least one child.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

## 75-02-04.1-02. Determination of support amount - General instructions.

- Calculations Except as provided in section 75-02-04.1-08.2, calculations of child support obligations provided for under this chapter consider and assume that one parent acts as a primary caregiver and the other parent contributes a payment of child support to the child's care.
- Calculations assume that the care given to the child during temporary periods when the child resides with the obligor or the obligor's relatives do not substitute for the child support obligation.
- 3. Net income received by an obligor from all sources must be considered in the determination of available money for child support.
- The result of all calculations which determine a monetary amount ending in fifty cents or more must be rounded up to the nearest whole dollar, and must otherwise be rounded down to the nearest whole dollar.
- 5. In applying the child support guidelines, an obligor's monthly net income amount ending in fifty dollars or more must be rounded up to the nearest one hundred dollars, and must otherwise be rounded down to the nearest one hundred dollars.
- The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the obligor's monthly net income.
- 7. Income must be <u>sufficiently</u> documented through the use of tax returns, current wage statements, and other information <del>sufficiently</del> to fully apprise the court of all gross income. Where gross income is subject to fluctuation, particularly in instances involving self-employment, information reflecting and covering a period of time sufficient to reveal the likely extent of fluctuations must be provided.
- 8. Calculations made under this chapter are ordinarily based upon recent past circumstances because past circumstances are typically a reliable indicator of future circumstances, particularly circumstances concerning income. If circumstances that materially affect the child

- support obligation are very likely to change in the near future, consideration may be given to the likely future circumstances.
- 9. Determination of a child support obligation is appropriate in any matter where the child and both of the child's parents do not reside together.
- Each child support order must include a statement of the net income of the obligor used to determine the child support obligation, and how that net income was determined.
- 11. A payment of children's benefits made to or on behalf of a child who is not living with the obligor must be credited as a payment toward the obligor's child support obligation in the month (or other period) the payment is intended to cover, but may not be credited as a payment toward the child support obligation for any other month or period.
- 12. No amount may be deducted to determine net income unless that amount is included in gross income.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

75-02-04.1-03. Determination of <u>child</u> support <u>amount obligation</u> - Split custody. A <u>child</u> support <u>amount obligation</u> must be determined for the child or children in each parent's <del>sole</del> custody. The lesser <u>amount obligation</u> is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation.

History: Effective February 1, 1991; amended effective August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

## 75-02-04.1-05. Determination of net income from self-employment.

- 1. Net income from self-employment means total income, for internal revenue service purposes, of the obligor and the obligor's business, reduced by the amount, if any, of that total income that is not the obligor's income from self-employment, plus:
  - a. Business expenses attributable to the obligor or a member of the obligor's household for Reduced by that amount, if any, of:
    - (1) Employee's or proprietor's benefits, pensions, and profit-sharing plans That total income that is not the obligor's income or that is otherwise included in gross income; and

- (2) Travel, meals, or entertainment With respect to a partnership or a small business corporation for which an election under 26 U.S.C. section 1362(a) is in effect and over which the obligor is not able to exercise direct or indirect control to a significant extent, that income of the partnership or small business corporation which is not available, and has not yet been distributed, to the obligor; and
- b. Payments made to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member. Increased by that amount, if any, for:
  - (1) Business expenses attributable to the obligor or a member of the obligor's household for employee's or proprietor's benefits, pensions, and profit-sharing plans;
  - (2) Payments made from the obligor's self-employment activity to a member of the obligor's household, other than the obligor, to the extent the payment exceeds the fair market value of the service furnished by the household member; and
  - (3) With respect to a corporation that pays its own tax over which the obligor is able to exercise direct or indirect control to a significant extent, the taxable income of the corporation, less the corporation's federal income tax, multiplied by seventy percent of the obligor's ownership interest in the corporation.
- 2. "Member of the obligor's household" includes any individual who shares the obligor's home a substantial part of the time, without regard to whether that individual maintains another home.
- 3. The "obligor's business" includes any business organization or entity which the obligor is, to a significant extent, able to directly or indirectly control.
- 4. If the tax returns are not available or do not reasonably reflect the income from the business self-employment, profit and loss statements which more accurately reflect the current status of the business must be used.
- 5. 4. Businesses Self-employment activities may experience significant changes in production and income over time. To the extent that information is reasonably available, the average of the most recent five years of business operations each self-employment activity, if undertaken on a substantially similar scale, must be used to determine business self-employment income. When self-employment activity has not been operated on a substantially similar scale for five years, a shorter period may be used.

- 5. When averaging self-employment income pursuant to subsection 4, no amount may be included in income for one year that was previously included in income for any other year during the period being averaged.
- 6. When less than three years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:
  - <u>a.</u> A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;
  - b. An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or
  - C. An amount equal to eighty percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court.
- 7. When three or more years were averaged under subsection 4, a loss resulting from the averaging may be used to reduce income that is not related to self-employment only if the loss is not related to a hobby activity, losses were calculated for no more than forty percent of the years averaged, and monthly gross income, reduced by one-twelfth of the average annual self-employment loss, equals or exceeds the greatest of:
  - <u>A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage;</u>
  - An amount equal to six-tenths of prevailing gross earnings of persons with similar work history and occupational qualifications who work in any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; or
  - <u>An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, calculated without using self-employment losses, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court.</u>
- 8. For purposes of subsections 6 and 7, an activity is presumed to be a hobby activity if the result from averaging is a loss. The presumption

may be rebutted if the obligor shows that the activity is not done primarily for enjoyment purposes, is a vocation and not an avocation and, in the context of the child support obligation, there is a reasonable expectation that the children will receive long-term benefits.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

**75-02-04.1-06.** Determining the cost of supporting a child living with the obligor. The cost of supporting a child living with the obligor, who is not also a child of the obligee, may be deducted from net income under subsection 4 of section 75-02-04.1-06.1 and is determined by applying the obligor's net income and the total number of children living with the obligor, who are not also children of the obligee, to whom the obligor owes a duty of support, to section 75-02-04.1-10.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

75-02-04.1-06.1. Determination of support amount in multiple-family cases.

- This section must be used to determine the child support amount presumed to be the correct amount of child support in all cases involving an obligor who:
  - a. Owes duties of support payable to two or more obligees; or
  - b. Owes a duty of support to at least one obligee and also owes a duty of support to a child living with the obligor who is not also the child of that obligee.
- If a court consolidates proceedings involving an obligor and two or more obligees, the court must determine all obligations that may be determined in the consolidated proceeding without regard to whom the initial moving party may be.
- 3. A hypothetical amount that reflects the cost of supporting children living with the obligor, as determined under section 75-02-04.1-06, and a hypothetical amount due to each obligee under this chapter must first be determined for the children living with the obligor and each obligee, whether or not the obligee is a party to the proceeding, assuming for purposes of that determination:
  - The obligor has no support obligations except to the obligee in question;

- b. The guidelines amount is not rebutted; and
- c. The obligor does not have extended visitation.
- 4. A hypothetical amount due to each obligee under this chapter must next be determined for each obligee who is a party to the proceeding, assuming for purposes of that determination:
  - a. The obligor's net income is reduced by:
    - (1) The amount of child support due to all other obligees, as determined under subsection 3; and
    - (2) The cost of supporting a child living with the obligor, who is not also the child of that obligee, as determined under section 75-02-04.1-06;
  - b. The guidelines amount is not rebutted;
  - Any support amount otherwise determined to be less than one dollar is determined to be one dollar; and
  - d. The obligor does not have extended visitation.
- a. Except as provided in subdivision b, for each obligee before the court, the support obligation presumed to be the correct amount of child support is equal to one-half of the total of the two amounts determined, with respect to that obligee, under subsections 3 and
  - b. Any necessary determination under this section must be made before an adjustment for extended visitation appropriate under section 75-02-04.1-08.1. The "amount otherwise due under this chapter", for purposes of section 75-02-04.1-08.1, is equal to one-half of the total of the two amounts determined, with respect to that obligation, under subsections 3 and 4.
- The fact, if it is a fact, that the obligor is required to pay, or pays, a different amount than the hypothetical amounts determined under subsections 3 and 4 is not a basis for deviation from the procedure described in this section.
- 7. When determining a support amount under paragraph 1 of subdivision a of subsection 4, consider only children to whom an obligor owes a current monthly support obligation pursuant to a support order and

other children under the age of eighteen to whom an obligor owes a duty of support.

**History:** Effective January 1, 1995; amended effective August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12) 50-09-02(16); 42 USC 667

## 75-02-04.1-07. Imputing income based on earning capacity.

- 1. For purposes of this section:
  - a. "Community" includes any place within one hundred miles [160.93 kilometers] of the obligor's actual place of residence; and
  - b. An obligor is "underemployed" if the obligor's gross income from earnings is significantly less than prevailing amounts earned in the community by persons with similar work history and occupational qualifications.
- 2. An obligor is presumed to be underemployed if the obligor's gross income from earnings is less than:
  - Six-tenths of prevailing amounts earned in the community by persons with similar work history and occupational qualifications; or
  - b. One A monthly amount equal to one hundred sixty-seven times the federal hourly minimum wage.
- Except as provided in subsections 4, 5, and 9, monthly gross income based on earning capacity equal to the greatest of subdivisions a through c, less actual gross earnings, must be imputed to an obligor who is unemployed or underemployed.
  - a. An A monthly amount equal to one hundred sixty-seven times the hourly federal minimum wage.
  - An amount equal to six-tenths of prevailing gross monthly earnings in the community of persons with similar work history and occupational qualifications.
  - c. An amount equal to ninety percent of the obligor's greatest average gross monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided.

- 4. Monthly gross income based on earning capacity may be imputed in an amount less than would be imputed under subsection 3 if the obligor shows:
  - a. The reasonable cost of child care equals or exceeds seventy percent of the income which would otherwise be imputed where the care is for the obligor's child:
    - Who is in the physical custody of the obligor;
    - (2) Who is under the age of fourteen; and
    - (3) For whom there is no other adult caretaker in the parent's home available to meet the child's needs during absence due to employment.
  - b. The obligor suffers from a disability sufficient in severity to reasonably preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
  - c. The unusual emotional or physical needs of a minor child of the obligor require the obligor's presence in the home for a proportion of the time so great as to preclude the obligor from gainful employment that produces average monthly gross earnings equal to one hundred sixty-seven times the hourly federal minimum wage.
- Gross income based on earning capacity may not be imputed if the obligor shows that the obligor has average monthly gross earnings equal to or greater than one hundred sixty-seven times the hourly federal minimum wage and is not underemployed.
- 6. If an unemployed or underemployed obligor shows that employment opportunities, which would provide earnings at least equal to the lesser of the amounts determined under subdivision b or c of subsection 3, are unavailable in the community, income must be imputed based on earning capacity equal to the amount determined under subdivision a of subsection 3, less actual gross earnings.
- 7. If the obligor fails, upon reasonable request made in any proceeding to establish a child support obligation, to furnish reliable information concerning the obligor's gross income from earnings, income based on earning capacity equal to the greatest of subdivisions a through c of subsection 3 must be imputed.
- 8. If the obligor fails, upon reasonable request made in any proceeding to review a child support obligation, to furnish reliable information

concerning the obligor's gross income from earnings, income must be imputed based on the greatest of:

- a. Subdivisions a through c of subsection 3; or
- The obligor's net income, at the time the child support order was entered or last modified, increased at the rate of ten percent per year.
- 9. Notwithstanding subsections 4, 5, and 6, if an obligor makes a voluntary change in employment resulting in reduction of income, monthly gross income equal to one hundred percent of the obligor's greatest average monthly earnings, in any twelve consecutive months beginning on or after thirty-six months before commencement of the proceeding before the court, for which reliable evidence is provided, less actual monthly gross earnings, may be imputed without a showing that the obligor is unemployed or underemployed.

History: Effective February 1, 1991; amended effective January 1, 1995; August 1,

1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09/7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

75-02-04.1-08.2. Equal physical custody - Determination of child support obligation. A child support obligation must be determined as described in this section in all cases in which a court orders each parent to have equal physical custody of their child or children. Equal physical custody means each parent has physical custody of the child, or if there are multiple children, all of the children, exactly fifty percent of the time. A child support obligation for each parent must be calculated under this chapter assuming the other parent is the custodial parent of the child or children subject to the equal physical custody order. The lesser obligation is then subtracted from the greater. The difference is the child support amount owed by the parent with the greater obligation. Each parent is an obligee to the extent of the other parent's calculated obligation.

History: Effective August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(16); 42 USC 667

### 75-02-04.1-09. Criteria for rebuttal of guideline amount.

- The child support amount provided for under this chapter, except for subsection 2, is presumed to be the correct amount of child support. No rebuttal of the guidelines may be based upon evidence of factors described or applied in this chapter, except in subsection 2, or upon:
  - The subsistence needs, work expenses, and daily living expenses of the obligor; or

- b. The income of the obligee, which is reflected in a substantial monetary and nonmonetary contribution to the child's basic care and needs by virtue of being a custodial parent.
- 2. The presumption that the amount of child support that would result from the application of this chapter, except for this subsection, is the correct amount of child support is rebutted only if a preponderance of the evidence establishes that a deviation from the guidelines is in the best interest of the supported children and:
  - a. The increased need if support for more than six children is sought in the matter before the court;
  - The increased ability of an obligor, with a monthly net income which exceeds ten twelve thousand five hundred dollars, to provide child support;
  - The increased need if educational costs have been voluntarily incurred, at private schools, with the prior written concurrence of the obligor;
  - d. The increased needs of children with disabling conditions or chronic illness;
  - e. The increased needs of children age twelve and older;
  - f. The increased needs of children related to the cost of child care, purchased by the obligee, for reasonable purposes related to employment, job search, education, or training;
  - 9. The increased ability of an obligor, who is able to secure additional income from assets, to provide child support;
  - h. The increased ability of an obligor, who has engaged in an asset transaction for the purpose of reducing the obligor's income available for payment of child support, to provide child support;
  - i. The reduced ability of the obligor to provide support due to travel expenses incurred solely predominantly for the purpose of visiting a child who is the subject of the order taking into consideration the amount of court-ordered visitation and, when such history is available, actual expenses and practices of the parties;
  - j. The reduced ability of the obligor to pay child support due to a situation, over which the obligor has little or no control, which requires the obligor to incur a continued or fixed expense for other than subsistence needs, work expenses, or daily living expenses, and which is not otherwise described in this subsection;

- k. The reduced ability of the obligor to provide support due to the obligor's health care needs, to the extent that the costs of meeting those health care needs:
  - (1) Exceed ten percent of the obligor's gross income;
  - (2) Have been incurred and are reasonably certain to continue to be incurred by the obligor;
  - (3) Are not subject to payment or reimbursement from any source except the obligor's income; and
  - (4) Are necessary to prevent or delay the death of the obligor or to avoid a significant loss of income to the obligor; or
- I. The reduced ability of the obligor to provide support when two or more of the obligor's children are in foster care or guardianship care calculation of the obligation otherwise reflects consideration of atypical overtime wages or nonrecurring bonuses over which the obligor does not have significant influence or control.
- 3. Assets may not be considered under subdivisions g and h of subsection 2, to the extent they:
  - Are exempt under North Dakota Century Code section 47-18-01;
  - b. Consist of necessary household goods and furnishings; or
  - c. Include one motor vehicle in which the obligor owns an equity not in excess of twenty thousand dollars.
- 4. For purposes of subdivision h of subsection 2, a transaction is presumed to have been made for the purpose of reducing the obligor's income available for the payment of child support if:
  - The transaction occurred after the birth of a child entitled to support;
  - The transaction occurred no more than twenty-four months before the commencement of the proceeding that initially established the support order; and
  - c. The obligor's income is less than it likely would have been if the transaction had not taken place.
- For purposes of subdivision j of subsection 2, a situation over which the obligor has little or no control does not exist if the situation arises out of spousal support payments, discretionary purchases, or illegal activity.

- 6. For purposes of subdivisions a through f of subsection 2, any adjustment shall be made to the child support amount resulting from application of this chapter.
- 7. For purposes of subdivisions g through I of subsection 2, any adjustment shall be made to the obligor's net income.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

**75-02-04.1-10.** Child support amount. The amount of child support payable by the obligor is determined by the application of the following schedule to the obligor's monthly net income and the number of children for whom support is being sought in the matter before the court.

Obligor's						
Monthly Net Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
100 or less	14	17	20	22	24	26
200	28	34	40	44	48	52
300	42	51	60	66	72	78
400	56	68	80	88	96	104
500	75	90	105	120	130	140
600	102	126	144	162	174	192
700	133	161	189	210	231	252
800	168	200	232	264	288	320
900	207	252	288	324	360	387
1000	250	300	350	390	430	470
1100	266	328	384	428	470	511
1200	282	356	418	465	510	553
1300	298	385	452	503	550	594
1400	314	412	486	540	590	635
1500	330	441	520	578	630	677
1600	346	469	554	616	669	718
1700	362	497	588	653	709	759
1800	378	526	622	691	749	800
1900	394	554	656	728	789	842
	Monthly Net Income  100 or less 200 300 400 500 600 700 800 900 1000 1100 1200 1300 1400 1500 1600 1700 1800	Monthly Net Income         One Child           100 or less         14 or less           200 28         300 42           400 56         500 75           600 102         700 133           800 168         900 207           1000 250         1100 266           1200 282         1300 298           1400 314         1500 330           1600 346         1700 362           1800 378	Monthly Net Income         One Child         Two Children           100 or less         14         17           200         28         34           300         42         51           400         56         68           500         75         90           600         102         126           700         133         161           800         168         200           900         207         252           1000         250         300           1100         266         328           1200         282         356           1300         298         385           1400         314         412           1500         330         441           1600         346         469           1700         362         497           1800         378         526	Monthly Net Income         One Child         Two Children         Three Children           100 or less         14         17         20           200         28         34         40           300         42         51         60           400         56         68         80           500         75         90         105           600         102         126         144           700         133         161         189           800         168         200         232           900         207         252         288           1000         250         300         350           1100         266         328         384           1200         282         356         418           1300         298         385         452           1400         314         412         486           1500         330         441         520           1600         346         469         554           1700         362         497         588           1800         378         526         622	Monthly Net Income         One Child         Two Children         Three Children         Four Children           100 or less         14         17         20         22           200         28         34         40         44           300         42         51         60         66           400         56         68         80         88           500         75         90         105         120           600         102         126         144         162           700         133         161         189         210           800         168         200         232         264           900         207         252         288         324           1000         250         300         350         390           1100         266         328         384         428           1200         282         356         418         465           1300         298         385         452         503           1400         314         412         486         540           1500         330         441         520         578	Monthly Net Income         One Child         Two Children         Three Children         Four Children         Five Children           100 or less         14         17         20         22         24           200         28         34         40         44         48           300         42         51         60         66         72           400         56         68         80         88         96           500         75         90         105         120         130           600         102         126         144         162         174           700         133         161         189         210         231           800         168         200         232         264         288           900         207         252         288         324         360           1000         250         300         350         390         430           1100         266         328         384         428         470           1200         282         356         418         465         510           1300         298         385         452         503

20	000	411	582	690	766	829	883
21	00	427	610	724	804	869	924
22	200	443	638	758	841	909	966
23	00	459	667	792	879	949	1007
24	00	475	695	826	916	989	1048
25	00	492	723	860	954	1029	1090
26	00	508	751	893	992	1068	1131
27	00	524	779	927	1029	1108	1172
28	00	540	808	961	1067	1148	1213
29	000	556	836	995	1104	1188	1255
30	000	572	864	1029	1142	1228	1296
31	00	588	892	1063	1180	1268	1337
32	200	604	920	1097	1217	1308	1379
33	800	620	949	1131	1255	1348	1420
34	00	636	977	1165	1292	1388	1461
35	00	653	1005	1199	1330	1428	1503
36	00	669	1033	1232	1368	1467	1544
37	00	685	1061	1266	1405	1507	1585
38	800	701	1090	1300	1443	1547	1626
39	000	717	1118	1334	1480	1587	1668
40	000	733	1146	1368	1518	1627	1709
41	00	749	1174	1402	1556	1667	1750
42	200	765	1202	1436	1593	1707	1792
43	300	781	1231	1470	1631	1747	1833
44	100	797	1259	1504	1668	1787	1874
45	500	814	1287	1538	1706	1827	1916
46	600	830	1315	1571	1744	1866	1957
47	700	846	1343	1605	1781	1906	1998
48	300	862	1372	1639	1819	1946	2039
49	900	878	1400	1673	1856	1986	2081
50	000	894	1428	1707	1894	2026	2122
51	100	910	1456	1741	1932	2066	2163
52	200	926	1484	1775	1969	2106	2205
53	300	942	1513	1809	2007	2146	2246
54	100	958	1541	1843	2044	2186	2287

5500	975	1569	1877	2082	2226	2329
5600	991	1597	1910	2120	2265	2370
5700	1007	1625	1944	2157	2305	2411
5800	1023	1654	1978	2195	2345	2453
5900	1039	1682	2012	2232	2385	2494
6000	1055	1710	2046	2270	2425	2535
6100	1071	1738	2080	2308	2465	2576
6200	1087	1766	2114	2345	2505	2618
6300	1103	1795	2148	2383	2545	2659
6400	1119	1823	2182	2420	2585	2700
6500	1136	1851	2216	2458	2625	2742
6600	1152	1879	2249	2496	2664	2783
6700	1168	1907	2283	2533	2704	2824
6800	1184	1936	2317	2571	2744	2865
6900	1200	1964	2351	2608	2784	2907
7000	1216	1992	2385	2646	2824	2948
7100	1232	2020	2419	2684	2864	2989
7200	1248	2048	2453	2721	2904	3031
7300	1264	2077	2487	2759	2944	3072
7400	1280	2105	2521	2796	2984	3113
7500	1297	2133	2555	2834	3024	3155
7600	1313	2161	2588	2872	3063	3196
7700	1329	2189	2622	2909	3103	3237
7800	1345	2218	2656	2947	3143	3278
7900	1361	2246	2690	2984	3183	3320
8000	1377	2274	2724	3022	3223	3361
8100	1393	2302	2758	3060	3263	3402
8200	1409	2330	2792	3097	3303	3444
8300	1425	2359	2826	3135	3343	3485
8400	1441	2387	2860	3172	3383	3526
8500	1458	2415	2894	3210	3423	3568
8600	1474	2443	2927	3248	3462	3609
8700	1490	2471	2961	3285	3502	3650
8800	1506	2500	2995	3323	3542	3691
8900	1522	2528	3029	3360	3582	3733

9000	1538	2556	3063	3398	3622	3774
9100	1554	2584	3097	3436	3662	3815
9200	1570	2612	3131	3473	3702	3857
9300	1586	2641	3165	3511	3742	3898
9400	1602	2669	3199	3548	3782	3939
9500	1619	2697	3233	3586	3822	3981
9600	1635	2725	3266	3624	3861	4022
9700	1651	2753	3300	3661	3901	4063
9800	1667	2782	3334	3699	3941	4104
9900	1683	2809	3368	3736	3981	4146
10000	1699	2838	3402	3774	4021	4187
10100	1715	2866	3436	3812	4061	4228
10200	1731	2894	3470	3849	4101	4270
10300	1747	2923	3504	3887	4141	4311
10400	1763	<u>2951</u>	<u>3538</u>	3924	4181	4352
10500	<u>1780</u>	2979	3572	3962	4221	4394
<u>10600</u>	<u>1796</u>	3007	<u>3605</u>	<u>4000</u>	4260	4435
10700	1812	<u>3035</u>	<u>3639</u>	4037	4300	<u>4476</u>
10800	<u>1828</u>	<u>3064</u>	3673	4075	4340	<u>4517</u>
10900	1844	3092	3707	4112	4380	<u>4559</u>
<u>11000</u>	<u>1860</u>	3120	3741	<u>4150</u>	4420	<u>4600</u>
<u>11100</u>	<u>1876</u>	3148	<u>3775</u>	4188	4460	4641
11200	1892	<u>3176</u>	3809	4225	<u>4500</u>	<u>4683</u>
<u>11300</u>	<u>1908</u>	3205	3843	<u>4263</u>	<u>4540</u>	<u>4724</u>
11400	1924	3233	3877	<u>4300</u>	4580	<u>4765</u>
<u>11500</u>	<u>1941</u>	<u>3261</u>	<u>3911</u>	<u>4338</u>	4620	<u>4807</u>
<u>11600</u>	<u>1957</u>	3289	3945	<u>4376</u>	4659	<u>4848</u>
<u>11700</u>	<u>1973</u>	3317	<u>3978</u>	4413	4699	4889
<u>11800</u>	1989	<u>3346</u>	4012	<u>4451</u>	4739	<u>4930</u>
<u>11900</u>	2005	3374	<u>4046</u>	<u>4488</u>	4779	<u>4972</u>
<u>12000</u>	2021	3402	<u>4080</u>	4526	4819	<u>5013</u>
<u>12100</u>	2037	<u>3430</u>	4114	4564	<u>4859</u>	<u>5054</u>
<u>12200</u>	2053	<u>3458</u>	<u>4148</u>	<u>4601</u>	<u>4899</u>	<u>5096</u>
<u>12300</u>	2069	3487	4182	4639	<u>4939</u>	<u>5137</u>

12400	2085	<u>3515</u>	4216	4676	<u>4979</u>	<u>5178</u>
12500	2102	<u>3543</u>	4250	4714	<u>5019</u>	5220
or more						

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, 50-09-02(12) 50-09-02(16); 42 USC 667

75-02-04.1-11. Parental responsibility for children in foster care or guardianship care. It is important that parents maintain a tie to and responsibility for their child when that child is in foster care. Financial responsibility for the support of that child is one component of the maintenance of the relationship of parent and child. Parents of a child subject to a guardianship order under North Dakota Century Code chapter 27-20 or 30.1-27 remain financially responsible for the support of that child.

- 1. In order to determine monthly net income, it is first necessary to identify the parent or parents who have financial responsibility for any child entering foster care or guardianship care, and to determine the net income of those financially responsible parents. If the parents of a child in foster care or guardianship care reside together, and neither parent has a duty to support any child who does not either reside with the parents or receive foster care or guardianship care, the income of the parents must be combined and treated as the income of the obligor. In all other cases, each parent is treated as an obligor, and each parent's support obligations obligation must be separately determined. If an obligor under this section has a child living with the obligor, the support obligation must be determined through applications of sections 75-02-04.1-06 and 75-02-04.1-06.1.
- 2. Each child in foster care or guardianship care is treated as an obligee, and support obligations must be separately determined for each such child. Unless subsection 3 applies to the obligor, the net income and the total number of children are applied to section 75-02-04.1-10 to determine the child support amount. That child support amount is then divided by the total number of children to determine the child support obligation for each child in foster care or guardianship care. For purposes of this subsection, the "total number of children" means:
  - a. If a child entering foster care or guardianship care resides in the obligor's home, the total number of children residing in the obligor's home to whom the obligor owes a duty of support, including the child or children entering foster care or guardianship care, plus any other full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support who are not residing in the obligor's home; or

- b. If no child entering foster care or guardianship care resides in the obligor's home, the child or children entering foster care or guardianship care plus the full siblings of the child or children entering foster care or guardianship care to whom the obligor owes a duty of support.
- 3. If an obligor owes a duty of support to any child other than the child or children described in subdivision a or b of subsection 2, as applicable to that obligor, the support obligation must be determined through application of section 75-02-04.1-06.1 such that:
  - <u>a.</u> The total number of children, as described in subdivision a or b of subsection 2, as applicable to that obligor, are treated as one obligee; and
  - b. The amount resulting from the application of section 75-02-04.1-06.1 for the children described in subdivision a or b of subsection 2, as applicable to that obligor, is divided by the total number of such children to determine the child support obligation for each child in foster care or quardianship care.
- 4. For purposes of subsection 2, a full sibling of the child or children entering foster care or guardianship care is a brother or sister who has both parents in common with the child or children entering foster care or guardianship care.

**History:** Effective February 1, 1991; amended effective January 1, 1995; August 1, 1999; August 1, 2003.

General Authority: NDCC 50-06-16, 50-09-25

Law Implemented: NDCC 14-09-09.7, <del>50-09-02(12)</del> <u>50-09-02(16)</u>; 42 USC 667

# TITLE 75.5 BOARD OF SOCIAL WORK EXAMINERS

### **AUGUST 2003**

## **CHAPTER 75.5-02-03**

**75.5-02-03-03.** License fees. The board adopts the following fee schedule:

New applicants Application fee \$25 deposit; \$75 balance at licensing

(nonrefundable)

<u>License fee</u> \$75

Renewals \$40 75

Late renewal fee (includes renewal \$60 150

fee)

Penalty for nonrenewal (includes \$120 300

renewal fee)

Licensure Application for licensure \$25 (nonrefundable)

upgrade fee

History: Effective January 1, 1987; amended effective June 1, 1991; April 1, 1998;

August 1, 2003.

General Authority: NDCC 43-41-09 Law Implemented: NDCC 43-41-09

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