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TITLE 4.5

BOARD OF ADDICTION COUNSELING EXAMINERS

JANUARY 2008

CHAPTER 4.5-01-01

4.5-01-01-01. Organization of board of addiction counseling examiners.

1. **History.** The 1987 legislative assembly passed legislation establishing the state board of addiction counseling examiners, codified as North Dakota Century Code chapter 43-45. The board of addiction counseling examiners license addiction counselors.
2. **Board membership.** The board consists of ~~nine~~ seven members appointed by the governor. ~~Six~~ Four members are licensed practicing addiction counselors, two members are laypersons, and one member is a licensed addiction counselor in private practice. The governor shall appoint board members for three-year terms, but no person may be appointed to serve for more than two consecutive terms.
3. **Board officers.** The board annually elects from its membership a chairperson, a vice chairperson, and a treasurer at the fourth quarter meeting. The board may hire a secretary at its discretion.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Board of Addiction Counseling Examiners
P.O. Box 975
Bismarck, ND 58502

History: Effective August 1, 1988; amended effective August 1, 1991; April 1, 1994; November 1, 1994; January 1, 2002; January 1, 2008.

General Authority: NDCC ~~28-32-02.1~~ 28-32-02, 43-45-04

Law Implemented: NDCC ~~28-32-02.1~~ 28-32-02, 43-45-02, 43-45-03, 43-45-04

CHAPTER 4.5-02.1-01

4.5-02.1-01-01. Definitions. ~~Repealed effective January 1, 2008. For the purposes of this title, "clinical training" means practicum.~~

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01

4.5-02.1-01-03. Academic requirements. Academic requirements related to the licensing of addiction counselors must be completed at an accredited college or university. ~~A bachelor's degree is required for applications made before January 1, 2005.~~ A bachelor's degree in addiction studies or a closely related social science or health care field is required ~~for applications made after December 31, 2004.~~ A minimum of thirty-two total credit hours in addiction studies is required. The thirty-two credit hours must include academic course content in all of the following areas:

1. Practice.

a. Curriculum content:

- (1) Treatment methods and models;_{1,2}
- (2) Interviewing process, skills, and techniques;_{1,2}
- (3) Individual and group counseling;_{1,2}
- (4) Assessment and diagnosis models, including current diagnostic manual of the American psychiatric association; including substance-related disorders and cooccurring mental illness.
- (5) Testing instruments;_{1,2}
- (6) Intervention approaches for individuals, groups, and families;_{1,2}
- (7) Documentation, report writing, and recordkeeping; ~~and~~₁
- (8) Verbal communication skills.
- (9) Counselor skill groups effective May 1, 2009.
- (10) American society of addiction medicine patient placement criteria effective May 1, 2009.

b. Examples of courses with such content:

- (1) Introduction to individual counseling_{1,2}
- (2) Introduction to group counseling_{1,2}
- (3) Advanced counseling₁ ~~and~~₂
- (4) Theories in practice of psychotherapy.

2. **Ethics.**

a. Curriculum content.

- (1) Professional competence and standards_{1,2}
- (2) Values and societal obligations_{1,2}
- (3) Ethics and codes of conduct for professionals_{1,2}
- (4) Ethical decisionmaking_{1,2}
- (5) Malpractice and liability_{1,2}
- (6) Legal aspects of practice₁ ~~and~~₂
- (7) Federal and state regulations.

b. Examples of courses with such content include professional ethics.

3. **Theory.**

a. Curriculum content.

- (1) Human development, tasks, and issues across lifespan_{1,2}
- (2) Family functioning, family types, and addiction in families_{1,2}
- (3) Group dynamics and group process_{1,2}
- (4) Psychopathology, mental health, and mental illness₁ in childhood, adolescence, and adulthood.
- (5) Dynamics of addiction_{1,2}
- (6) ~~Substance abuse and alcoholism;~~ Substance-related disorders.
- (7) Pharmacology and human biology_{1,2}

- (8) AIDS Autoimmune deficiency syndrome and HIV; human immunodeficiency virus.
 - (9) Alcoholics anonymous, the twelve steps, and twelve steps support group_{1,2}
 - (10) Social and cultural theory₁ and₂
 - (11) Communication process and theory.
- b. Examples of courses with such content:
- (1) Marriage and the family_{1,2}
 - (2) Psychopathology_{1,2}
 - (3) Pharmacology_{1,2}
 - (4) Theories of personality_{1,2}
 - (5) Dynamics of addiction_{1,2}
 - (6) Child psychology and development_{1,2}
 - (7) Adolescent psychology and development₁ and₂
 - (8) Adult psychology and development.
 - (9) Cultural competence or cultural minorities.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-06. Reciprocity. Repealed effective January 1, 2008. An applicant licensed by another state, territory of the United States, or province of Canada or certified by a national addiction counselor certifying organization may be licensed by the board if:

- 1. ~~The applicant's license or certification is in good standing.~~
- 2. ~~The applicant demonstrates that the academic, clinical training, and examination requirements required for the license or certification is substantially the same as required under North Dakota Century Code chapter 43-45 and article 4.5-02.1.~~

History: Effective January 1, 2002.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-05.1

4.5-02.1-01-07. Fees. The board has adopted the following fee payment schedule:

1.	Initial license fee:	\$150.00	
a.	<u>Application for license received on or after January first of the even-numbered year and before July first of the even-numbered year</u>		<u>\$250.00</u>
b.	<u>Application for license received on or after July first of the even-numbered year and before January first of the odd-numbered year</u>		<u>\$200.00</u>
c.	<u>Application for license received on or after January first of the odd-numbered year and before July first of the odd-numbered year</u>		<u>\$150.00</u>
d.	<u>Application for license received on or after July first of the odd-numbered year and before January first of the even-numbered year</u>		<u>\$100.00</u>
2.	Annual <u>Biennial</u> renewal of license fee	\$100.00	<u>\$200.00</u>
3.	Private practice initial fee	\$50.00	<u>\$100.00</u>
4.	Private practice annual renewal fee	\$25.00	
5.	Late fee	\$100.00	
5.	<u>Annual continuing education provider approval fee</u>		<u>\$100.00</u>
6.	<u>Provider continuing education program approval fee</u>		<u>\$35.00</u>
7.	<u>Fee for mailing list</u>		<u>\$20.00</u>
8.	<u>Written examination fee is the national testing agency fee plus an additional board administrative fee of twenty dollars.</u>		

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02.1-02

4.5-02.1-02-01. Licensure renewal. ~~Repealed effective January 1, 2008.~~

~~Licenses are renewable annually providing each of the following conditions has been met:~~

- ~~1. The renewal application form is completed, submitted, and postmarked on or before December first of each year.~~
- ~~2. The license renewal fee is submitted with the renewal application.~~
- ~~3. Verification of required continuing education has been submitted and postmarked on or before December first, at the end of the three-year continuing education cycle.~~
- ~~4. The license is not in suspension or revocation.~~

~~A late charge will be assessed if the renewal application and renewal license fee or three-year continuing education documentation are submitted and postmarked after the applicable date and before July first of the new year.~~

~~If the application for renewal does not meet the above conditions within six months of the date of expiration of the license, the board may revoke the license. Any person seeking to be relicensed must apply for licensing and must satisfy all current licensure requirements.~~

History: ~~Effective January 1, 2002.~~

General Authority: ~~NDCC 43-45-04~~

Law Implemented: ~~NDCC 43-45-04, 43-45-07~~

4.5-02.1-02-02. Continuing education. ~~Continuing education credit is an award given to a participant at a workshop or seminar. All licensed addiction counselors are required to complete sixty hours of continuing education in a three-year period beginning January first of the year following the counselor's original licensure.~~

~~All persons wishing approval must submit a request to the licensing board for approval of continuing education credits. Continuing education, workshops, and seminars must:~~

- ~~1. Be related to the practice of addiction counseling.~~
- ~~2. Have the potential to increase the licensee's proficiency in addiction counseling.~~

~~Ten of the sixty continuing education hours for clinical supervisors must be obtained in a clinical supervision-related course and documented to the board.~~

1. Continuing education credit is an award given to a participant at a workshop or seminar. All licensed addiction counselors are required to complete forty hours of continuing education for the two-year licensing period to maintain licensure in North Dakota.
 - a. Twenty approved continuing education hours are required if an addiction counselor is initially licensed between January first and June thirtieth of the odd-numbered year.
 - b. No continuing education hours are required if an addiction counselor is initially licensed on or after July first of an odd-numbered year.
 - c. Continuing education hours cannot be earned until after the license effective date and only within the current licensing period except hours earned after December 31, 2005, and before January 1, 2008, may be used to meet the continuing education requirement for the period ending December 31, 2009.
 - d. Continuing education hours may only be applied to one licensing period.
2. All persons wishing approval must submit a request to the licensing board for approval of continuing education credits. Continuing education, workshops, and seminars must:
 - a. Be related to the practice of addiction counseling, behavioral mental health, or best practice techniques.
 - b. Have the potential to increase the licensee's proficiency in addiction counseling.
3. Ten of the forty continuing education hours for clinical supervisors must contain materials related to clinical supervision techniques and skills, with documentation verifying the content submitted to the board.
4. An approved provider is an entity or an individual approved by the board to provide continuing education without the need for prior board review on a program by program basis. Requirements to obtain and maintain status as an approved provider are as follows:
 - a. Completed application.
 - b. Application fee.
 - c. Provider must ensure all programs offered contain a course outline, learning objectives, and an evaluation of the learning outcome

of participants, and provide these documents to the board upon request.

- d. Provider must report the participants' completion of programs to the board within thirty days from the date of the program presentation. Failure to do so may result in the loss of approved provider status.
 - e. Complaints against providers may be investigated by the board and may result in removal of provider approval status.
 - f. Provider must renew the approval annually.
- 5. An approved program is one specific program, with defined continuing education contact hours, approved by the board. Requirements to obtain and maintain program approval status are as follows:
 - a. Completed application.
 - b. Application fee.
 - c. Program sponsor must ensure the program offered contains a course outline, learning objectives, and an evaluation of the learning outcome of participants and provide these documents to the board upon request.
 - d. Program sponsor must report participants' completion of the program to the board within thirty days from the date of the program presentation.
 - e. Program approval must be approved annually.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02.1-03

4.5-02.1-03-02. Internship registration. The internship is the practice of addiction counseling, under the supervision of a board-registered clinical supervisor, after the academic and clinical training program requirements are met. An intern will become licensed when application criteria are met and examinations are passed. The intern's supervision must be verified in writing to the board by signature of the onsite clinical supervisor.

1. **Qualifications.** To be eligible for registration as an intern, the following must be met:
 - a. All core academic coursework has been completed.
 - b. All clinical training program requirements have been board-approved.
2. **Registration.** An individual requesting to be registered as an intern shall make formal application to the board documenting the applicant's qualifications as required by this section.
3. **Expiration.** An individual may remain an intern for a maximum of ~~two years before completion of all examinations is required~~ one year. Upon showing of good cause the board, by special provision, may extend internship status for longer than ~~two years~~ one year. Request for extension of the internship registration period with documentation of need by clinical supervisor is the responsibility of the ~~clinical supervisor~~ intern.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-05.1

CHAPTER 4.5-02.1-04

4.5-02.1-04-04. Application for clinical supervision registration.

1. Qualifications. To be eligible for registration to provide clinical supervision, the following must be met:
 - a. Licensure as ~~a licensed~~ an addiction counselor.
 - b. A minimum of three years and a total of six thousand hours supervised experience as a licensed addiction counselor.
 - c. Twenty hours of continuing education contact hours in clinical supervision completed.
 - d. Letters of reference and recommendation from two board-registered clinical supervisors.
2. Registration. Individuals requesting registration for clinical supervision shall make formal application to the board documenting their above qualifications.
3. Individuals choosing to continue their clinical supervisor registration must submit the required documentation verifying ten hours of clinical supervision-related coursework within the ~~three-year~~ two-year continuing education cycle in order to maintain clinical supervisor status.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-01, 43-45-04, 43-45-06

CHAPTER 4.5-02.1-05

4.5-02.1-05-01. Code of ethics. A licensed addiction counselor and anyone under licensed addiction counselor supervision shall conduct the person's professional practice in conformity with the national association of alcoholism and drug abuse counselors code of ethics, as revised ~~May 20, 1995~~ December 8, 2004.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07.1

4.5-02.1-05-04. Notification of action against license. When the board revokes a license, the board shall provide a public notice of such action in order to further the cause of consumer protection. Such public notice shall specify the name of the licensee, action taken, and the violations. Public notice must include ~~publication in the newsletter of the board~~, notification of the known licensee's employers, and a news release issued to a regional newspaper chosen by the board.

History: Effective January 1, 2002; amended effective January 1, 2008.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04, 43-45-07.1

TITLE 24
STATE ELECTRICAL BOARD

JANUARY 2008

CHAPTER 24-02-01

24-02-01-02. General statement of policy and interpretative rules.

There are three categories of licensed electricians recognized by the electrical board.

1. Licensed electricians and the qualifications required for each to apply for examination:
 - a. A master electrician shall have at least one year's experience working as a licensed journeyman electrician under the supervision of a contracting master electrician or master of record.

There are three categories of master electricians, which are defined as follows:

- (1) A contracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has shown proof of liability insurance and contributed to the undertaking fund.
- (2) A master of record is a person responsible to adhere to all rules and laws of the North Dakota wiring standards for the partnership, company, corporation, limited liability company, or association and has shown proof of liability insurance that the master of record is covered by the organization and has contributed to the undertaking fund. The master of record is not allowed to work on other property other than property owned or leased by the organization.
- (3) A noncontracting master is a person responsible to adhere to all rules and laws of the North Dakota wiring standards and has the same responsibility as a journeyman electrician. Electrical work shall be done under the supervision of a contracting master or master of record.

- b. A journeyman electrician shall have at least four years' (8,000 completed eight thousand hours total, maximum 2,000 hours per year) experience, which experience may not be obtained in less than three years, registered as an apprentice electrician (of which up to eighteen months three thousand hours may apply under the qualifications of a class B electrician) under the supervision of a contracting master or master of record licensed electrician in an area where electrical construction work is done in the jurisdiction regulating similar rules of the state of North Dakota, and successfully completed apprentice electrician training as described in subdivision a or b of subsection 2. One-year's Two thousand hours credit will may be granted for a graduate of a two-year or more electrical school accepted by the state electrical board. Practical experience shall consist of a minimum of four thousand hours and a maximum of eight thousand hours credit may be granted for wiring for and installing electrical wiring, apparatus, and equipment.

Credit allowed in other areas may include any combination of the following:

- (1) A maximum of two thousand hours credit for maintaining and repairing electrical wiring, apparatus, and equipment;
- (2) A maximum of one thousand hours for wiring and maintaining light, heat and power, and fire alarm technology circuits or systems;
- (3) A maximum of two thousand hours for wiring and maintaining process control circuits or systems; and
- (4) A maximum of two thousand hours of electrical construction experience gained in the armed forces of the United States which the board has determined is equivalent to work performed under the supervision of a North Dakota licensed electrical contractor.

The person shall have the necessary qualifications, training, and technical knowledge to wire, install, and repair electrical apparatus and equipment in accordance with the standard rules and regulations of the National Electrical Code.

- c. A class B electrician shall have at least eighteen months' (3,000 hours total, maximum 2,000 hours per year) completed three thousand hours experience in farmstead or residential wiring, in one-family or two-family dwellings, under the supervision of a master or class B electrician.

Commercial wiring experience will not be credited for experience toward a class B license. ~~Six months'~~ One thousand hours credit will be granted for a graduate of a two-year electrical school approved by the state electrical board.

- d. Upon receiving an application for an electrician's license from an applicant, the state electrical board shall forward an employment verification record to the appropriate parties listed in the application. Upon receiving verification of electrical construction experience as outlined under this section and upon final approval of the application by the state electrical board, the applicant shall be sent an invitation to take the examination. The invitation shall outline the available testing dates for the year. Upon receiving the invitation, the applicant shall contact the state electrical board and inform the board as to the date chosen to take the examination.
- e. The state electrical board issues an identification card to currently licensed and registered electricians. This identification card shall be in the possession of the electrician when doing electrical work. If the identification card is misplaced or destroyed, a replacement charge to cover board costs shall be imposed.

2. Apprentice electricians. There are two categories of apprentice electricians electrician training.

- a. Apprentice electricians under the joint apprenticeship training committee training program approved by the department of labor who have successfully completed the United States department of labor training program recognized by the office of apprenticeship.
- b. Electrician trainees who may not be eligible for the joint apprenticeship training committee program and other persons desiring to accumulate a sufficient time and capability in the electrical trade to qualify them to apply for permission to take the examination for the journeyman electrician's license. Apprentice electricians who have successfully completed at least two years of electrical school approved by the state electrical board or five hundred seventy-six hours of training classes recognized by the United States department of labor office of apprenticeship. An unlicensed electrician who has prior experience outside of the state of North Dakota may take a placement examination equal to the verification of practical experience obtained in order to apply credit toward the verification of hours. If the electrician fails the placement examination, the electrician is ineligible to retake the examination. An appeal would need to be submitted in writing to the state electrical board.
- c. An apprentice electrician who has not successfully completed training as stated in subdivision a or b is required to be registered

with the state electrical board, but is not eligible to take the journeyman or class B license examination. If the person receives a license from another state based on the verification that the majority of practical experience was obtained in the state of North Dakota the person will not be eligible for examination for licensure or a reciprocal license.

A licensed electrician shall supervise not more than three apprentices. Any person over sixteen years of age may work as an apprentice under a licensed master or class B electrician, but the master or class B electrician shall not allow an apprentice to work on any installation without direct constant supervision by a North Dakota licensed electrician working with the apprentice at the worksite. A licensed electrician shall supervise not more than three apprentices.

Electrical contractors shall maintain records of all employees who are or will be performing electrical work for that electrical contractor and shall permit the electrical board to examine and copy all such records as required by this section.

When an apprentice electrician is found to be doing electrical work not under the direct supervision of a licensed electrician, an investigative fee may be charged to cover the costs incurred by the board. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.

Any master or class B electrician who fails or refuses to comply with this section or who fails or refuses to comply or demonstrate compliance with this section at the request of the board or its representative shall subject that person's license to nonrenewal, suspension, or revocation by the board.

3. Master and class B electricians. A master or class B electrician may exercise that person's privileges as a licensed master or class B electrician for no more than one shop or business, and shall comply with provisions as required for contracting with the secretary of state's office as stated in North Dakota Century Code chapter 43-07. A master or class B electrician shall notify the state electrical board office immediately upon changing from contracting status to noncontracting status for the shop or business they represent.
4. Maintenance personnel regularly employed by the owner may maintain or make minor repairs to existing electrical wiring devices and appliances, but are precluded from extending or changing the characteristics of existing circuits, feeders, or other electrical apparatus.
5. Purpose and scope. The purpose of these standards is the practical safeguarding of persons and of buildings and building contents from

electrical hazards arising from the use or control of electricity for light, heat, power, and control thereof and of the fire detection system. It covers the electrical conductors and equipment installed within or on public and private buildings and other premises, including yards, carnival and parking lots, railroad right of way and, also the conductors that supply streetlighting, with the associated equipment necessary to its safe operation.

These standards, based on the National Electrical Code, are the result of years of experience and research to meet the demand for uniform standards to govern electrical wiring in North Dakota, and provide basic rules for intelligent and uniform installation and inspection.

All requirements contained herein shall be given careful consideration to ensure greatest permanence, convenience, and safety. These standards do not constitute a design specification for any particular installation, nor an instruction manual for untrained persons. Skill and experience are necessary factors for a safe and adequate wiring installation. In cases where these requirements differ or are in conflict with the requirements of the NFPA 70 ~~2005~~ 2008 edition National Electrical Code and NFPA 101 ~~2003~~ 2006 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors, the more restrictive requirements shall be the minimum.

6. Administrative powers and duties. The executive director of the state electrical board, under the direction of the board, shall administer laws, rules, and wiring standards of this state, the electrical requirements of the NFPA 70 ~~2005~~ 2008 edition National Electrical Code and NFPA 101 ~~2003~~ 2006 edition Life Safety Code, and applicable articles in currently adopted state building code pertaining to fire detection, fire alarms, fire communications, and smoke detectors. In all cases when any action is taken by the executive director to enforce the provisions of any sections contained in these electrical regulations, the NFPA 70 ~~2005~~ 2008 edition National Electrical Code and NFPA 101 ~~2003~~ 2006 edition Life Safety Code, such acts shall be done in the name of and on behalf of the state.

The electrical regulations of these standards, the NFPA 70 ~~2005~~ 2008 edition National Electrical Code and NFPA 101 ~~2003~~ 2006 edition Life Safety Code, may be modified or waived by special permission in particular cases when such modification or waiver is specifically permitted or in particular cases when an advancement in the technology of electricity makes such modification or waiver advisable in the best interest of the people of North Dakota. Such "special permission" shall, in all cases, be obtained from the executive director in writing prior to the commencement of the work.

Whenever the board is authorized or mandated by law to inspect an electrical installation, the inspector has authority to enter upon land for the purpose of conducting the inspection. Except in emergency circumstances, the inspector

shall request permission from the property owner or agent prior to entering a dwelling, other building, or other place so enclosed as manifestly to exclude intruders. If the landowner refuses to give permission, the board may request the district court of the district containing the property for an order authorizing the inspector to enter the property to conduct the inspection. Emergency circumstances include situations presenting imminent danger to health, safety, or property.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-03. General requirements. Electrical installations shall be planned to provide adequate capacity for the load.

1. Wiring systems shall have conductors of sufficient capacity to furnish each outlet without excessive line loss or voltage drop. The voltage drop shall not exceed five percent at the farthest outlet of power, heating and lighting loads, or combinations of such loads. (See appendix for example.)
2. All wiring materials and equipment shall be listed by nationally recognized testing laboratories to safeguard life and property. It is the duty of the electrical installer to secure permission from the executive director to use materials, devices, and methods of installation not specifically covered by these standards. Equipment not approved under a testing laboratory category shall be evaluated by a registered professional engineer on state-accepted evaluation forms.

Exception: Manufacturing firms that install industrial machinery for use by the firm itself and employ professional engineers may evaluate the industrial machinery according to NFPA 79 or UL 508 standards. This evaluation shall be maintained with the equipment at all times.

3. All installations shall be made in a workmanlike manner with special attention paid to the mechanical execution of work. All conductors shall be rigidly supported and all fittings securely fastened.
4. When wiring public school buildings, approval shall be received from the department of public instruction and the state electrical board.
5. Overhead conductors shall not cross over water wells or known sites where water wells may be drilled. A minimum distance of twenty feet [6.10 meters] in all directions shall be maintained for overhead conductors.

6. All hospitals, nursing homes, and related patient care areas along with dormitories designed to house more than sixteen people shall be wired in metal raceway. Portable cleaning equipment receptacle outlets shall be installed in corridors and located so that no point in the corridor along the floorline, measured horizontally, is more than twenty-five feet [7.62 meters] from an outlet. Spacing of receptacle outlets for dormitories and assisted living shall be in conformity with section 210-60, ~~2005~~ 2008 edition, National Electrical Code.
7. In the wiring of nursing homes and hospitals, reference shall be made to the state department of health for special requirements pertaining to operating rooms, delivery rooms, and emergency lighting.
8. Aluminum conductors in sizes smaller than no. 6 shall not be used. Aluminum conductors installed and all corresponding materials shall be approved by testing laboratories.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-04. Places of assembly. This section covers all buildings, structures, or portions of buildings designed or intended for the assembly of one hundred or more persons.

Places of assembly include: assembly halls, auditoriums, including auditoriums in schools; mercantile, business, and other occupancies; exhibition halls; armories; dining facilities, including restaurants; church chapels; dancehalls; mortuary chapels; museums; skating rinks; gymnasiums and multipurpose rooms; bowling lanes; poolrooms; clubrooms; places of awaiting transportation; courtrooms; drinking establishments; and conference rooms.

Occupancy of any room or space for assembly purposes by less than one hundred persons in a building of other occupancy, and incidental to such other occupancy, shall be classed as part of the other occupancy and subject to the applicable provisions.

When such building structures or portions thereof contain a projection booth or stage platform or area for the presentation of theatrical or musical production, either fixed or portable, the wiring for that area shall comply with all applicable provisions of article 520, ~~2005~~ 2008 edition, National Electrical Code.

(For methods of determining population capacity, see occupant load value table, section 24-02-01-16.)

4. ~~Hazardous (classified) locations.~~ Hazardous areas located in any assemblage occupancy shall be installed in accordance with article 500, 2005 edition, National Electrical Code, hazardous locations.
2. ~~Wiring methods.~~ The fixed wiring method including fire alarms shall be metal raceway (and metal boxes) or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Wiring methods. The fixed wiring method including fire alarms shall be metal raceway (and metal boxes) or nonmetallic raceway encased in not less than two inches [5.08 centimeters] of concrete.

Exception 1: As provided in article 640, 2005 2008 edition, National Electrical Code, sound reproduction and similar equipment; in article 800, 2005 2008 edition, National Electrical Code, communication circuits; and in article 725, 2005 2008 edition, National Electrical Code, for class 2 and class 3 remote control and signaling circuits.

Exception 2: Listed two-hour fire-rated cables as permitted in article 695.6e 695.6 and article 700.9 700.9D and article 760, 2005 2008 edition, National Electrical Code.

Adjacent areas separated by a fire barrier shall be considered a separate building and may be wired in any approved wiring method in chapter 3 of the 2005 2008 edition, National Electrical Code. For the purpose of this section, a fire barrier is defined as a continuous assembly, vertical or horizontal, in accordance with currently adopted state building code. In no case shall it be less than two-hour fire-rated.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-05. Hazardous locations.

1. Hazardous locations shall be wired in accordance with articles 500-516. For classifications of oilfield installations refer to RP 500, Classification of Locations for Electrical Installations at Petroleum Facilities, second edition, November 1997.
2. Electrical wiring in grain elevators shall conform with code requirements, class II, division 1, under article 500, 2005 2008 edition, National Electrical Code.
 - a. Surge arrestors shall be provided for all services in grain elevators.

- b. Hot bearing or other similar detection systems shall be installed in accordance with articles 500-516, ~~2005~~ 2008 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-06. Grounding and bonding. Grounding and bonding shall conform to article 250, ~~2005~~ 2008 edition, National Electrical Code.

1. At motor connections, a bonding jumper sized in accordance with table 250-122, ~~2005~~ 2008 edition, National Electrical Code, shall be provided around all flexible conduit in sizes one-half inch [12.70 millimeters] and larger. The bonding jumper is not required where a separate grounding conductor is included.
2. Grounding of metal outdoor lighting standards. Definition of lighting standard is a pole exceeding twelve feet [3.66 meters] in height measured from the bottom of the base or from the intended grade level of poles.
 - a. Circuits run in nonmetallic conduit or buried directly in the ground: the metal lighting standard shall be grounded by use of an equipment grounding conductor, not the neutral conductor. This equipment grounding conductor shall be run continuously throughout the system and properly bonded to each standard by use of lugs.
 - b. The metal lighting standard shall be connected to a one-half inch [12.70 millimeters] by ten-foot [3.05-meter] copperweld ground rod, or twenty feet [6.10 meters] of one or more bare or zinc galvanized or other electrically conductive coated steel reinforcing bars or rods (rebar) of not less than one-half inch [12.70 millimeters] in diameter. by the means of a bonding jumper. The ten-foot [3.05-meter] ground rod shall be driven in the center of the metal standard base and project slightly above the base. Both ground rod and equipment grounding conductor shall be connected to the metal standards. The bonding jumper shall be in accordance with ~~2005~~ 2008 edition, National Electrical Code, and in no case smaller than no. 8 copper or no. 6 aluminum.

3. The grounding electrode conductor shall be connected to the grounded service conductor in the enclosure for the service disconnect.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-07. Branch circuits and feeders. Branch circuits and feeders shall comply with articles 210 and 215, ~~2005~~ 2008 edition, National Electrical Code.

1. The total connected load shall be divided as evenly as practicable, between the two ungrounded conductors of a three-wire system and three conductors of a four-wire wye system.
2. A separate circuit with disconnect shall be provided for the purpose of operating or controlling electrical equipment on heating units. Wiring requirements for fixed electrical space heating equipment is provided under article 424, ~~2005~~ 2008 edition, National Electrical Code.
3. Dwelling occupancies having built-in baking or cooking units installed separately shall have an individual disconnect and overcurrent protective device. Conductors supplying these units shall have a carrying capacity according to nameplate rating.
4. A minimum of six 20-amp small appliance branch circuits shall be installed for counter receptacles in kitchens that may be used to serve public gatherings at schools, churches, lodges, and similar buildings. Any island counter in public gatherings shall have at least one receptacle.
5. ~~Dwelling~~ One-family and two-family dwelling occupancies. A minimum of three 20-amp small appliance branch circuits shall be installed to supply receptacle outlets in kitchen, pantry, dining room, and breakfast room. These circuits shall not supply other outlets and shall have conductors not smaller than no. 12. Two of these circuits shall supply receptacle outlets on or near work counter area and so arranged that adjacent receptacles are not on the same circuit. One 20-amp branch circuit shall be provided for no more than two bathrooms.
6. Fifteen and twenty ampere 125-volt receptacles located outdoors or in unfinished basements supplying sewer pumps and sump pumps shall

be ground-fault protected or a single receptacle shall be installed in an enclosure that is lockable.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-08. Services. Electrical services shall comply with article 230, 2005 2008 edition, National Electrical Code.

1. Perpendicular mast used for support of a service shall not be less than two-inch [5.08-centimeter] galvanized rigid steel conduit or intermediate metal conduit, fitted with storm collar flashing.
2. To eliminate moisture condensation, a suitable compound shall be installed to prevent circulation of air from a warmer to a colder section of the raceway (see section 300-7, 2005 2008 edition, National Electrical Code).
3. Outside switch location. In no case shall the equipment be mounted lower than two feet [.6096 meter] above grade level unless listed for such purpose.
4. All services in one-family dwellings shall be located in a single accessible location.

Exception: Special permission may be granted by the electrical inspector for a second service location to be added where there is no available space for the service equipment. The second service location shall be installed in accordance with article 230-2, 2005 2008 edition, National Electrical Code.

4. 5. Rating of service switch. Any new or old single-family dwelling where the main house panel or service is altered or repaired, the dwelling is moved, or where the dwelling is rewired, a minimum one hundred ampere service-rated panel shall be installed. Replacement of service mast or meter enclosure is an alteration of the service.
 - a. A one hundred ampere main house panel shall be installed using ungrounded conductors rated at one hundred amperes. The panel shall contain provisions for a minimum of twenty full-sized branch circuit spaces.
 - b. A two hundred ampere or larger main house panel shall be installed using ungrounded conductors sized for the proper ampacity. The panel or panels shall contain provisions for a minimum of forty full-sized branch circuit spaces.

- c. Service and feeder calculation for electric heating loads shall be sized to one hundred twenty-five percent of the full load rating.
- 5- 6. Underground services. Underground service shall comply with article 230, part III, ~~2005~~ 2008 edition, National Electrical Code. Cables or individual conductors on outside of buildings or poles shall be protected where subject to mechanical damage. Where rigid metal conduit is used, a bushing shall be used on both ends. Sufficient slack conductor shall be left to allow for ground settling next to foundations. Past experience indicates that the ground next to a foundation has settled as much as three feet [.914 meter].

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-09. Overcurrent protection. Overcurrent protection shall comply with article 240, ~~2005~~ 2008 edition, National Electrical Code.

- 1. Exterior overcurrent devices shall be located at a height of no less than two feet [.6096 meter] above grade level to the bottom of the enclosure. ~~Lighting, appliance, and power~~
- 2. Switchboards and panel boards ~~may~~ shall not be located in bathrooms, clothes closets, stairways, or crawl space.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10. Wiring methods.

- 1. Agricultural buildings. This section covers all buildings housing livestock, poultry, and other areas of similar or like nature. All electrical panel boards, wiring devices, and equipment shall be installed in accordance with the provisions of article 547, ~~2005~~ 2008 edition, National Electrical Code.

A site-isolating device shall be permitted to be installed at the distribution point where two or more agricultural building structures are supplied from the distribution point.

- 2. Electric metallic tubing shall not be used in concrete below grade, in concrete slab or masonry in direct contact with earth. A vapor barrier,

if used, will have no effect on the requirements of the section. Electric metallic tubing shall not be embedded in earth or fill.

3. Aluminum conduit shall not be installed in contact with earth or embedded in concrete.
4. The installation of rigid nonmetallic conduit shall comply with the provision of article 352, ~~2005~~ 2008 edition, National Electrical Code. Expansion fittings for rigid nonmetallic conduit shall be provided to compensate for thermal expansion and contraction in accordance with section 352.44, ~~2005~~ 2008 edition, National Electrical Code. When installed outdoors and above grade, one hundred forty degrees Fahrenheit [60 degrees Celsius] shall be considered the minimum change in degrees.
5. Fertilizer rooms, meatpacking plants, salt processing plants, and similar locations are judged to be occupancies where severe corrosive conditions are likely to be present. It is recommended that nonmetallic conduit with nonmetallic boxes and fittings be used as the wiring method for such occupancies. Ferrous and nonferrous metal raceways shall be used providing the raceway, boxes, and fittings are properly protected against corrosion.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-10.1. Water-damaged electrical equipment. Electrical wiring and equipment exposed to water damage shall comply with the following:

1. All breaker panel boards, breakers, fuses, disconnect switches, controllers, receptacles, switches, light fixtures, and electric heaters that have been submerged or exposed to water damage shall be replaced or all electrical equipment, switchgear, motor control centers, boilers and boiler controls, electric motors, transformers, and other similar equipment such as appliances, water heaters, dishwashers, ovens, and ranges that have been submerged shall be reconditioned by the original manufacturer or by its approved representative or replaced.
2. Electrical wiring may require replacement depending on the type of wire or cable and what application it was listed for.
3. Splices and terminations shall be checked to make sure they comply with article 110-14, ~~2005~~ 2008 edition, National Electrical Code.

Other recommendations can be found in "Guidelines for Handling Water Damaged Electrical Equipment" published by the national electrical manufacturers association (NEMA).

History: Effective January 1, 1999; amended effective April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-12. Boxes and fittings. Not more than one extension ring may be used on outlet boxes unless special permission has been obtained from the electrical inspector having jurisdiction. Boxes or conduit bodies shall be installed at each opening, splice, or connection, except as provided in article 604, ~~2005~~ 2008 edition, National Electrical Code.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-14.1. Mobile home parks and recreational vehicle parks. Mobile homes, manufactured homes, and mobile home parks shall comply with articles 550 and 551; ~~2005~~ 2008 edition, of the National Electrical Code.

Service equipment may be installed on manufactured homes as required in article 550.32(b) if the following requirements are met:

1. The mobile home is located on property owned by homeowner and not in mobile home park.
2. The mobile home is secured to a permanent foundation that complies with currently adopted state building code.

History: Effective April 1, 2002; amended effective April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-16. Marking of means of egress, illumination of means of egress, and emergency lighting. The purpose of this section is to provide exit and emergency lighting requirements in accordance with Life Safety Code, NFPA 101, ~~2003~~ 2006 edition, in simple and condensed form. For occupancies or items not covered in this condensed version, refer to NFPA 101, ~~2003~~ 2006 edition, for complete details. In the wiring of institutional occupancies, governmental agencies may use other codes, which may be more stringent, especially when federal funds are involved.

1. Marking of means of egress. All required exits and access to exits shall be marked by readily visible signs. For externally illuminated

signs, letters shall be not less than six inches [~~15.24 centimeters~~ 150 millimeters] high. Internally illuminated signs shall be listed per UL 924 which assures proper letter size. Chevron-shaped arrows are required to indicate direction to exits. Every sign shall be suitably illuminated. For externally illuminated signs see section 7.10.6, Life Safety Code, NFPA 101, ~~2003~~ 2006 edition and for internally illuminated signs see section 7.10.7.

2. Illumination of means of egress. Illumination of means of egress shall provide continuous, dependable, illumination of not less than one foot-candle at floor level for all areas such as corridors, stairways, and exit doorway, providing a lighted path of travel to the outside of the building and public way during all times that the means of egress is available for use. For new stairs, the required minimum illumination level is ten foot-candle during conditions of stair use. Illumination shall be from a source of reasonable assured reliability and may be supplied from normal lighting circuits or special circuits with switching controlled by authorized personnel. Illumination required for exit marking shall also serve for illumination of means of egress and shall be so arranged that failure of a single unit such as burning out of a single bulb will not leave any area in darkness.
3. Emergency lighting. Emergency lighting systems shall be so arranged to provide the required illumination automatically in event of any interruption or failure of the normal power supply. An acceptable alternate source of power may be an electric generator or approved battery. In occupancies where emergency lighting is required, the circuits supplying exit marking and illumination of means of egress shall be supplied by the emergency system. Other areas of the facilities only requiring exit marking and illumination of means of egress may be supplied by the normal source.
4. Classification of occupancy based on chapter 6, Life Safety Code, NFPA 101, ~~2003~~ 2006 edition.

Note: Check with local building official to determine occupancy and occupant load.

Assembly. Assembly occupancies include all buildings or portions of buildings used for gathering together fifty or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement, or awaiting transportation. Assembly occupancies also include special amusement buildings regardless of occupant load.

Assembly occupancies include the following:

Armories	Libraries
Assembly halls	Mortuary chapels

Auditoriums	Motion picture theaters
Bowling lanes	Museums
Clubrooms	Passenger stations and terminals of air, surface, underground, and marine public transportation facilities
College and university classrooms, fifty persons and over	Places of religious worship
Conference rooms	Poolrooms
Courtrooms	Recreation piers
Dancehalls	Restaurants
Drinking establishments	Skating rinks
Exhibition halls	Theaters
Gymnasiums	

Occupancy of any room or space for assembly purposes by fewer than fifty persons in a building or other occupancy and incidental to such other occupancy shall be classified as part of the other occupancy and shall be subject to the provisions applicable thereto.

Educational. Educational occupancies include all buildings or portions of buildings used for educational purposes through the twelfth grade by six or more persons for four or more hours per day or more than twelve hours per week.

Educational occupancies include the following:

Academies	Nursery schools
Kindergartens	Schools

Other occupancies associated with educational institutions shall be in accordance with the appropriate part of Life Safety Code, NFPA 101, 2003 2006 edition.

In cases when instruction is incidental to some other occupancy, the section of Life Safety Code, NFPA 101, 2003 2006 edition, governing such other occupancy applies. For example:

- Classrooms under fifty persons - business occupancy
- Classrooms fifty persons and over - assembly
- Instructional building - business occupancy
- Laboratories, instructional - business occupancy
- Laboratories, noninstructional - industrial

Day care. Day care occupancies include all buildings or portions of buildings in which four or more clients receive care, maintenance, and supervision, by other than their relatives or legal guardians, for less than twenty-four hours per day.

Day care occupancies include the following:

- Child day care occupancies

- Adult day care occupancies, except where part of a health care occupancy

- Nursery schools

- Day care homes

- Kindergarten classes that are incidental to a child day care occupancy

In cases when public schools offer only half-day kindergarten programs, many child day care occupancies offer state-approved kindergarten classes for children who require full day care. As these classes are normally incidental to the day care occupancy, the requirements of the day care occupancy should be followed.

Health care. Health care occupancies are those used for purposes such as medical or other treatment or care of persons suffering from physical or mental illness, disease, or infirmity and for the care of infants, convalescents, or infirm aged persons. Health care occupancies provide sleeping facilities for four or more occupants and are occupied by persons who are mostly incapable of self-preservation because of age, physical or mental disability, or because of security measures not under the occupants' control.

Health care occupancies include the following:

- Hospitals

- Nursing homes

- Limited care facilities

Ambulatory health care. Ambulatory health care occupancies are those used to provide services or treatment simultaneously to four or more patients on an outpatient basis. The patients are considered incapable of self-preservation due to the treatment rendered, the use of anesthesia, or the injury for which they are receiving emergency or urgent care.

Detention and correctional. Detention and correctional occupancies are used to house individuals under varied degrees of restraint or security and are occupied by persons who are mostly incapable of self-preservation because of security measures not under the occupants' control.

Detention and correctional occupancies include the following:

- Adult and juvenile substance abuse centers
- Adult and juvenile work camps
- Adult community residential centers
- Adult correctional institutions
- Adult local detention facilities
- Juvenile community residential centers
- Juvenile detention facilities
- Juvenile training schools

Residential. Residential occupancies are those occupancies in which sleeping accommodations are provided for normal residential purposes and include all buildings designed to provide sleeping accommodations.

Exception. Those classified under health care or detention and correctional occupancies.

Residential occupancies are treated separately in Life Safety Code, NFPA 101, 2003 2006 edition, in the following groups:

- One-family and two-family dwellings
- Lodging or rooming houses
- Hotels, motels, and dormitories
- Apartment buildings
- Residential board and care facilities

Mercantile. Mercantile occupancies include stores, markets, and other rooms, buildings, or structures for the display and sale of merchandise.

Mercantile occupancies include the following:

Auction rooms	Shopping centers
Department stores	Supermarkets
Drugstores	

Office, storage, and service facilities incidental to the sale of merchandise and located in the same building are included with mercantile occupancy.

Business. Business occupancies are those used for the transaction of business other than those covered under mercantile, for the keeping of accounts and records, and for similar purposes.

Business occupancies include the following:

Air traffic control towers (ATCTs)	Doctors' offices
City halls	General offices
College and university instructional buildings, classrooms under fifty persons, and instructional laboratories	Outpatient clinics, ambulatory
Courthouses	Townhalls
Dentists' offices	

Doctors' and dentists' offices are included unless of such character as to be classified as ambulatory health care occupancies.

Industrial. Industrial occupancies include factories making products of all kinds and properties devoted to operations such as processing, assembling, mixing, packaging, finishing or decorating, and repairing.

Industrial occupancies include the following:

Drycleaning plants	Power plants
Factories of all kinds	Pumping stations
Food processing plants	Refineries
Gas plants	Sawmills
Hangars (for servicing or maintenance)	Telephone exchanges
Laundries	

In evaluating the appropriate classification of laboratories, the authority having jurisdiction should determine each case individually based on the extent and nature of the associated hazards. Some laboratories may be classified as occupancies other than industrial, for example, a physical therapy laboratory or a computer laboratory.

Storage. Storage occupancies include all buildings or structures utilized primarily for the storage or sheltering of goods, merchandise, products, vehicles, or animals.

Storage occupancies include the following:

Barns	Hangars (for storage only)
Bulk oil storage	Parking structures

Cold storage	Stables
Freight terminals	Truck and marine terminals
Grain elevators	Warehouses

Storage occupancies are characterized by the presence of relatively small numbers of persons in proportion to the area. Any new use that increases the number of occupants to a figure comparable with other classes of occupancy changes the classification of the building to that of the new use.

Mixed occupancies. Where two or more classes of occupancy occur in the same building or structure and are intermingled so that separate safeguards are impracticable, means of egress facilities, construction, protection, and other safeguards shall comply with the most restrictive life safety requirements of the occupancies involved.

5. Occupant load factor table.

Use	Square Feet Per Person
Assembly use	15 net*
Areas of concentrated use without fixed seating	7 net
Waiting space	3 net
Bleachers, pews, and similar bench-type seating	Note 1
Fixed seating	Note 2
Kitchens	100 gross**
Libraries	
In stack areas	100 gross
In reading rooms	50 net
Swimming pools	
Water surface	50 gross
Pool decks	30 gross
Stages	15 net
Educational use	
Classroom area	20 net
Shops, laboratories, and similar vocational areas	50 net
Day care use	
Maximum number of persons intended to occupy that floor, but not less than	35 net

Health care use		
Sleeping departments	120	gross
Inpatient departments	240	gross
<u>Ambulatory health care</u>	<u>100</u>	<u>gross</u>
Detention and correctional use		
Maximum number of persons intended to occupy that floor, but not less than	120	gross
Residential use		
Hotels, motels, dormitories, apartment buildings:		
Maximum probable population, but not less than	200	gross
Lodging or roominghouses:		
Sleeping accommodations for a total of sixteen or fewer persons on either a transient or permanent basis, with or without meals, but without separate cooking facilities or individual occupants	No requirements	
One-family and two-family dwellings	No requirements	
Residential board and care use	Note 3	
Mercantile use (including malls)		
Street level and below (sales)	30	gross
Upper floor (sales)	60	gross
Office areas	100	gross
Storage, receiving, or shipping (not open to the general public)	300	gross
Assembly areas	See	"Assembly"
Business use		
Business purposes	100	gross
Other purposes	Note 4	
Industrial use		
Maximum number of persons intended to occupy that floor but not less than	100	gross
Storage use		
No occupant load factor specified		
In storage occupancies	N/A	

<u>In mercantile occupancies</u>	<u>300 gross</u>
<u>In other than storage and mercantile occupancies</u>	<u>500 gross</u>

* Net floor area is the actual occupied area, not including accessory unoccupied areas or thickness of walls.

** Gross floor area is the floor area within the inside perimeter of the outside walls of the building under consideration with no deduction for hallways, stairs, closets, thickness of interior walls, columns, or other features.

Notes to occupant load table.

Note 1. Bleachers, pews, and similar bench-type seating: one person per eighteen linear inches [~~45.72 centimeters~~ 457.2 millimeters].

Note 2. Fixed seating. The occupant load of an area having fixed seats shall be determined by the number of fixed seats installed. Required aisle space serving the fixed seats shall not be used to increase the occupant load.

Note 3. Refer to chapters 32 and 33 of Life Safety Code, NFPA 101, 2003 2006 edition.

Note 4. Occupant load factors associated with the use.

6. Building classification table.

x - indicates required
o - indicates not required

Occupancy	Marking of Means Egress	Illumination of Means Egress	Emergency Lighting
Assembly	x	x	x
Educational	x	x	x
Interior stairs and corridors	x	x	x
Normally occupied spaces	x	x	x Note 6
Flexible and open plan buildings	x	x	x
Interior or windowless portions of buildings	x	x	x
Shops and laboratories	x	x	x
Day care	x	x	x
Interior stairs and corridors	x	x	x
Normally occupied spaces	x	x	x Note 6
Flexible and open plan buildings	x	x	x
Interior or windowless portions of buildings	x	x	x

Shops and laboratories	x	x	x	
Family day care homes (more than three but fewer than seven persons)	o	x	o	
Group day care homes (seven to twelve persons)	o	x	o	
Health care occupancies (Note 1) (for complete details see Article 517 of NEC and NFPA Standard 99)	x	x	x	
Detention and correctional	x	x	x	
Residential				
Hotels and dormitories	x	x	o	
			x	Note 2
More than twenty-five rooms	x	x	x	Note 2
Apartment buildings				
Twelve or less apartments	x	x	o	Note 3
More than twelve apartments or greater than three floors	x	x	x	Note 3
Residential board and care				
More than sixteen	x	x	x	
Mercantile				
Class A - over thirty thousand square feet [2787.09 square meters]	x	x	x	
Class B - three thousand to thirty thousand square feet [278.71 square meters to 2787.09 square meters]	x	x	x	
Class C - under three thousand square feet [278.71 square meters]	x	Note 7	o	
Malls	x	x	x	
Business	x	x	o	
Two or more stories above exit discharge	x	x	x	
Fifty or more persons above or below level of exit discharge	x	x	x	
Three hundred or more persons	x	x	x	
All windowless and underground	x	x	x	
Industrial	x	x	x	Notes 8 & 9
Storage		x	x	Notes 10 & 11
	x	10		

Special structures (refer to chapter 11, Life Safety Code, NFPA 101, 2003 2006 edition).

Mixed occupancies (Note 5).

NOTES:

Note 1. Exception: Power supply for exit and emergency lighting shall conform to NFPA 110.

Note 2. Exception: Where each guest room or guest suite has an exit direct to the outside of the building at street or ground level emergency lighting is not required.

Note 3. Exception: Buildings with only one exit need not be provided with exit signs.

Note 5. Exception: Where the same means of egress serve multiple-use or combined occupancies, exit lighting, exit signs, and emergency lighting shall be provided for the occupancy with the most stringent lighting requirements. The occupant load of each type of occupancy shall be added to arrive at the total occupant load.

Note 6. Exception: Rooms with windows to outside (other than assembly use spaces) exempted from emergency lighting requirement.

Note 7. Exception: Where an exit is immediately apparent from all portions of the sales area, the exit marking is not required.

Note 8. Exception: Special purpose industrial occupancies without routine human habitation.

Note 9. Exception: Structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination on all portions of the means of egress during these hours.

Note 10. Exception: Storage occupancies do not require emergency lighting when not normally occupied.

Note 11. Exception: In structures occupied only during daylight hours, with skylights or windows arranged to provide the required level of illumination of all portions of the means of egress during these hours, emergency lighting is not required.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-17. Carnivals. This section provides standards for temporary outdoor installations of portable electrical wiring and equipment for carnivals and celebrations consisting of overhead and underground installations for lighting and power to tents, stands, concessions, and amusement rides and shall comply with article 525, ~~2005~~ 2008 edition, National Electrical Code.

1. All temporary outdoor installations shall be approved by the electrical inspector before usage.

2. Inspection and fees for outdoor carnivals and concessions. Each outdoor amusement enterprise or carnival operating or intending to operate in North Dakota shall notify the North Dakota State Electrical Board, Box 857 7335, Bismarck, North Dakota ~~58502-0857~~ 58507-7335, each year of its itinerary and make application for the initial inspection thirty days before the first engagement in the state. Failure to notify the state electrical board may result in the outdoor amusement enterprise or carnival being responsible for expenses incurred for excess time and travel to inspect these installations.
 - a. Fees - ~~\$10.00~~ \$15.00 each ride or concession
~~\$10.00~~ \$15.00 reinspection fee on each unit, if required
~~\$40.00~~ \$50.00 each transformer or generator truck
 - b. The fee shall be paid to the inspector at the first engagement or inspection. Each ride or concession will be issued a certification of inspection so that "en route" inspection shall be recorded by each inspector.
 - c. Each ride or concession wired properly will be issued a certification of compliance, serving for an entire carnival season, subject to subsequent inspections.
 - d. Each ride or concession having minor code violations will be issued a correction order with instructions to correct the same, before a following engagement, which will require a reinspection with a ten fifteen dollar reinspection fee.
 - e. The electrical inspector is empowered to write a correction order for immediate compliance should the inspector find a condition dangerous to life and property.

History: Amended effective October 1, 1987; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-19. Inspection fees.

1. All electrical installations, including new jobs and additional work on old installations, made in this state, shall have an electrical wiring certificate or e-cert properly executed by the master or class B electrician supervising the installation of electrical wiring. The state electrical board shall prescribe such form and shall have on hand a supply of such certificates for distribution to master and class B electricians. Such certificate shall consist of the original and five copies.

2. Before work commences on any electrical installation where a new entrance is installed, an existing entrance is altered or repaired, a building is moved, where a mobile home feeder is installed, or where the cost of the repair work or additional installation exceeds three hundred dollars, the master or class B electrician supervising such installation shall execute an electrical wiring certificate and distribute the various copies as directed. ~~The goldenrod copy of the certificate shall be forwarded to the state electrical board or city electrical inspection authority having jurisdiction and the canary copy to the power company before work is commenced.~~ follows:

~~Within fifteen days of completion, use, or occupancy, whichever is foremost, the white and green copies shall be forwarded to the office of the state electrical board, along with the proper fee. The pink copy shall be retained by the master or class B electrician and the manila copy shall be left in, or on the panel or given to the owner. All six copies shall contain a description of the work and the legal description of the location. Certificates with job cost of ten thousand dollars or less are valid twelve months from the original filing date. The wiring certificate shall be submitted with a proper description of work completed and with the proper fee. A new wiring certificate shall be filed on all unfinished work.~~

- a. The goldenrod copy of the certificate shall be forwarded to the state electrical board and the canary copy to the power company before work is commenced.
- b. Within fifteen days of completion, use, or occupancy, whichever is foremost, the white and green copies shall be forwarded to the office of the state electrical board, along with the proper fee. The wiring certificate shall be completed with the location and a proper description of work completed.
- c. The pink copy shall be retained by the master or class B electrician.
- d. The manila copy shall be left in or on the panel or given to the owner.

Certificates with job cost of ten thousand dollars or less are valid twelve months from the original filing date. A new wiring certificate shall be filed on all unfinished work.

3. The electric wiring certificates are available from the state electrical board at Bismarck, North Dakota, upon request of any master or class B electrician holding a proper current license from the electrical board. The master or class B electrician shall be held responsible for all certificates issued to that person. A charge of fifteen twenty-five dollars to cover board costs shall be imposed on each lost wiring certificate.

4. A copy of an electrical wiring certificate shall be filed with the power supplier before an electrical installation may be energized.
5. Inspection fees shall be as follows:

Job Cost	Inspection Fee
Up to \$300.00	\$25.00 (minimum fee)
\$300.00 to \$3,000.00	\$25.00 for the first \$300.00 plus 2% on balance up to \$3,000.00
\$3,000.00 to \$10,000.00	\$79.00 for the first \$3,000.00 plus 1.5% on balance up to \$10,000.00
\$10,000.00 to \$15,000.00	\$184.00 for the first \$10,000.00 plus 1% on balance up to \$15,000.00
\$15,000.00 to \$100,000.00	\$234.00 for the first \$15,000.00 plus 1/2 of 1% on balance up to \$100,000.00
Over \$100,000.00	\$659.00 for the first \$100,000.00 plus 1/4 of 1% on balance

Inspection fees shall accompany the copies of wiring certificates which shall be forwarded to the State Electrical Board, Box 857 7335, Bismarck, North Dakota ~~58502~~ 58507-7335.

6. Whenever an electrical installation made by or under the supervision of a master or class B electrician is commenced or in use without submitting an electrical wiring certificate, as directed in subsection 2, the certificate may be considered late and the normal inspection fee, as required under this section, is increased in the amount of fifty dollars. In addition, when time and travel are expended by employees of the board to obtain a late certificate, an investigative fee may be charged to cover the costs incurred. Costs are to be calculated at a rate of fifty dollars per hour and mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile of travel.
7. Corrections. Whenever a correction order is written and corrections are not completed within the allotted time, there shall be an administration charge of fifty dollars, which shall be paid to the board by the master or class B electrician.
8. All reinspections shall be paid for by the electrical contractors at a cost of fifty dollars per hour with a minimum charge of one hundred dollars.
9. The electrical inspection fee shall be based on the total amount of the electrical contract or total cost to the owner including extras.
10. The following items need not be included in the cost:

- a. Appliances, including dishwashers, heat pumps, air-conditioners, disposals, and similar equipment.
 - b. Heating, ventilating, and air-conditioning (HVAC) units.
 - c. Electric motors, PLC, generators; and
 - d. Industrial machines.
11. The electrical contractor is responsible to collect the proper inspection fee on each installation. When the owner furnishes the material and the electrical contractor furnishes the labor, the owner shall provide the electrical contractor with the total amount expended for electrical materials used in connection with the installation, and the electrical contractor shall then calculate and collect the necessary inspection fee from the owner. Whenever electrical materials are donated or removed from an existing installation and placed at another location or labor is donated to an installation, the electrical contractor shall estimate the cost of these materials and labor and include the amount in the job cost for the purpose of calculating the proper inspection fee.
12. The inspection fee for all electrically driven irrigation machines and motor-driven passenger or freight elevators and dumbwaiters installed in North Dakota shall be as follows:

Elevators and dumbwaiters having horsepower rating up to 5 horsepower - \$20.00

Elevators and dumbwaiters having horsepower rating 5 horsepower through 15 horsepower - \$40.00

Elevators and dumbwaiters having horsepower rating over 15 horsepower - \$60.00

Electrically driven irrigation machines - \$50.00

~~The master electrician (restricted) having supervision of elevator or dumbwaiter installations shall obtain electrical wiring certificates from the state electrical board. The certificate form shall be completed, signed by the master electrician (restricted), and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee.~~

The companies having supervision of elevators, dumbwaiters, or electrically driven irrigation machine installations shall submit reports to the state electrical board. The report shall be completed, signed by owner or manager, and forwarded to the state electrical board, Bismarck, North Dakota, with the inspection fee within fifteen days of completion or use, whichever is first.

13. Requested inspections. For inspections not covered in this section or special services, the fee shall be fifty dollars per hour, including travel time, plus mileage rates currently allowed by North Dakota Century Code section 54-06-09 per mile traveled.
14. For self-wire inspections on wiring done by the owner, the inspection fee shall be as stated in this section, except the minimum shall be fifty dollars. Owner wiring shall be done on residential and farmstead property occupied by the owner. Certification and inspection are required as stated in subsection 1. The owner is required to notify the state electrical board or authority having jurisdiction before work commences. Requests for inspection of owner-wired installations shall be in writing and shall be accompanied by a print or drawing depicting the wiring to be done.

History: Amended effective January 1, 1981; January 1, 1984; October 1, 1987; January 1, 1990; March 1, 1990; January 1, 1993; February 1, 1996; January 1, 1999; April 1, 2002; April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

24-02-01-21. Examination Application, examination, and annual license fees. Examination fees shall be paid separately to the examination testing center provider, if required.

1. The examination fees are as follows:

a. Master examination	\$50.00
b. Journeyman examination	\$25.00
c. Class B examination	\$40.00
2. The annual license fees are as follows:

a. Master license	\$50.00
b. Journeyman license	\$25.00
c. Class B license	\$40.00
d. Apprentice registration	\$10.00
3. Licenses renewed after the expiration date require a reinstatement fee as follows:

a. Master license	\$50.00
b. Journeyman license	\$25.00

- | | | |
|----|-------------------------|---------|
| c. | Class B license | \$40.00 |
| d. | Apprentice registration | \$10.00 |

History: Effective August 1, 1988; amended effective January 1, 1990; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-13

24-02-01-22. Continuing education requirements.

1. Each master, journeyman, and class B electrician license shall not be renewed unless the proof of eight continuing education requirements of North Dakota Century Code section 43-09-15.1 are met hours have been submitted, of which a minimum of fifty percent of the hours shall be based on the ~~2005~~ 2008 edition, National Electrical Code. The remaining credits shall be subjects related to the electrical industry. Approval of the course curriculum is at the discretion of the North Dakota state electrical board.
 - a. Electrical continuing education programs will be accepted from technical or trade schools or colleges, electrical trade associations, or individual commercial providers.
 - b. Courses, seminars, and instructors shall have prior approval by the North Dakota state electrical board to receive credit. Request for approval of courses, seminars, and instructors shall be made no later than ten days prior to the board meeting. Board approval of courses, seminars, and instructors accepted expires when the state electrical board adopts an updated edition of the National Electrical Code.
 - c. Application for approval of courses and instructors shall be on a form provided by the North Dakota state electrical board. A complete description (detailed curriculum outlining the subject matter along with the time and sequence of each item) or copies of all materials provided to the attendants shall be submitted.
 - d. Continuing education programs held in other states and not granted prior approval according to this section may be considered for credit if the board is provided with evidence that the educational programs meet the requirements of the state electrical board and are approved for required continuing education credits by the public authority for licensing electricians in that state.
 - e. The board shall be notified in writing no later than fifteen days prior to the date, time, and location of the presentation. A representative of the North Dakota state electrical board shall be able to attend

without charge and have the authority to audit or review continuing education presentations.

- f. The board shall withdraw approval of any educational program not in compliance with this section.
 - g. The provider of the presentation shall forward an attendance list to the board on a form supplied by the board within fifteen days following the presentation but no later than March thirty-first of that year. A certificate of completion shall also be provided to each licensee in attendance. Each certificate of completion and attendance list shall include the name of the provider, the name of the instructor, the course identification number, the date and location of presentation, the number of code and noncode hours of instruction for continuing education units, the electrician's name, and the electrician's license number or social security number. It is the responsibility of the licensee to have a copy of this certificate of completion. The certificates shall be sent to the board only if requested to do so by the board.
 - h. Continuing education credits are valid for a period up to two license renewal periods.
2. Instructors shall submit their qualifications to the state electrical board prior to the presentation of the course or seminar. Courses will not be approved unless the instructor has one or more of the following qualifications:
- a. A master electrician with at least one year's experience in electrical inspection.
 - b. A journeyman or master electrician who is certified as an instructor through a vocational education department.
 - c. A person with a valid teaching accreditation from a trade or technical school, college, or university teaching an electrical curriculum.
 - d. A registered or licensed electrical engineer with at least four years' experience in design of premise electrical wiring systems.
 - e. A representative from the national fire prevention association, testing laboratories, international association of electrical inspectors, and other product manufacturer representatives with five years' practical experience in the subject taught.

- f. Instructor of an apprenticeship training program.

History: Effective January 1, 1999; amended effective April 1, 2005; April 1, 2008.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-21, 43-09-22

APPENDIX
Short Cut
At 75° C

Voltage Drop Formulas 167° F

$$\text{Voltage drop} = \frac{K \times L \text{ ft.} \times I}{\text{C.M.A.}}$$

C.M.A.

or

$$\text{C.M.A.} = \frac{K \times L \text{ ft.} \times I}{\% \text{ drop} \times \text{voltage}}$$

% drop x voltage

L = length in feet, one way

I = load in amps

E = Volts

C.M.A. = circular-mil area

K-factor = 25.8 multiplying factor for copper, 42.4 multiplying factor for aluminum at 75° C.

Percent drop = permissible voltage drop times voltage of circuit as follows:

$$3\% \text{ of } 208 = 208 \times .03 = 6.24 \text{ volts}$$

$$3\% \text{ of } 120 = 120 \times .03 = 3.6 \text{ volts}$$

$$3\% \text{ of } 240 = 240 \times .03 = 7.2 \text{ volts}$$

$$5\% \text{ of } 240 = 240 \times .05 = 12.0 \text{ volts}$$

Example:

240 volts, 1,000 ft. distance, 10 ampere load, 5% drop

$$25.8 \times 1,000 = 25,800 \times 10 = 258,000$$

258,000 divided by 26,250 (C.M.A. of No. 6) = 9.8 volts (less than 5%)

258,000 divided by 16,510 (C.M.A. of No. 8) = 15.6 volts (more than 5%)

120 volts, 8 ampere load, 100 ft. distance, 3% drop

$$25.8 \times 100 = 2,580 \times 8 = 20,640$$

20,640 divided by 6,530 (C.M.A. of No. 12) = 3.16 volts (less than 3%)

20,640 divided by 4,107 (C.M.A. of No. 14) = 5.0 volts (more than 3%)

or

$$25.8 \times 8 \text{ amps} \times 100 \text{ ft.} = 20,640$$

20,640 divided by 3.6 (volts representing 3%) = 5,733 C.M.A. (No. 12)

For 3-phase circuits, use formula, then multiply the results by .86.

Fire Alarm System Condensed Guide
O - NOT required X - required

Occupancy	Manual Stations	Smoke Detector	Heat Detector	Flow Switch	Fire Station Alarm
Assembly under three hundred	O	O	O	O	O
Assembly over three hundred	X Note 1	O	O	O	O
Amusement buildings	X	X	O	X	X
Hotel-motel					
Nineteen rooms or less	O	X Note 2	O	O	O
Three or more story *	X	X	O	O	O
Hotel-motel					
Twenty rooms or more * and congregate residences	X	X Note 2	X	X	O
Commons area					
Hotels-motels-apartment houses	X	X	X Note 3	Note 5	
Educational					
North Dakota Century Code Section 18-12-16					
Institutional *	X	X	X	X	X
Office - High-rise	X	X	X	X	
Apartments (see #2 above)	O	X	O	O	O
Industrial - Check with the local fire authority or the state fire marshal					
Office building - Check with local jurisdiction					

* State Department of Health rules.

Note 1. Placement of devices shall be at exit on each level.

Note 2. Detectors required in each sleeping room and one detector for each seventy-five feet [22.86 meters] of hallway.

Note 3. When automatic sprinklers and flow detectors are installed, they shall be connected to the alarm system. Heat detectors are required in mechanical rooms, laundry rooms, and storerooms.

Note 4. Institutional includes hospitals, nursing homes, jails, and similar facilities, including any occupancy where movement is restricted.

Note 5. If equipped with sprinkler.

Note 6. Emergency voice alarm and signal.

Note 7. One hundred or more sprinkler heads.

All signaling devices for all occupancies shall meet Americans with Disabilities Act (ADA) requirements (check ADA requirements).

Smoke detectors in hotels, motels, and apartments are not to be tied to the central alarm system (alarm in room or apartment only).

Central alarm trouble indicator shall be located where it will be heard.

Systems with two or more zones shall have an annunciator panel located at an entrance approved by the local fire department.

Cities shall have additional or more stringent requirements.

Be aware the table is the minimum and the owner or designer shall ask for more.

TITLE 33
STATE DEPARTMENT OF HEALTH

JANUARY 2008

CHAPTER 33-03-24.1

33-03-24.1-01. Definitions.

1. "Abuse" includes the willful infliction of mental, physical, sexual, and verbal abuse which could result in temporary or permanent mental, physical, emotional, or psychological injury or harm. Mental abuse includes humiliation, harassment, intimidation, threats of punishment, or deprivation. Physical abuse includes hitting, slapping, pinching, kicking, unreasonable confinement, and deprivation, by an individual, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. It also includes controlling behavior through corporal punishment. Sexual abuse includes sexual harassment, sexual coercion, sexual contact, or sexual assault. Verbal abuse includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, used within their hearing distance to describe the residents, regardless of their age, ability to comprehend, or disability.
2. "Activities of daily living" means those personal, functional activities required by an individual for continued well-being, including eating, nutrition, dressing, personal hygiene, mobility, toileting, and behavior management.
 - a. "Assistance" means the resident is able to help with most of an activity, but cannot do it entirely alone. The resident may need prompting, encouragement, or the minimal hands-on assistance of the personal care attendant.
 - b. "Independent" means the resident can perform the activities of daily living without help.
3. "Activity staff" means an employee who is responsible for providing an activity program.

4. "Adult day care services" means the provision of basic care facility services to meet the needs of individuals who do not remain in the facility overnight.
5. "Basic care facility" means a facility licensed by the department under North Dakota Century Code chapter 23-09.3 whose focus is to provide room and board and health, social, and personal care to assist the residents to attain or maintain their highest level of functioning, consistent with the resident assessment and care plan, to five or more residents not related by blood or marriage to the owner or manager. These services shall be provided on a twenty-four-hour basis within the facility, either directly or through contract, and shall include assistance with activities of daily living and instrumental activities of daily living; provision of leisure, recreational, and therapeutic activities; and supervision of nutritional needs and medication administration.
6. "Capable of self-preservation" means a resident's ability, with or without assistance, to evacuate the facility or relocate from the point of occupancy to a point of safety in case of fire in compliance with the requirements of this chapter.
7. "Department" means the North Dakota state department of health and ~~consolidated laboratories~~.
8. "Facility" means a basic care facility.
9. "Governing body" means the entity legally responsible for the operation of a basic care facility.
10. "Instrumental activities of daily living" includes preparing meals, shopping, managing money, housework, laundry, transportation, use of telephone, and mobility outside the basic care facility.
11. "Licensed health care practitioner" means an individual who is licensed or certified to provide medical, medically related, or advanced registered nursing care to individuals in North Dakota.
12. "Medication administration" means an act in which a drug or biological is given to a resident by an individual who is authorized in accordance with state laws and regulations governing such acts.
13. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both.
14. "Neglect" includes failure to carry out resident services as directed or ordered by the licensed health care practitioner or other authorized personnel, or failure to give proper attention to residents.

15. "Personal care" means assistance with activities of daily living and instrumental activities of daily living and general supervision of physical or mental well-being.
16. "Resident" means an individual admitted and retained in a facility in order to receive room and board and health, social, and personal care who is capable of self-preservation, and whose condition does not require continuous, twenty-four-hour a day onsite availability of nursing or medical care.

History: Effective January 1, 1995; amended effective January 1, 2008.

General Authority: NDCC 23-09.3-09, 28-32-02(1)

Law Implemented: NDCC 23-09.3

33-03-24.1-03. Issuance of license. A facility meeting the definition of a basic care facility as outlined in North Dakota Century Code chapter 23-09.3 and this chapter must obtain a license from the department in order to operate in North Dakota.

1. Application to operate a facility must be made to the department prior to opening a facility, prior to change in ownership, annually, and upon determination by the department that a facility meets the definition of a basic care facility.
2. Floor plans must be submitted to the department for review and approval prior to opening a facility and prior to making structural alterations, including those which increase or decrease resident bed capacity.
3. Upon receipt of an application for an initial license, the department may schedule an inspection. The department may request the assistance of the state fire marshal in the inspection. Upon completion of the inspection and consideration of the findings, the department may issue an initial or provisional license, or deny the application.
4. An initial license is valid for a period not to exceed one year and shall expire on December thirty-first of the year issued.
5. Licenses must be issued on a calendar year basis and expire on December thirty-first of each year. An application for licensure renewal must be received by the department with sufficient time prior to the beginning of the licensure period to process.
6. A provisional license may be issued to a facility that does not comply with this chapter if practices in the facility do not pose a danger to the health and safety of the residents, as determined by the department.
 - a. A provisional license must be accompanied by a written statement of the specific rules or statutes violated and the expiration date of

the license, which is not to exceed three months from the date of issuance.

- b. If compliance with the requirements has been determined by the department prior to the expiration of the provisional license, an annual license may be issued. If an acceptable plan of correction has been approved by the department but compliance has not yet been achieved, the provisional license may be renewed no more than one time for an additional period up to three months at the discretion of the department.
- 7. Once issued, the facility shall display the license in a conspicuous place. A license is not subject to sale, assignment, or other transfer, voluntary or involuntary. A license is not valid for any premises other than those for which originally issued.
- 8. The department may, at any time, inspect a facility that the department determines meets the definition of a basic care facility as described in North Dakota Century Code chapter 23-09.3 and this chapter.
- 9. ~~The department will perform, as deemed necessary, unannounced onsite surveys to determine compliance with this chapter.~~
- 40. The facility must provide the department access to any material and information necessary, as determined by the department, for determining compliance with these requirements.
- 44. 10. Information regarding facilities is public information and is available upon request through the department.

History: Effective January 1, 1995; amended effective January 1, 2008.

General Authority: NDCC 23-09.3-09, 28-32-02(1)

Law Implemented: NDCC 23-09.3-04, 23-09.3-05

CHAPTER 33-04-01

33-04-01-01. Forms. All paper certificates, forms, and reports used in the system of vital records registration and health statistics tabulation and analysis are the property of the state department of health and shall be surrendered to the state registrar upon demand. The forms prescribed and distributed by the state registrar for reporting vital events shall be used only for official purposes. No forms shall be used in the reporting of vital events or making copies thereof except those furnished or approved by the state registrar.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

33-04-01-02. Requirements for preparation of paper certificates and worksheets. All certificates and records relating to vital events must either be prepared on a typewriter with a black ribbon or printed legibly in black nonfading ink. All signatures required shall be entered in black nonfading ink. Unless otherwise specified by the state registrar, no certificates shall be complete, correct, and acceptable for registration that:

1. Does not have the certifier's name typed or printed legibly under the certifier's signature.
2. Does not supply all items of information called for thereon or satisfactorily account for their omission.
3. Contains significant alterations or erasures.
4. Does not contain handwritten signatures as required.
5. Is marked "copy" or "duplicate".
6. Is a carbon, photographic, or xerographic copy.
7. Is prepared on an improper form.
8. Contains inconsistent or improper data.
9. Contains an indefinite cause of death which denotes only symptoms of disease or conditions resulting from disease.
10. Is not prepared in conformity with rules or instructions issued by the state registrar.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

CHAPTER 33-04-02
DUTIES OF THE LOCAL REGISTRARS

[Repealed effective January 1, 2008]

**CHAPTER 33-04-03
DUTIES OF SUBREGISTRARS**

[Repealed effective January 1, 2008]

CHAPTER 33-04-04

33-04-04-01. General provisions. If the mother of the child was not married at the time of conception or birth, the child's surname shall be shown on the ~~certificate~~ record as the legal surname of the mother at the time of the birth unless otherwise determined in a court paternity action, or unless an ~~affidavit~~ of acknowledgment of paternity signed by both parents is received stating the surname of the child to be ~~that~~ the legal surname of the mother or father.

If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-13

CHAPTER 33-04-05

33-04-05-01. General provisions.

1. **Registration procedures.** The report for an infant of unknown parentage shall be registered ~~on a regular certificate of live birth~~ using the electronic birth registration system and shall:
 - a. ~~Have "foundling" plainly marked in the top margin of the certificate.~~
 - b. Show the required facts as determined by the approximation and have parentage data left blank.
 - e. b. Amend the certification of the attendant to show the signature of the custodian and indicate title, if any.
2. **Inspection of records.** When a report has been sealed as provided by subsection 4 of North Dakota Century Code section 23-02.1-14, the state registrar may inspect such information for purposes of properly administering the vital records registration program.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-14

CHAPTER 33-04-06

33-04-06-01. Registration - Seven days to one year. ~~Certificates~~ Records of birth filed after seven days, but within one year from the date of birth, shall be registered ~~on the standard form of live birth certificate~~ using the electronic birth registration system in the manner prescribed in North Dakota Century Code section 23-02.1-13. Such certificate records shall not be marked "delayed".

~~In any case where~~ If the certificate record is signed by someone other than the attendant, a notarized statement setting forth the reason therefore must be ~~attached to accompany the certificate record.~~ The state registrar may require additional evidence in support of the facts of birth or an explanation for the delay in filing.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-02. Delayed certificate record of birth form. All certificates records registered one year or more after the date of the birth are to be registered on a ~~delayed certificate of birth~~ form prescribed by the state registrar.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-03. Who may request the registration of and sign a delayed certificate record of birth. Any person born in this state whose birth is not recorded in this state, or the person's parent, guardian, next of kin, ~~or older person acting for the registrant and having personal knowledge of the facts of birth or an authorized representative~~ may request the registration of a delayed certificate record of birth, subject to these rules and instructions issued by the state registrar.

Each delayed certificate record of birth shall be signed and sworn to before an official authorized to administer oaths by the person whose birth is to be registered if such person is of legal age and is competent to sign and swear to the accuracy of the facts stated therein; otherwise the certificate record shall be signed and sworn to by one of the following in the indicated order of priority:

1. One of the parents of the registrant.
2. The guardian of the registrant.
3. The next of kin of the registrant.

4. ~~Any older person having personal knowledge of the facts of birth. An authorized representative.~~

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-04. Facts to be established for a delayed registration of birth.

The minimum facts which must be established by documentary evidence shall be all of the following:

1. The full name of the person at the time of birth.
2. The date of birth and the place of the birth.
3. The full maiden name of the mother.
4. The full name of the father; except that if the mother was not married to the father of the child either at the time of conception or birth, the name of the father shall not be entered on the delayed certificate record unless otherwise determined in a court paternity action, or unless an affidavit of acknowledgment of paternity signed by both parents is received stating the surname of the child to be that of the legal surname of the mother or father.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-05. Delayed registration following a legal change of status.

When evidence is presented reflecting a legal change of status by adoption, legitimation, paternity determination, or acknowledgment of paternity, a new delayed certificate record may be established to reflect such changes.

The existing certificate record and evidence upon which the new certificate record was based shall be placed in a special file. Such files shall not be open to inspection except upon order of a court of competent jurisdiction or by the state registrar for purposes of properly administering the vital records registration program.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-06. Documentary evidence - Requirements. To be acceptable for filing, the name of the registrant and date and place of birth entered on the delayed certificate record of birth shall be supported by at least:

1. Two pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed within seven years after the date of birth.
2. Three pieces of documentary evidence, only one of which may be an affidavit of personal knowledge, if the record is filed seven years or more after the date of birth.

Facts of parentage need be supported by only one document which may be one of the documents above other than the affidavit of personal knowledge.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-07. Documentary evidence - Acceptability. The state registrar may establish a priority of best evidence.

~~Documents presented, such as census, hospital, church, and school records, must be from independent sources and shall be in the form of the original record or duly certified copy thereof or a signed statement from the custodian of the record or document.~~

All documents submitted in evidence, other than an affidavit of personal knowledge, must have been established at least ten years prior to the date of application ~~or~~ and at least one of those documents must have been established prior to the applicant's tenth birthday.

An affidavit of personal knowledge, to be acceptable, must be prepared by one of the parents, the next of kin, or any older person and must be signed before an official authorized to administer oaths. The affiant must be at least ten years older than the applicant, except that if the affiant is a member of the applicant's immediate family, the affiant need only be at least four years older than the applicant, and have personal knowledge of the facts of birth.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-08. Abstraction of documentary evidence. The state registrar, or the state registrar's designated representative, shall abstract on the delayed certificate record of birth a description of each document submitted to support the facts shown on the delayed birth certificate record. The description shall include:

1. The title or description of the document.
2. The name and address of the affiant, if the document is an affidavit of personal knowledge, or of the custodian, if the document is an original or certified copy of a record or signed statement.

3. The date of the original filing of the document being abstracted.
4. The information regarding the birth facts contained within the document.

All documents submitted in support of the delayed birth registration shall be returned to the applicant after review and abstraction.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-15

33-04-06-09. Certification by the state registrar. The state registrar, or the state registrar's designated representative, shall, by the state registrar's signature, certify:

1. That no prior birth ~~certificate~~ record is on file for the person whose birth is to be recorded.
2. That the state registrar has reviewed the evidence submitted to establish the facts of birth.
3. That the abstract of the evidence appearing on the delayed ~~certificate~~ record of birth accurately reflects the nature and the content of the document.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

33-04-06-10. Dismissal after ~~one-year~~ two years. Applications for delayed ~~certificates~~ records of birth which have not been completed within ~~one-year~~ two years from the date of application may be dismissed at the discretion of the state registrar. ~~Upon dismissal, the state registrar shall advise the applicant of the state registrar's decision and all documents submitted in support of such registration shall be returned to the applicant.~~

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

CHAPTER 33-04-07

33-04-07-01. General provisions. The registration of a death after the time prescribed by statute and regulations shall be registered on the standard certificate record of death form in the manner prescribed below:

1. If the attending physician or coroner at the time of death and the attending funeral director or person who acted as such are available to complete and sign the certificate record of death, it may be completed without additional evidence and filed with the state registrar. However, for those certificates records filed one year or more after the date of death, the physician or coroner and the funeral director or person who acted as such must state in accompanying affidavits that the information on the certificate record is based on records kept in their files.
2. In the absence of the attending physician or coroner and the funeral director or the person who acted as such, the certificate record may be filed by the next of kin of the deceased and shall be accompanied by:
 - a. An affidavit of the person filing the certificate record swearing to the accuracy of the information on the certificate record.
 - b. Two documents which identify the deceased and the deceased's date and place of death.
3. In the case of presumptive death, a certified copy of a court decree finding that such death has occurred and the date of such death must be received by the state registrar before a death certificate record can be filed.

In all cases the state registrar may require additional documentary evidence to prove the facts of death.

A summary statement of the evidence submitted in support of the delayed registration shall be endorsed on the certificate record.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-19

CHAPTER 33-04-08

33-04-08-01. Adoption in other states or a foreign nation. A new certificate record of birth may be prepared by the state registrar for a child born in this state upon receipt of an adoption report or certified copy of an adoption decree from the courts of the several states of the United States or a foreign nation made by a court of competent jurisdiction.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-18

33-04-08-02. Legitimation. If the natural parents marry after the birth of a child, a new certificate record of birth shall be prepared by the state registrar for a child born in this state upon receipt of an affidavit acknowledgment of paternity signed by the natural parents of the child or a certified copy of a court determination of paternity made by a court of competent jurisdiction, together with a certified copy of the parents' marriage record. However, if another man is shown as the father of the child on the original certificate record, a new certificate record may be prepared only when a court determination of paternity has been made by a court of competent jurisdiction.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-18

33-04-08-03. Determination of paternity. A new certificate record of birth shall may be prepared by the state registrar for a child born in this state upon receipt of a certified copy of a court determination of paternity, together with a request from the natural mother or person having legal custody of the child that such new certificate record be prepared. The surname of the child shall be that of the father remain unchanged unless the decree or request provides otherwise.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-18

33-04-08-04. New certificate record. The new certificate of birth shall be on the form in use at the time of its preparation and shall include the following items of information and such other information necessary to complete the certificate:

1. The name of the child.
2. The date and place of birth as transcribed from the original certificate.
3. The names and personal particulars of the adoptive parents or of the natural parents.
4. The name of the attendant, printed or typed.

5. The same birth number as was assigned to the original certificate.
6. The original filing date.

The necessary data to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the state registrar on forms prescribed and approved by the state registrar.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-18

33-04-08-05. Existing certificate record to be placed in special file. After preparation of a new certificate of birth, the existing certificate and the evidence upon which the new certificate was based are to be placed in a special file. The state registrar may inspect such information for purposes of properly administering the vital records registration program. No other inspection shall be permitted except as provided by order of a court of competent jurisdiction.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-18

CHAPTER 33-04-09 DEATH REGISTRATION

Section

33-04-09-01	Acceptance of Incomplete Death Record - Delayed Record of Cause of Death
33-04-09-02	Attending Physician Not Available
33-04-09-03	Hospital or Institution May Assist in Preparation of Record

33-04-09-01. Acceptance of incomplete death certificate record - Delayed certificate record of cause of death. If the attending physician or coroner is unable to complete the medical certification of cause of death or if the funeral director is unable to obtain the personal information about the deceased within the prescribed period, the funeral director shall file a death certificate form record with all available information completed. Such certificates records shall be the authority for the ~~local registrar or~~ subregistrar to issue a burial transit permit.

A supplemental report providing the information missing from the original certificate record shall be filed with the state registrar as soon as is possible, but in all cases within thirty days.

The supplemental report shall be made a part of the existing death certificate record. Such reports shall not be considered an amendment, and the death certificate record shall not be marked "amended".

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-19

33-04-09-03. Hospital or institution may assist in preparation of certificate record. When a death occurs in a hospital or other institution and the death is not under the jurisdiction of the coroner, the person in charge of such institution, or the person's designated representative, may, when the cause of death is known, initiate the preparation of the death certificate record by all of the following:

1. Place the full name of the deceased and the date and the place of death on the death certificate record and obtain from the attending physician the medical certification of the cause of death and the physician's signature.
2. Present the partially completed death certificate record to the funeral director or person acting as such.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-19

CHAPTER 33-04-10

33-04-10-01. Hospital disposition of fetus. A hospital, by written authorization of the parents, may dispose of a dead fetus of any period of gestation. A burial-transit permit must also be obtained from the state registrar for the disposition of a fetus if the fetus has reached gestation period of twenty completed weeks. The hospital must file the completed burial-transit permit with the county recorder in the registration district where the final disposition takes place.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

33-04-10-02. Removal of body.

1. **Requirements for removal of body.** Before removing a dead body or fetus from the place of death, the funeral director or person acting as such shall:
 - a. Obtain assurances from the attending physician that death is from natural causes and that the physician will assume responsibility for certifying to the cause of death or fetal death; or
 - b. Contact the coroner if the case comes within the coroner's jurisdiction and receive authorization from the coroner to remove the body.

~~If the body is to be removed from the registration district where death occurred or where the body is found, prior to the obtaining of a burial-transit permit, the funeral director or person acting as such shall notify the local registrar of the registration district of such removal, and give the local registrar the following information regarding the decedent and removal: name of the decedent; sex; date; date and place of death; cause of death, if known; name and address of the funeral director; and the place to which the body is to be removed.~~

2. **Burial-transit permits.** The original burial-transit permit shall be filed with the county recorder in that registration district in which final disposition takes place.

~~All subregistrars shall obtain supplies of burial-transit permits from local registrars in counties served by their respective funeral homes and shall return all completed stub sections of such burial-transit permits to the~~

~~local registrar~~ county recorder upon demand, but at no time to exceed a period of ~~one year~~ thirty days.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

33-04-10-03. Disposal of permits. Burial-transit permits must be retained permanently by the ~~local registrar~~ and ~~may only be disposed of with the prior written approval and consent of the state registrar, and under no circumstances may they be disposed of prior to twenty-five years from the date of issuance~~ county recorder.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

CHAPTER 33-04-11

33-04-11-01. General provisions.

1. When for reasons satisfactory to the ~~local~~ state registrar a death or fetal death ~~certificate~~ record cannot be completed within the time period specified by North Dakota Century Code sections 23-02.1-19 and 23-02.1-20, the ~~local~~ state registrar may grant an extension ~~of such time, not to exceed forty-eight hours.~~
2. The ~~local registrar or subregistrar~~ may issue a burial-transit permit ~~prior to the filing of a death certificate or fetal death certificate in cases where in the local registrar's or subregistrar's judgment the requirement that a certificate be filed prior to the issuance of a permit would result in undue hardship and if the following conditions are met:~~
 - a. ~~The attending physician is contacted and assurance is obtained that the death was from natural causes and the attending physician will certify to the cause of death; or~~
 - b. ~~If the attending physician is unavailable or if the death comes within the jurisdiction of the coroner, the coroner is contacted and gives permission for the removal and final disposition~~ once the facts of death are filed with the state registrar.
3. In all cases, a completed death certificate record must be filed with the ~~local~~ state registrar ~~or subregistrar~~ after a period of no more than thirty days after an extension has been granted.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-22

CHAPTER 33-04-12

33-04-12-01. Amendment of minor errors on birth certificates records during the first year. Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions on birth certificates records may be made by the state registrar within the first year after the date of birth either by the state registrar's own observation or query or upon request of a person with a direct and tangible interest in the certificate record as defined in section 33-04-13-01. When such additions or minor amendments are made by the state registrar, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate record in such a way as not to become a part of any certificate record issued. The certificate record is not to be marked as "amended".

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-25(2)

33-04-12-02. Amendments as a result of gender identity change.

1. **Evidence and documents required.** The birth certificate record of a person born in this state who has undergone a sex conversion operation may be amended as follows:
 - a. Upon written request of the person who has undergone the operation;
 - b. An affidavit by a physician that the physician has performed an operation on the person, and that by reason of the operation, the sex designation of such person's birth certificate record should be changed; and
 - c. An order of a court of competent jurisdiction decreeing a legal change in name.
2. **New certificate record.** Pursuant to such amendment, a new certificate record of birth will be created by the state registrar showing original data as transcribed from the original certificate record excepting those items that have been amended. The new certificate record will be clearly marked in the upper margin with the word "amended" and a description of the amended items may be added to the certified copy for clarification.
3. **Sealing of original certificate record.** The original certificate record shall be then placed in a special file and shall not be open to inspection except by order of a court of competent jurisdiction or by the state registrar for purpose of carrying out the provisions of North Dakota

Century Code chapter 23-02.1 and properly administering the vital records registration program.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

33-04-12-03. All other amendments.

1. **Provisions for other amendments.** Unless otherwise provided in this chapter or in the statute, all other amendments to vital records shall be supported by:
 - a. ~~An affidavit~~ A request setting forth:
 - (1) Information to identify the ~~certificate~~ record.
 - (2) The incorrect data as it is listed on the ~~certificate~~ record.
 - (3) The correct data as it should appear.
 - b. One or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of the application for amendment ~~or within seven years after the date of the event~~ and are prior to the applicant's eighteenth birthday.
 - c. If the item to be corrected or amended is the date of birth, the state registrar ~~may~~ will require additional documentary evidence established ~~prior to the incorrect date of birth specified on the original certificate~~ as follows:
 - (1) If the correction is being made to the month or day of birth, the applicant must provide one item of documentary evidence which was established prior to the applicant's eighteenth birthday.
 - (2) If the correction is being made to the year of birth, the applicant must provide two items of documentary evidence which were established prior to the eighth birthday.
 - d. If the item to be corrected or amended is the applicant's legal name, the state registrar will require additional documentary evidence established as follows:
 - (1) If the correction is a minor spelling change to the legal name, the applicant must provide one item of documentary evidence which was established prior to the applicant's eighteenth birthday.

- (2) If the correction is a legal name change, the applicant must provide two items of documentary evidence, one of which was established prior to the applicant's eighth birthday and a second item that was established prior to the eighteenth birthday.

2. **Validity of evidence.** The state registrar shall evaluate the evidence submitted in support of any amendment, and when the state registrar finds reason to doubt its validity or adequacy the state registrar may reject the amendment and shall advise the applicant of the reasons for this action.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-25

33-04-12-04. Who may apply.

1. To amend a birth certificate record, application may be made by one of the parents, the guardian, or the registrant if ~~of legal age, or the individual responsible for filing the certificate at least eighteen years of age.~~
2. To amend a death or fetal death certificate record, application may be made by the next of kin or the funeral director or person acting as such. Applications to amend the medical certification of cause of death shall be made by the attending physician or coroner.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-25(3)

33-04-12-05. Amendment of registrant's given names on birth certificate record within the first year. Until the registrant's first birthday, given names may be amended upon written request of any of the following:

1. Both parents.
2. The mother, in the case of a child born out of wedlock.
3. The father, in the case of the death or incapacity of the mother.
4. The mother, in the case of the death or incapacity of the father.
5. The guardian or agency having legal custody of the registrant.

A record amended in this manner prior to the first birthday is not to be marked "amended".

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-25(3)

33-04-12-06. Addition of given names.

1. ~~Before seventh~~ **After the first birthday.** ~~Until~~ After the registrant's seventh first birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate record upon written request of any of the following:

- a. Both parents.
- b. The mother, in the case of a child born out of wedlock.
- c. The father, in the case of the death or incapacity of the mother.
- d. The mother, in the case of the death or incapacity of the father.
- e. The guardian or agency having legal custody of the registrant.

A certificate record amended in this manner prior to after the first birthday is not to shall be marked "amended".

2. ~~After seventh birthday~~ **Documentary evidence.** ~~After the seventh first birthday, one or more items of documentary evidence must be submitted to substantiate the name being added the applicant must provide two items of documentary evidence, one of which was established prior to the applicant's eighth birthday and a second item that was established prior to the eighteenth birthday.~~

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-25

33-04-12-09. Methods of amending certificates records.

1. **Procedures utilized in amending certificates records.** Certificates Records of birth, death, and fetal death may be amended by the state registrar in the following manner:
 - a. Preparing a new certificate record showing the correct information when the state registrar deems that the nature of the amendment so requires.

In the case of birth, such new certificates records shall be prepared ~~on a special form~~ in a manner prescribed by the state registrar. The new certificate record shall contain a space for inclusion of the amended item as it appeared on the existing certificate record. It shall also include a summary of the evidence presented in support of the amendment and a certification statement by the state registrar that the state registrar has evaluated the evidence submitted.

For all other vital events, the new certificate record shall be prepared ~~on the form~~ in a manner used for registering current events at the time of the amendment. The item number or the entry that was amended shall be identified on the new certificate record.

In all cases the new certificate record shall show the date the amendment was made and be given the same state file number as the existing certificate record. Signatures appearing on the existing certificate record shall be typed or digitally recorded on the new certificate record.

- b. Completing the item in any case where the item was left blank on the existing certificate record.
 - c. ~~Drawing~~ In the case of an actual paper certificate, drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry must not obliterate such entry.
2. **Notations of amendments to be made.** In all cases, there shall be inserted on the certificate record a statement identifying the affidavit and documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials or user id of the person making the change. As required by statute or regulation, the certificate record shall be marked as "amended".

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-04

CHAPTER 33-04-13.1

33-04-13.1-01. Definitions.

1. "Guardian" means a person who has been appointed as legal guardian through some judicial process.
2. "Relative" means ~~those connected by ties of consanguinity or affinity. Adopted children must be treated the same as natural children for purposes of this definition and are not considered a relative of the natural parents or their relatives~~ a person's current or surviving spouse, a parent or legal guardian, a child, a grandparent, or a grandchild. The state registrar may require proof of the relationship.

History: Effective April 1, 1994; amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-27

33-04-13.1-02. General provisions.

1. In order to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of confidential information, a person may not be allowed direct ~~actual~~ physical access to the original vital records in the custody and care of the state ~~and local~~ registrars. Every person wishing to review records or desiring information contained in such records must make a request for a certified copy to the state ~~or local registrars or their assistants. Each request must be reasonably particularized in scope~~ registrar.
2. Nothing in this section may be construed to permit disclosure of information contained in the "confidential information for medical and health use only" section of vital records unless specifically authorized by the state registrar for statistical research or if authorized by a court of competent jurisdiction.
3. The state registrar may furnish data from vital records for statistical research purposes, subject to such conditions as the state registrar may impose. Data may not be furnished from records under this subsection until the state registrar has prepared in writing the conditions under which the data will be used and received ~~on a data use agreement~~ signed by a responsible agent of the research organization agreeing to meet with and conform to such conditions.
4. ~~Upon written application by any local registrar, the state registrar may authorize, in written form, the local registrar to prepare and issue certified copies of original certificates of death and certificates of fetal death in the immediate possession of the local registrar. To ensure uniformity in the preparation and issuance of certified copies, the state registrar shall prescribe the format to be used for such certifications,~~

~~the nature of the certification statements used, and the length of time for which original certificates of death and fetal death may be retained by the local registrar for purposes of issuance of certified copies. The state registrar may revoke such authorization for reasonable cause including actions inconsistent with North Dakota Century Code chapter 23-02.1 and rules adopted under that chapter.~~

History: Effective April 1, 1994; amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-27

33-04-13.1-03. ~~Certificates of birth, certificates of death, and certificates of fetal death~~ Proof of identity.

- ~~1. Information on birth certificates and certificates of fetal death presumed to relate to births or fetal deaths which occurred out of wedlock may not be disclosed to persons other than to the child's guardian, to the person to whom the record relates if that person is at least eighteen years old, to the legal parent of the child, or upon order of a court of competent jurisdiction.~~
- ~~2. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, or upon order of a court of competent jurisdiction.~~
- ~~3. Whenever it is deemed necessary to establish an applicant's right to confidential information from vital records, the state registrar may require written application, identification of the applicant, or a sworn notarized statement. The state registrar may furnish information, at the written request of the applicant entitled to such information, to any person or agency designated by the applicant.~~

History: Effective April 1, 1994; amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-27

CHAPTER 33-04-14

33-04-14-01. General provisions.

1. Full or short form certified copies of vital records may be made by mechanical, electronic, or other reproductive processes, except that information contained in the "confidential information for medical and health use only" section of vital records on birth and fetal death ~~certificates~~ records shall not be included.
2. When a certified copy is issued, each certification shall be signed and certified as a true copy by the ~~officer in whose custody the record is entrusted~~ state registrar and shall include the date issued, the name of the issuing ~~officer~~ office, the state registrar's signature or an authorized facsimile thereof (or the same for the deputy state registrar), and the seal of the issuing office shall be affixed thereon.
3. When the state registrar finds evidence that a ~~certificate~~ record was registered through misrepresentation or fraud, the state registrar shall have authority to withhold the issuance of a certified copy of such ~~certificate~~ record until a court determination of the facts has been made.

History: Amended effective April 1, 1994; amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-28

CHAPTER 33-04-15

33-04-15-01. Fee required before issuance or search. No certified copies shall be issued or a search for a record can be started until the fee for such copy (and filing fee for delayed ~~certificates~~ records of birth) have or search has been received unless specific approval has been obtained from the state registrar or otherwise provided by statute or regulation.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-29

33-04-15-02. Amount of fee.

1. For the issuance of the first full certified copy, short form, or ~~birth~~ and certification of a birth record, the initial fee per request is seven dollars. For subsequent copies or certifications, issued at the time of the request, the fee is four dollars per copy. The filing fee for a delayed ~~certificate~~ record of birth is five dollars. The fee for amendments to vital records is five dollars per request. The fee for creation of a new ~~certificate~~ record of birth following adoption, legitimation, or paternity determination is five dollars. For each search of the files when no birth record is found or no copy is made, a fee of seven dollars shall be charged.
2. For the issuance of the first certified copy of a death, fetal death, or marriage record, the initial fee per request is five dollars. For subsequent copies issued at the time of the request, the fee is two dollars per copy. For each search of the files when no death or marriage record is found or no copy is made, a fee of five dollars shall be charged.
3. For statistical research purposes, the state registrar shall determine the fee for such services and shall determine the manner in which the costs are to be paid.
4. For each verification of a vital record, the fee is the same as the first certified copy for that record unless specific approval has been obtained from the state registrar or otherwise provided by statute or regulation.

History: Amended effective February 1, 1984; January 1, 1986; January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-29

CHAPTER 33-04-16

33-04-16-01. ~~Funeral-director~~ Subregistrars required to keep information. Each ~~funeral-director~~ subregistrar shall keep a record containing as a minimum, the following information about each dead body or fetus the ~~funeral-director~~ subregistrar handles:

1. The date, place, and time of receipt.
2. The date, place, and manner of disposition.
3. If the dead body or fetus is delivered to another ~~funeral-director~~ subregistrar, the date of such delivery and the name and the address of the ~~funeral-director~~ subregistrar to whom delivered.
4. Items required by the ~~certificate~~ record of death or fetal death in use when the event occurs for those events for which the ~~funeral-director~~ subregistrar is required to file the ~~certificate~~ record.

History: Amended effective January 1, 2008.

General Authority: NDCC 23-02.1-04, 28-32-02

Law Implemented: NDCC 23-02.1-30

CHAPTER 33-06-04

33-06-04-11. Vaccines. Administrative charges by physicians, private or public clinics, and hospitals for the administration of any vaccine and biologicals obtained at no cost from the state department of health for any patient who is not a medicaid recipient are limited to no more than the charges established by the North Dakota department of human services for eligible medicaid reimbursement federal regional fee caps as set forth in 59 Federal Register 50235 (October 3, 1994). Administrative charges by physicians, private or public clinics, and hospitals for the administration of any vaccine and biologicals purchased through the state department of health are limited to no more than seventeen dollars.

History: Effective January 1, 1990; amended effective December 1, 1993; January 1, 2008.

General Authority: NDCC 23-01-04.2, 28-32-02

Law Implemented: NDCC 23-01-04.2

CHAPTER 33-06-05

33-06-05-01. Requirements.

1. **Definitions.** As used in this section:

- a. "Advisory committee on immunization practices" refers to a panel of experts in fields associated with immunization who have been selected by the secretary of the United States department of health and human services to provide advice and guidance to the secretary, the assistant secretary for health, and the centers for disease control and prevention on the most effective means to prevent vaccine-preventable diseases.
- b. "Age-appropriate immunizations" refers to the vaccines a child should receive based on age and previous immunization history as recommended by the advisory committee on immunization practices of the United States department of health and human services and outlined by the North Dakota immunization schedule.
- b: c. "Beliefs" as used in subsection 3 of North Dakota Century Code section 23-07-17.1 means sincerely held religious, philosophical, or moral beliefs which are not a pretense for avoiding legal requirements.
- e: d. "Institution" includes all early childhood facilities, head start programs, preschool educational facilities, public and private kindergartens, and elementary, middle, and high schools operating in North Dakota.
- d: e. "Institutional authority" means anyone designated by the governing body of an institution.
- f. "Medical exemption" means an exemption from an immunization requirement based on a form signed by a licensed physician stating that the physical condition of the child seeking the exemption is such that the vaccine administered would endanger the life or health of the child.

2. **Minimum requirements.**

- a. Minimum requirements for children attending early childhood facilities, head start programs, and preschool educational facilities shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, and rubella: ~~Each child must also be adequately immunized for haemophilus influenzae type B disease at the age-appropriate schedule recommended by the state department of health. Effective January 1, 2004, each child must be adequately immunized~~

~~against varicella (chickenpox) disease according to the advisory committee on immunization practices (ACIP), unless there is a reliable history of varicella (chickenpox) disease, medical, or "beliefs" exemption. In the case of a child with a history of chickenpox disease or other exemption, an exemption form should be signed by the child's physician or parent or guardian, haemophilus influenzae type B disease, varicella (chickenpox), pneumococcal disease, rotavirus, and hepatitis A.~~

- b. ~~Minimum requirements for children attending kindergartens and elementary and high schools kindergarten through grade twelve shall be age-appropriate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps, and rubella. A second dose of measles, mumps, and rubella (MMR) vaccine is required for children who entered kindergarten or first grade in the 1992-93 school year. Each subsequent year, the next higher grade will be included in the second dose immunization requirement so those students transferring into North Dakota schools are added to the MMR immunization cohort, varicella (chickenpox), and meningococcal disease.~~

3. **Effective dates.**

- a. Effective with the 1992-93 school year, a second dose of measles, mumps, and rubella vaccine is required for school entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the requirement so those students transferring into North Dakota schools are added to the measles, mumps, and rubella immunization cohort.
- e. b. Effective with the 2000-01 school year, in addition to the immunizations previously mentioned, a student must complete the hepatitis B vaccine series prior to entry into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the hepatitis B immunization requirement so those students transferring into North Dakota schools are added to the hepatitis B immunization cohort.
- c. Effective January 1, 2004, in order to attend an early childhood facility, head start program, or preschool educational facility, each child must be adequately immunized against varicella (chickenpox) disease according to the advisory committee on immunization practices.
- d. ~~Effective with the 2004-05 school year, in addition to the immunizations previously mentioned, a student must receive the varicella (chickenpox) vaccine before being admitted into any~~

kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent year, the next higher grade will be included in the varicella immunization requirement so those students transferring into North Dakota schools are added to the varicella immunization cohort. ~~A child with a reliable history of chickenpox disease or who has a medical or "beliefs" exemption is exempt from the above requirement. A physician or parent or guardian must sign an exemption form stating that the child has had chickenpox disease or has a medical or "beliefs" exemption. The exemption form must be kept on file with the immunization records at the child's school.~~

- e. Effective January 1, 2008, in order to attend an early childhood facility, head start program, or preschool educational facility, each child must be adequately immunized according to the advisory committee on immunization practices against pneumococcal disease, rotavirus, and hepatitis A.
- f. Effective with the 2008-09 school year, a student must receive a second dose of varicella (chickenpox) vaccine before being admitted into kindergarten or first grade if the student's school does not have a kindergarten. Each subsequent school year, the next higher grade will be included in the second dose varicella (chickenpox) immunization requirement so those students transferring into North Dakota schools are added to the second dose varicella (chickenpox) immunization cohort.
- g. Effective with the 2008-09 school year, a student must receive meningococcal and tetanus, diphtheria, and pertussis (tdap) vaccine before being admitted into any middle school (sixth or seventh grade).
- 4. **Exemptions.** A child with a medical or a beliefs exemption is exempt from any one or all of the immunization requirements. A physician must sign an exemption form indicating the vaccines that are included in the medical exemption. A parent or guardian must sign an exemption form stating that the child has a beliefs exemption and indicate which vaccines are exempt because of beliefs. A child with a reliable history of chickenpox disease is exempt from varicella (chickenpox) immunization requirements. A physician or parent or guardian must sign an exemption form stating that the child has had chickenpox disease. Exemption forms must be kept on file with the immunization records at the child's school, early childhood facility, head start program, or preschool educational facility.
- 3. 5. **Recordkeeping and reporting.** Records and reports requested by the state department of health shall be completed and submitted to the state department of health.

- a. Certificates of immunization or other official proof of immunization must be presented to the designated institutional authority before any child is admitted to an institution. The parent or guardian of a child claiming a medical or ~~belief~~ beliefs exemption shall present an appropriately signed statement of exemption to the designated institutional authority. Proof of immunization or the statement of exemption must be maintained by the child's school or early childhood facility.
- b. The school or early childhood facility immunization summary report must be submitted to the state department of health by November first of each year or such other annual date as the department may designate.

4. 6. Appointment of an institutional authority.

- a. An institutional authority shall be appointed for each institution by its governing board or authorized personnel. The authority must be an employee of such institution.
- b. The name of the designated institutional authority, the institution, address, and telephone number shall be submitted to the appropriate governing state department by July first of each year.

5. 7. Provisional admission - Exclusion. Any child admitted to school or early childhood facility under the provision that such child is in the process of receiving the required immunizations shall be required to receive the immunizations according to the recommended schedule set forth by the state department of health. Any child not adhering to the recommended schedule shall provide proof of immunization or a certificate of immunization within thirty days of enrollment or be excluded from school or early childhood facility.

History: Amended effective November 1, 1979; September 1, 1991; January 1, 1998; February 1, 2000; January 1, 2004; January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-07-17.1

ARTICLE 33-11

LICENSING OF EMERGENCY MEDICAL SERVICES

Chapter

33-11-01	North Dakota Ground Ambulance Services [Repealed]
33-11-01.1	North Dakota Quick Response Units
33-11-01.2	North Dakota Ground Ambulance Services
33-11-02	Basic Life Support Ground Ambulance License
33-11-03	Advanced Life Support Ground Ambulance License
33-11-04	North Dakota Air Ambulance Services
33-11-05	Basic Life Support Air Ambulance License
33-11-06	Advanced Life Support Air Ambulance License
33-11-07	Critical Care Air Ambulance License
33-11-08	Emergency Medical Services Grants

CHAPTER 33-11-01

NORTH DAKOTA GROUND AMBULANCE SERVICES

[Repealed effective January 1, 2008]

CHAPTER 33-11-01.1
NORTH DAKOTA QUICK RESPONSE UNITS

<u>Section</u>	
<u>33-11-01.1-01</u>	<u>Definitions</u>
<u>33-11-01.1-02</u>	<u>License Required</u>
<u>33-11-01.1-03</u>	<u>Application for License</u>
<u>33-11-01.1-04</u>	<u>Issuance and Renewal of Licenses</u>
<u>33-11-01.1-05</u>	<u>Availability of Quick Response Unit</u>
<u>33-11-01.1-06</u>	<u>Driver's License Required</u>
<u>33-11-01.1-07</u>	<u>Number of Personnel Required</u>
<u>33-11-01.1-08</u>	<u>Minimum Equipment Requirements</u>
<u>33-11-01.1-09</u>	<u>Other Requirements</u>
<u>33-11-01.1-10</u>	<u>Quick Response Units Performing Advanced Life Support Interventions</u>
<u>33-11-01.1-11</u>	<u>Transporting of Patients</u>

33-11-01.1-01. Definitions. Words defined in North Dakota Century Code chapter 23-27 shall have the same meaning in this chapter. For purposes of this chapter:

1. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.
2. "Department" means the state department of health as defined in chapter 23-01 of the North Dakota Century Code.
3. "Driver" means an individual who operates a quick response unit vehicle.
4. "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.
5. "Emergency medical technician" means a person who is licensed as an emergency medical technician by the department.
6. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
7. "Personnel" means qualified primary care providers, or drivers, or both, within a quick response unit service.
8. "Primary care provider" means a qualified individual on the quick response unit crew responsible for the care of the patient.

9. "Quick response unit run" means the response of a quick response unit vehicle and personnel to an emergency or nonemergency for the purpose of rendering medical care to someone sick or incapacitated, including canceled calls, no transports, and standby events where medical care may be rendered.
10. "State health council" means the council as defined in title 23 of the North Dakota Century Code.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-02. License required.

1. Quick response unit licensure, as defined in chapter 23-27 of the North Dakota Century Code, is optional.
2. The license shall expire midnight on June thirtieth of the odd year following issuance. License renewal shall be on a biennial basis.
3. A license is valid only for the service for which it is issued. A license may not be sold, assigned, or transferred.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-02

Law Implemented: NDCC 23-27-02

33-11-01.1-03. Application for license. Application for the license shall be made in the manner prescribed by the department.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-04. Issuance and renewal of licenses.

1. The department or its authorized agent may inspect the service. If minimum standards are met, the department shall issue a license.
2. If minimum standards are not met, the department will allow the quick response unit thirty days to comply with the standards. The department will work with the quick response unit to obtain compliance.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-05. Availability of quick response unit. A quick response unit shall be available twenty-four hours per day and seven days per week, except as exempted through waiver by the department.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-06. Driver's license required. All drivers of quick response unit vehicles shall have a current valid driver's license pursuant to requirements under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-07. Number of personnel required. The minimum personnel required on each quick response unit run shall be one primary care provider who may function as the driver and is certified as a first responder or its equivalent.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-08. Minimum equipment requirements. The quick response unit shall have the following:

1. Automated external defibrillator.
2. Blood pressure manometer, cuff in child, adult, and large adult sizes; and stethoscope.
3. Disposable gloves - four pair of each size small, medium, and large.
4. One blunt shears.
5. One portable suction device with catheter.
6. One portable oxygen unit size "D" with variable flowmeter.
7. Two nasal cannulas and two nonrebreather masks with supply tubing.
8. Nasopharyngeal airways in adult and child sizes.
9. Oropharyngeal airways in adult, child, and infant sizes.
10. Two cold packs.
11. Four hot packs.

12. Two space blankets.
13. Twelve four-by-four sterile gauze pads.
14. Three sterile soft roller self-adhering bandages.
15. Four rolls of tape.
16. Two sterile occlusive dressings.
17. One sterile multitrauma dressing approximately ten inches [25.4 centimeters] by thirty-six inches [91.44 centimeters].
18. One sterile burn sheet or its equivalent.
19. Equipment case.
20. Equipment storage - readily accessible and safe from the elements.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-09. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in a quick response unit.
2. All licensed quick response unit agencies shall keep the quick response unit vehicle 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.
4. All licensed quick response units must be affiliated with a licensed ambulance service, as defined in chapter 33-11-02.1, that provides medical oversight for the quick response unit.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-10. Quick response units performing advanced life support interventions. Quick response units may provide advanced life support interventions on an as-needed basis if the following requirements are met:

1. The primary care provider is licensed to provide the level of care required.

2. The service complies with the equipment list as set forth by its medical director.
3. A North Dakota licensed physician has authorized advanced life support interventions by verbal or written order.
4. The transporting ambulance's primary care provider is licensed to provide or maintain any advanced life support intervention provided by the quick response unit.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.1-11. Transporting of patients.

1. Except as otherwise provided in subsection 2, quick response units may not transport patients.
2. Notwithstanding subsection 1, quick response units may transport patients during a major catastrophe or mass casualty incident if all of the following conditions are met:
 - a. The ambulance services that normally provide service or mutual aid in the area of the catastrophe or mass casualty incident are insufficient or unavailable to transport.
 - b. The primary care provider on the quick response unit must be an emergency medical technician or its equivalent.
 - c. The quick response unit must rendezvous with a licensed ambulance service if one becomes available during transport.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-01.2
NORTH DAKOTA GROUND AMBULANCE SERVICES

Section

<u>33-11-01.2-01</u>	<u>Definitions</u>
<u>33-11-01.2-02</u>	<u>License Required - Fees</u>
<u>33-11-01.2-03</u>	<u>Application for License</u>
<u>33-11-01.2-04</u>	<u>Issuance and Renewal of Licenses</u>
<u>33-11-01.2-05</u>	<u>Special Licenses and Waivers</u>
<u>33-11-01.2-06</u>	<u>Other Requirements for Substation Ambulance Operation</u>
<u>33-11-01.2-07</u>	<u>Availability of Ground Ambulance Service</u>
<u>33-11-01.2-08</u>	<u>Driver's License Required</u>
<u>33-11-01.2-09</u>	<u>Number of Personnel Required</u>
<u>33-11-01.2-10</u>	<u>Other Requirements</u>
<u>33-11-01.2-11</u>	<u>Out-of-State Operators</u>
<u>33-11-01.2-12</u>	<u>Specialty Care Transport</u>
<u>33-11-01.2-13</u>	<u>Ground Ambulance Service Vehicle Requirements</u>
<u>33-11-01.2-14</u>	<u>Transporting of Patients</u>
<u>33-11-01.2-15</u>	<u>Required Advanced Life Support Care</u>

33-11-01.2-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code shall have the same meaning in this chapter. For purposes of 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. "Advanced life support ambulance service" means an emergency medical services operation licensed under and meeting all requirements of chapter 33-11-03.
3. "Ambulance driver" means an individual who operates an ambulance vehicle.
4. "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, including canceled calls, no transports, and standby events where medical care may be rendered.
5. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.

6. "Commission on accreditation of ambulance services" means the commission on accreditation of ambulance services located in Glenview, Illinois.
7. "Department" means the state department of health as defined in chapter 23-01 of the North Dakota Century Code.
8. "Designated trauma center" means a licensed hospital with a trauma designation as defined in section 33-38-01-06.
9. "Driver's license" means the license as required under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.
10. "Emergency medical technician" means a person who is licensed as an emergency medical technician by the department.
11. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
12. "Headquarters ambulance service" means the base of operations for an ambulance service that operates subordinate substation ambulances.
13. "Industrial site ambulance service" means an ambulance service that primarily serves an organization and may or may not offer service to the general public.
14. "Licensed health care facilities" means facilities licensed under chapter 23-16 of the North Dakota Century Code.
15. "Major trauma patient" means any patient that fits the trauma triage algorithm as defined in chapter 33-38-01.
16. "Nonemergency health transportation" means health care transportation not provided by a licensed ambulance service that takes place 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.
17. "Paramedic" means a person who is certified as an emergency medical technician-paramedic by the national registry of emergency medical technicians and licensed by the department.
18. "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 paramedic's medical director.
19. "Personnel" means qualified primary care providers, or drivers, or both, within an ambulance service.
 20. "Primary care provider" means a qualified individual on the ambulance crew responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.
 21. "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.
 22. "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.
 23. "State health council" means the council as defined in title 23 of the North Dakota Century Code.
 24. "Substation ambulance service" means a subordinate operation of a headquarters ambulance service located in a separate municipality.
 25. "System status management" means strategically positioning ambulances in geographic locations during various times of the day based on historical data that can aid in predicting operational demands.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-02. License required - Fees.

1. No ground ambulance services, as defined in chapter 23-27 of the North Dakota Century Code, shall be advertised or offered to the public or any person unless the operator of such service is licensed by the department.
2. The license shall expire midnight on October thirty-first of the even year following issuance. License renewal shall be on a biennial 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 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 biennial license fee, including special licenses, shall be fifty dollars for each headquarters ambulance service location and fifty dollars for each substation location.
6. Entities solely providing nonemergency health transportation services are not required to obtain a license under chapter 23-27 of the North Dakota Century Code as long as they do not advertise or offer services to the general public.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-03. Application for license.

1. Application for the license shall be made in the manner prescribed by the department.
2. The application must be for a headquarters ambulance service or substation ambulance service at either the basic life support level as defined in chapter 33-11-02.2, or for the advanced life support level as defined in chapter 33-11-02.3.
3. New operators applying for an ambulance service license for an operation that will be based in a city already served by a licensed advanced life support ambulance service must apply for advanced life support ambulance licensure.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-04. Issuance and renewal of licenses.

1. The department or its authorized agent may inspect the service. If minimum standards for either basic life support ground ambulance services or advanced life support ground ambulance services are met, the department shall issue a license.
2. A service may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of ambulance services or its equivalent.

3. Services requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department a copy of the entire accrediting agency survey report. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.
4. 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 January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-05. Special licenses and waivers.

1. An operator of a ground ambulance service intended for industrial site use may be issued a special license by the department.
2. 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.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-06. Other requirements for substation ambulance operation.

1. A substation ambulance operation and all of its assets must be fully owned and operated by a headquarters ambulance service. A substation ambulance may not establish a separate business structure independent of the headquarters service.
2. A substation ambulance service may not have its own governing board separate from a governing board of the headquarters ambulance service.
3. All logos, vehicle lettering, personnel uniforms, and signage on any substation building must reflect the name of the headquarters ambulance service. However, a logo, vehicle lettering, personnel uniforms, or signage on a substation building may include the name of the substation.

4. A licensed advanced life support ambulance service meeting the requirements of chapter 33-11-03 may operate a substation ambulance that meets the basic life support ambulance standards outlined in chapter 33-11-02.
5. A substation ambulance service may not be established in a city that has a licensed ambulance service based in that city.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-07. Availability of ground ambulance service.

1. A headquarters ambulance service shall be available twenty-four hours per day and seven days per week, except as exempted through waiver by the department.
2. A substation ambulance service may be available intermittently. When the substation ambulance is not available it is the responsibility of the headquarters service to respond to calls within that area if no closer ambulance can respond. The headquarters ambulance service must inform its dispatching entity as to the time of availability of its substation ambulance service.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-08. Driver's license required. All drivers of ambulance service vehicles shall have a current valid driver's license pursuant to requirements under sections 39-06-01 and 39-06-02 of the North Dakota Century Code.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-09. Number of personnel required. The minimum personnel required on each ambulance run shall be one driver and one primary care provider.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-10. Other requirements.

1. Personnel must be able to identify and locate all equipment items required to be carried in an ambulance.

2. All licensed ambulance services shall keep the ambulance vehicle 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.
4. 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 when not in use.
8. All ambulance services must submit a trauma transport plan to the department upon request.
9. All licensed ambulance services must keep either an electronic or paper copy of each run report on file for a minimum of seven years.
10. All licensed ambulance services must have current written protocols developed and signed by their medical director. The current version of the protocols must be kept on file with ambulance service management. The ambulance service manager must keep inactive protocols for a period of seven years after deactivating the protocol.
11. All ambulance services must report any collision involving an ambulance that results in property damage of one thousand dollars or greater, or personal injury. The report must be made within thirty days of the event and on a form provided by the department.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-11. Out-of-state operators.

1. Operators licensed in another state may pick up patients within this state for transportation to locations within this state under the following circumstances:

- a. When there is a natural disaster, such as a tornado, earthquake, or other disaster, which may require all available ambulances to transport the injured; or
 - b. When an out-of-state ambulance is traveling through the state for whatever purpose comes upon an accident where immediate emergency ambulance services are necessary.
2. Out-of-state ambulance services who expect to pick up patients from within this state and transport to locations within this state must meet the North Dakota state standards and become licensed under chapter 23-27 of the North Dakota Century Code and this chapter.
3. Out-of-state fire units responding to North Dakota for the purposes of forest fire or grassland fire suppression may bring their own emergency medical personnel to provide emergency medical treatment to their own staff. The emergency medical personnel must be certified by the national registry of emergency medical technicians and have physician oversight.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-01

Law Implemented: NDCC 23-27-01

33-11-01.2-12. Specialty care transport.

1. 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:
 - a. 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 medical 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.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-13. Ground ambulance service vehicle requirements.

- 1. All ground ambulances must have a vehicle manufactured to be an ambulance.
- 2. All ground ambulance service vehicles must be equipped with a siren and flashing lights as described for class A emergency vehicles in subsection 2 of section 39-10-03 of the North Dakota Century Code.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-14. Transporting of patients. Ambulance services must transport patients to the nearest appropriate licensed health care facility according to their hospital transport plan except for:

1. Interfacility transports shall be made in accordance with the referring or accepting physician's orders.
2. In the following specific instances transport must be made to a licensed health care facility with specific capabilities or designations. This may result in bypassing a closer licensed health care facility for another located farther away. An ambulance service may deviate from these rules contained in this section on a case-by-case basis if online medical control is consulted and concurs.
 - a. Major trauma patients must be transported to a designated trauma center as per article 33-38.
 - b. A patient suffering acute chest pain that is believed to be cardiac in nature or an acute myocardial infarction determined by a twelve-lead electrocardiograph must be transported to a licensed health care facility capable of performing percutaneous catheter insertion or thrombolytic therapy.
 - c. In cities with multiple hospitals an ambulance service may bypass one hospital to go to another hospital with equal or greater services if the additional transport time does not exceed ten minutes.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-01.2-15. Required advanced life support care. When it would not delay transport time, basic life support ambulance services must call for a rendezvous with an advanced life support ground ambulance, or an advanced life support or critical care air ambulance if the basic life support ambulance is unable to provide the advanced life support interventions needed to fully treat a patient exhibiting:

1. Major trauma.
2. Cardiac chest pain or acute myocardial infarction.
3. Cardiac arrest.
4. Severe respiratory distress or respiratory arrest.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-02

33-11-02-04. Medical director. Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-03

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

1. The driver must be ~~an~~ a licensed emergency medical technician or its equivalent.
2. The primary care provider, whose duties include an assessment of each patient, must be ~~an emergency medical technician-paramedic~~ a licensed paramedic or its equivalent, or be a licensed registered nurse currently ~~certified~~ licensed as an emergency medical technician or its equivalent who has a current American heart association advanced cardiac life support certification or its equivalent, with the following exceptions:
 - ~~a.~~ If, based on the paramedic's, or its equivalent's, assessment findings, a patient's condition requires only basic life support, an emergency medical technician or its equivalent may assume primary care of the patient.
 - ~~3.~~ b. For scheduled basic life support transfers, the driver and the primary care provider must be at least licensed emergency medical technicians or its equivalent.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008.

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, except oral glucose or glucose, plus the following:

1. ~~Gardiae~~ Manual cardiac monitor defibrillator with pediatric capabilities.
2. Portable radio. Rechargeable battery operated capable of reaching law enforcement and hospitals.
3. Nebulizer with tubing.
4. Endotracheal airway equipment in pediatric and adult sizes.
5. Intravenous therapy equipment. Catheters, intraosseous needles, tubing solutions, for both pediatric and adult patients as approved by medical director.
6. Glucose measuring device.
7. Syringes and needles.

8. Alcohol swabs. Betadine swabs.
9. 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, 2003; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-04. Medical director. Each ground ambulance service shall have a signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

History: Effective March 1, 1985; amended effective August 1, 2003; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

33-11-03-05. ~~Availability on first call~~ Number of ambulances staffed. 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 staffed, either by on call or in-house staff,~~ by the licensed ambulance service is dependent upon the population of the city in which the ambulance is based.

1. For cities with a population less than fifteen thousand, one advanced life support ambulance must be ~~available for first call staffed.~~ Additional ambulances may be staffed and equipped at the basic life support level.
2. For cities with populations between fifteen thousand one and fifty-five thousand, two advanced life support ambulances must be ~~available for first call staffed.~~ Additional ambulances may be staffed and equipped at the basic life support level.
3. For cities with populations greater than fifty-five thousand, three advanced life support ambulances must be ~~available for first call.~~ The second call ambulance or ambulances may be staffed and equipped

at the basic life support level staffed. Additional ambulances may be
staffed and equipped at the basic life support level.

History: Effective March 1, 1985; amended effective January 1, 1986; August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-04

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. Includes canceled calls, no transports, and standby events where medical care may be rendered.
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-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.
4. "Commission on accreditation of medical transport systems" means the commission on accreditation of medical transport systems located in Anderson, South Carolina.
5. "Department" means the state department of health as defined in North Dakota Century Code chapter 23-01.
6. "Emergency medical technician" means a person who meets the requirements of the state emergency medical technician program and is licensed by the department.
7. ~~"Emergency medical technician-basic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department.~~
8. ~~"Emergency medical technician-paramedic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department.~~
9. "Equivalent" means training or equipment of equal or greater value which accomplishes the same results as determined by the department.
8. "Paramedic" means a person who is certified by the national registry of emergency medical technicians and licensed by the department as a paramedic.
10. 9. "Personnel" means qualified primary care providers within an air ambulance service.

- 44- 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; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

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

1. 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 even year following issuance. License renewal shall be on ~~an annual~~ a biennial 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 biennial~~ license fee shall be ~~twenty-five~~ fifty dollars for each air ambulance service operated.

History: Effective August 1, 2003; amended effective January 1, 2008.

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 signed agreement on file with the department with a North Dakota licensed physician who shall serve as official medical director and whose duties include establishing written medical protocols, recommending optional equipment, oversight of a quality assurance program, and maintaining current training requirements for personnel.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-06

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

History: Effective August 1, 2003; amended effective January 1, 2008.

General Authority: NDCC 23-27-04

Law Implemented: NDCC 23-27-04

CHAPTER 33-11-08
EMERGENCY MEDICAL SERVICES GRANTS

Section

33-11-08-01

Eligibility for Emergency Medical Services Grants

33-11-08-02

Use of Funds

33-11-08-01. Eligibility for emergency medical services grants. Certain ambulance services may be eligible for grants on an annual basis dependent upon legislative appropriation. In addition to compliance with chapter 23-40 of the North Dakota Century Code the following conditions must be met to be eligible for an emergency medical services grant.

1. Application for the grant shall be made in the manner and timeframe prescribed by the department.
2. The ambulance service must be based in North Dakota.
3. The ambulance service must be licensed as a basic life support ground ambulance as described in chapter 33-11-02 or licensed as an advanced life support ground ambulance as described in chapter 33-11-03 for at least twelve months prior to the filing of the application.
4. The ambulance service must bill for services at a level at least equivalent to the medicare billing level.
5. Criteria for grant approval shall be established by the state health council and shall at a minimum include consideration of:
 - a. The transportation distance to hospitals.
 - b. The size of the ambulance service area.
 - c. Contributing factors that may affect the number of patient care providers on the ambulance service.
 - d. The volume of ambulance runs.

History: Effective January 1, 2008.

General Authority: NDCC 23-40-01

Law Implemented: NDCC 23-40-01

33-11-08-02. Use of funds. The state health officer or designee shall determine the scope of the project, eligibility of emergency medical services operations, and distribution amounts on an annual basis. Considerations shall include:

1. How the emergency medical services operation fits into the overall structure of provision of emergency medical services in the state:

2. The needs of the emergency medical services operation and neighboring operations;
3. Compliance with the requirements set forth in section 23-40-06 of the North Dakota Century Code; and
4. Existence of local matching funds.

History: Effective January 1, 2008.

General Authority: NDCC 23-40-01

Law Implemented: NDCC 23-40-01

CHAPTER 33-31-03

33-31-03-07. Salvaged food operator license fee. Before any salvaged food operator engages in the distribution or selling of distressed or salvaged food, that operator must be licensed by the department. Licenses expire on December thirty-first following the date of issuance. The annual license fee for a salvaged food distributor is ~~sixty-five~~ eighty dollars.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-09-24

CHAPTER 33-33-01

33-33-01-07. License fees. The department shall charge the following fees for licenses to operate mobile home parks in this state:

1. For a mobile home park containing at least three but not more than ten lots, ~~seventy~~ seventy-five dollars.
2. For a mobile home park containing at least eleven but not more than twenty-five lots, one hundred ten dollars.
3. For a mobile home park containing at least twenty-six but not more than fifty lots, one hundred ~~thirty~~ forty-five dollars.
4. For a mobile home park containing more than fifty lots, one hundred ~~sixty~~ eighty dollars.

The department shall waive the license fee for any mobile home park owned by the state, a municipality, or a nonprofit organization.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-10-02, 23-10-07

CHAPTER 33-33-02

33-33-02-07. License fees. The department shall charge the following fees for licenses to operate trailer parks or campgrounds in this state:

1. For a trailer park or campground containing at least three but not more than ten lots, ~~seventy~~ seventy-five dollars.
2. For a trailer park or campground containing at least eleven but not more than twenty-five lots, one hundred ten dollars.
3. For a trailer park or campground containing at least twenty-six but not more than fifty lots, one hundred ~~thirty~~ forty-five dollars.
4. For a trailer park or campground containing more than fifty lots, one hundred ~~sixty~~ eighty dollars.

The department shall waive the license fee for any trailer park or campground owned by the state, a municipality, or a nonprofit organization.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-10-07

CHAPTER 33-33-03

33-33-03-02. License issuance, suspension, revocation, and reinstatement.

1. It shall be unlawful for any person to engage in the operation of one or more vending machines in North Dakota who does not possess a currently valid vending license from the department. Only persons who comply with the provisions of this chapter shall be entitled to receive such a license. The annual license fee for operating a vending machine is ~~twenty~~ twenty-five dollars.
2. Any person desiring to operate one or more vending machines in North Dakota shall make application in writing to the department on forms provided by the department. The applicant shall provide the following information:
 - a. The applicant's full name, residence, and post-office address.
 - b. The name and location of the commissary or commissaries where the vending machines are to be located and the name and location of the company or companies servicing the vending machines.
 - c. The identity of the products to be dispensed through vending machines.
 - d. The signature of the applicant or applicants.
3. Upon receipt of the application, the department shall issue a license to the applicant. The license shall not be transferable. The operator's license shall be displayed and be readily visible in the immediate area of the vending machines. In order to retain an operator's license, the operator shall comply with the requirements of these regulations.
4. After an opportunity for a hearing, and following the procedures provided in section 33-33-03-04, an operator's license may be suspended temporarily by the department upon violation by the licenseholder of any of the provisions of this chapter or may be revoked upon serious or repeated violation of such section, or for interference with the department's performance of its duties.
5. Notwithstanding any other provisions of this chapter, whenever the department finds unsanitary or other conditions involving the operation of any vending machine or commissary which, in the judgment of the department, constitutes a substantial hazard to the public health, it may, without notice or hearing, issue a written order to the operator citing the existence of such condition and specifying corrective action to be taken and, if deemed necessary, requiring immediate discontinuance of operation. Such order shall be effective immediately and shall apply

only to the vending machine, commissary, or product involved. Any operator to whom such order is issued shall comply therewith, but upon petition to the department, shall be afforded a hearing as soon as possible. When necessary corrective action has been taken and upon receipt of a written request from the operator, the department shall make a reinspection to determine whether operations may be resumed.

6. After any hearing held under the provisions of this chapter, the department shall sustain, modify, or rescind any notice or order considered in the hearing.
7. Any operator whose license has been suspended may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that in the operator's opinion the violated term or terms of this chapter have been complied with, the department shall make a reinspection. If the applicant is again complying with the terms of this chapter, the license shall be reinstated.

History: Effective August 1, 1988; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 19-02.1-24, 23-01-03(3)

Law Implemented: NDCC 19-02.1-24

CHAPTER 33-33-04

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

1. "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. "Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have been resolved or subsided, or because symptoms never manifested.
4. "a_w" means water activity 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_w.
5. "Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.
- 4: 6. "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: 7. "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: 8. "Commingle" means:
 - a. To combine shellstock harvested on different days or from different growing areas as identified on the tag or label; or

- b. To combine shucked shellfish from containers with different container codes or different shucking dates.
7. 9. "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.
8. 10. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
9. 11. "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.
12. "Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with title 1 of the Americans with Disabilities Act of 1990.
40. 13. "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.
41. 14. "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.
42. 15. "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.
43. 16. "Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.
44. 17. "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 health hazard.

15. 18. "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.
16. 19. "Department" means the state department of health or its designated agent.
17. 20. "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.
18. 21. "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. 22. ~~"Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea.~~ "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey.
- a. Egg does not include:
- (1) A balut;
 - (2) The egg of reptile species such as alligator; or
 - (3) An egg product.
- b. Egg product.
- (1) Egg product means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs.
 - (2) Egg product does not include food which contains eggs only in a relatively small proportion such as cake mixes.
20. 23. "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.

24. 24. "Enterohemorrhagic Escherichia coli" (EHEC) means E. coli which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with E. coli that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: E. coli O157:H7; E. coli O157:NM; E. coli O26:H11; E. coli O145:NM; E. coli O103:H2; or E. coli O111:NM.
- 21- 25. "EPA" means the United States environmental protection agency.
- 22- 26. "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- 27. "Exclude" means to prevent a person from working as ~~a food~~ an employee or entering a food establishment except for those areas open to the general public.
- 24- 28. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic ~~animal~~ life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) 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.
- 25- 29. "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.
- 26- 30. "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.
- 27- 31. "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.
- 28- 32. "Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.
- 29- 33. "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:

- (1) 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;
- (3) 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.

~~30:~~ 34. "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.

- ~~31.~~ 35. "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.
- ~~32.~~ 36. "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.
- ~~33.~~ 37. "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.
38. "Handsink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of hands. Handsink includes an automatic handwashing facility.
- ~~34.~~ 39. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.
40. "Health practitioner" means a physician licensed to practice medicine, or if allowed by law, a nurse practitioner, physician assistant, or similar medical professional.
- ~~35.~~ 41. "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.
- ~~36.~~ 42. "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.

- ~~37-~~ 43. "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".
44. "Juice" means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree. Juice does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as beverages or ingredients of beverages.
- ~~38-~~ 45. "Kitchenware" means food preparation and storage utensils.
- ~~39-~~ 46. "Law" includes applicable federal, state, and local statutes, ordinances, and regulations.
- ~~40-~~ 47. "License" means the document issued by the department that authorizes a person to operate a food establishment.
- ~~41-~~ 48. "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.
- ~~42-~~ 49. "Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.
50. "Major food allergen".
- a. "Major food allergen" means:
- (1) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or
- (2) A food ingredient that contains protein derived from a food, as specified in paragraph 1.
- b. "Major food allergen" does not include:
- (1) Any highly refined oil derived from a food specified in paragraph 1 of subdivision a and any ingredient derived from such highly refined oil; or

(2) Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 [Public Law 108-282].

- 43- 51. "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.
- 44- 52. "Mobile food unit" means a vehicle-mounted food establishment designed to be readily movable.
- 45- 53. "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.
- 46- 54. "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.
- 47- 55. "Person" includes any individual, partnership, corporation, association, or other legal entity.
- 48- 56. "Person in charge" means the individual present in a food establishment who is responsible for the operation at the time of inspection.
- 49- 57. "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.
- 50- 58. "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.
- 51- 59. "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.
- 52- 60. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:

- a. 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.

~~53.~~ 61. "Potentially hazardous food".

- a. "Potentially hazardous food" means a food that is a natural or synthetic and is in a form capable of supporting:
 - (1) 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 (A_w (a_w)) 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.

54. 62. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, or guineas, whether live or dead.
55. 63. "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.
56. 64. "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.
65. "Ratite" means a flightless bird such as an emu, ostrich, or rhea.
57. 66. "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.
58. 67. "Reconstituted" means dehydrated food products recombined with water or other liquids.
59. 68. "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.~~

a. "Reduced oxygen packaging" means:

- (1) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21 percent at sea level); and
- (2) A process as specified in paragraph 1 that involves a food for which the hazards clostridium botulinum or Listeria monocytogenes require control in the final packaged form.

b. "Reduced oxygen packaging" includes:

- (1) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
- (2) Modified atmosphere packaging in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
- (3) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;
- (4) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychotrophic pathogens; or

- (5) Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic pathogens.
- ~~60.~~ 69. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food establishment.
70. "Re-service" means the transfer of food, that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.
- ~~61.~~ 71. "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.
- ~~62.~~ 72. "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.
- ~~63.~~ 73. "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.
- ~~64.~~ 74. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
- ~~65.~~ 75. "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.
- ~~66.~~ 76. "Shellstock" or "shucked shellfish" means raw, in-shell molluscan shellfish or molluscan shellfish that have one or both shells removed.
77. "Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC include both O157 and non-O157 *E. coli*.
- ~~67.~~ 78. "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.

- 68- 79. "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- 80. "Smooth" means:
- a. A food-contact surface having a surface free of pits and inclusions 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
 - c. A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.
- 70- 81. "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.
- 71- 82. "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.
- 72- 83. "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.
- 73- 84. "Thermometer" means a thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.
- 74- 85. "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.
- 75- 86. "Warewashing" means the cleaning and sanitizing of food-contact surfaces of equipment and utensils.

76- 87. "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- 88. "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; January 1, 2008.

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:
 - a. Foods such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, 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:
 - a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;
 - b. 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
 - 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
 - c. 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.

History: Effective August 1, 2003; amended effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-03. Special requirements.

1. Fluid milk, dry milk, and milk products shall be obtained ~~from sources that pasteurized and~~ comply with grade A standards as specified by law. 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 CFR, such as 21 CFR 133 - cheeses and related cheese products, for curing certain cheese varieties.
2. 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:
 - a. 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
 - b. 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.
5. 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(l) and 9 CFR 381.125(b).
 6. ~~Shell-eggs~~ 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). Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of seven degrees Celsius [45 degrees Fahrenheit] or less.
 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~~ 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, meringue, 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~~ thirty-five degrees Fahrenheit [~~60~~ 57.2 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:
 - a. 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
 - 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;

- c. 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. 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.
16. Prepackaged juice shall:
- a. Be obtained from a processor with an HACCP system as specified in 21 CFR part 120;
 - b. 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

- 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
 - b. Labeled, if not treated to yield a 5-log reduction of the most resistant micro-organism of public health significance:
 - (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; January 1, 2008.

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.

- 1. 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:
 - a. 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;
 - (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~~ shall be maintained by retaining shellstock tags or labels for 90 ninety calendar days from the date of harvest"; and
- b. 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~~ shall be maintained by retaining shellstock tags or labels for 90 ninety calendar days from the date of harvest."
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.

History: Effective August 1, 2003; amended effective January 1, 2008.

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.

1. 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:
 - a. 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:
 - a. 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
 - b. The shellfish are protected from contamination.
4. Shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers where allowed by law if:
 - a. The labeling information for the shellfish is on each consumer self-service container as specified under section 33-33-04-03.1 and subsection 1 of section 33-33-04-04.3 and subdivisions a through e of subsection 2 of section 33-33-04-04.3.
 - b. The labeling information as specified under section 33-33-04-03.1 is retained and correlated with the date when, or dates during which, the shellfish are sold or served.
 - c. The labeling information and dates specified under subdivision b are maintained for ninety days; and
 - d. The shellfish are protected from contamination.

History: Effective August 1, 2003; amended effective January 1, 2008.

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:
 - a. 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
 - 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 with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer.

History: Effective August 1, 2003; amended effective January 1, 2008.

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. 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~~ thirty-five degrees Fahrenheit [~~60~~ 57.2 degrees Celsius] or above.

5. 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~~ 57.2 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; January 1, 2008.

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.

1. 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~~ 33-33-04-28.9 through ~~33-33-04-28.2~~ 33-33-04-28.11 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; amended effective January 1, 2008.

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.

1. 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:
 - a. 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
 - e. The name of the food source for each major food allergens contained in the food unless the food source is already part of the common or usual name of the respective ingredient.
 - f. 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. g. 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:
 - a. 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:
 - a. A health, nutrient content, or other claim is not made;
 - b. There are no state or local laws requiring labeling; and
 - c. 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.

History: Effective August 1, 2003; amended effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

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

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:
 - a. 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
 - b. Forty-one degrees Fahrenheit [5 degrees Celsius] or less for a maximum of seven days.
2. Refrigeration facilities shall be provided to assure the maintenance of potentially hazardous food and shall operate at forty-one degrees Fahrenheit [5 degrees Celsius] or less.
3. Hot holding facilities shall be provided to assure the maintenance of potentially hazardous food and shall operate at one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius] or above.
4. ~~Shell-eggs~~ 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.~~ 5. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [-17.78 degrees Celsius] or below.
- ~~4.~~ 6. 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; January 1, 2008.

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 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:
 - a. The day the original container is opened in the food establishment shall be counted as day one; and
 - b. 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.
3. 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 using calendar dates, days of the week, color-coded marks, other effective marking methods, 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.
4. 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:
 - a. Fermented sausages produced in a federally inspected food processing plant that are not labeled "keep refrigerated" as specified in 9 CFR 317 labeling, marking devices, and containers and which retain the original casing on the product;
 - b. Shelf-stable, dry, fermented sausages, such as pepperoni and Genoa salami; and
 - c. Shelf-stable salt-cured products such as prosciutto and Parma (ham) produced in a federally inspected food processing plant that are not labeled "keep refrigerated".
6. Subsection 2 does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:
 - a. Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 current good manufacturing practice in manufacturing, packaging, or holding human foods;
 - b. Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 CFR 133 cheeses and related cheese products, such as cheddar, gruyere, parmesan, and reggiano andromano;
 - c. Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 CFR 133 cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and Monterey jack;
 - d. Cultured dairy products as defined in 21 CFR 131 milk and cream, such as yogurt, sour cream, and buttermilk; and
 - e. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 acidified foods.
7. 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; January 1, 2008.

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 animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens. 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 way of disclosure and reminder using 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.

1. Disclosure shall include:
 - a. A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)", "raw-egg Caesar salad", and "hamburgers (can be cooked to order)"; or
 - b. Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain or may contain raw or undercooked ingredients.
2. Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:
 - a. Regarding the safety of these items, written information is available upon request;
 - b. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or
 - c. Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions. See appendix A.

History: Effective July 1, 1997; amended effective August 1, 2003; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-11. Cooking raw animal foods.

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:
 - a. 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
- | Minimum | |
|---------------------|---------------------------|
| Temperature °F [°C] | Time |
| 145 [63] | 3 minutes |
| 150 [66] | 1 minute |
| 158 [70] | <1 second (instantaneous) |
- c. 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 meat including beef ~~roasts~~, corned beef roasts, pork roasts, lamb, 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 [°C]	Time in Minutes	Temperature °F [°C]	Time in Seconds
130 [54.4]	112	147 [63.9]	134
131 [55.0]	89	149 [65.0]	85
133 [56.1]	56	147 [63.9]	54
135 [57.2]	36	149 [65.0]	34
136 [57.8]	28	151 [66.1]	22
138 [58.9]	18	153 [67.2]	14
140 [60.0]	12	155 [68.3]	0
142 [61.1]	8	157 [69.4]	
144 [62.2]	5	158 [70.0]	
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:
- a. The food establishment serves a population that is not a highly susceptible population;
 - b. 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

- c. 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:
 - a. The food establishment serves a population that is not a highly susceptible population; and
 - b. 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
 - c. 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) Is submitted by the licenseholder and approved as specified in section 33-33-04-142;
 - (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; January 1, 2008.

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.

- 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:
 - a. Frozen and stored at a temperature of minus four degrees Fahrenheit [-20 degrees Celsius] or below for a minimum of 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.~~ 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] or below for a minimum of fifteen hours; or
 - c. Frozen at minus thirty-one degrees Fahrenheit [-35 degrees Celsius] or below until solid and stored at minus four degrees Fahrenheit [-20 degrees Celsius] or below for a minimum of twenty-four 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~~ or aquacultured fish, such as salmon, that:
- a. If raised in open water, are raised in net-pens; or
 - b. Are raised in land-based operations such as ponds or tanks; and
 - c. Are fed formulated food, such as pellets, that contains no live parasites infective to the aquacultured fish; and
 - d. 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; January 1, 2008.

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~~ thirty-five degrees Fahrenheit [~~60~~ 57.2 degrees Celsius].

History: Effective August 1, 2003; amended effective January 1, 2008.

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.
2. 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.
3. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in subsection 2 of section 33-33-04-11.5, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in subsection 2 of section 33-33-04-11.5 shall be obtained by the person in charge and retained in the records of the food establishment for ninety calendar days beyond the time of service or sale of the fish.

History: Effective August 1, 2003; amended effective January 1, 2008.

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.

1. 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.
2. 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 as specified in subsections 1 through 3 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~~ meat 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; January 1, 2008.

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 33-33-04-139 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:
 - a. 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;
5. 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.

8. Sprouting seeds or beans.

History: Effective July 1, 1997; amended effective August 1, 2003; January 1, 2008.

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.

1. A food establishment that packages food using 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 and Listeria Monocytogenes because it complies with one of the following:
 - (1) Has an Aw (a_w) 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 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;
 - c. 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) 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;

- e. Limits the refrigerated shelf life to no more than fourteen calendar days from packaging to consumption, except the time the product is maintained frozen, 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
- g. 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 33-33-04-143.
- 2. Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method.
- 3. Except as specified in subsection 2, a food establishment may package food using a cook-chill or sous vide process without obtaining a variance if:
 - a. The food establishment implements an HACCP plan that contains the information as specified in section 33-33-04-143;
 - b. The food is:
 - (1) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the bagged product to another business entity or the consumer.

- (2) Cooked to heat all parts of the food to a temperature and for a time as specified in section 33-33-04-11.
- (3) Protected from contamination after cooking as specified in subdivision f of subsection 1.
- (4) Placed in a package or bag with an oxygen barrier before cooking, or placed in a package or bag immediately after cooking and before reaching a temperature below one hundred thirty-five degrees Fahrenheit [57.2 degrees Celsius].
- (5) Except for frozen food that is not shelf life restricted, cooled to forty-one degrees Fahrenheit [5 degrees Celsius] in the package or bag as specified in section 33-33-04-07.5, and then cooled to thirty-four degrees Fahrenheit [1 degree Celsius] or less within forty-eight hours of reaching forty-one degrees Fahrenheit [5 degrees Celsius] and:
 - (a) Held at thirty-four degrees Fahrenheit [1 degree Celsius] and consumed or discarded within thirty days after the date of preparation; or
 - (b) If removed from a storage unit that maintains a thirty-four degrees Fahrenheit [1 degree Celsius] food temperature, held at forty-one degrees Fahrenheit [5 degrees Celsius] or less for no more than seventy-two hours before consumption.
- (6) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily.
- (7) If transported offsite to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation.

4. Labeled with the product name and the date packaged and;

- a. The records required to confirm that cooling and cold holding refrigeration time and temperature parameters are required as part of the HACCP plan are maintained; and
- b. Are made available to the regulatory authority upon request, and held for six months; and written operational procedures as specified under subdivisions f and g of subsection 1 are implemented.

5. A food establishment may package cheese using a reduced oxygen packaging method without obtaining a variance if it:
- a. Limits the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the standards of identity as specified in 21 CFR 133.150 hard cheeses, 21 CFR 133.169 pasteurized process cheese, or 21 CFR 133.187 semisoft cheeses;
 - b. Has a HACCP plan that contains the information specified in section 33-33-04-143;
 - c. Except as specified in subdivisions a, b, c, d(2), and e of subsection 1 and labels the package on the principal display plane with a "use by" date that does not exceed thirty days or the original manufacturer's "sell by" or "use by" date, whichever occurs first; and
 - d. Discards the reduced oxygen packaged cheese if it is not sold for offpremises consumption or consumed within thirty calendar days of its packaging.

History: Effective July 1, 1997; amended effective August 1, 2003; January 1, 2008.

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.

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] or forty-one degrees Fahrenheit [5 degrees Celsius] or less 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; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-27.1. Management and personnel. The licenseholder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation. The person in charge shall ensure that:

- a. Food establishment operations are not conducted in a private home or room used as living or sleeping quarters as specified in subsection 4 of section 33-33-04-02 and section 33-33-04-112;
- b. Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;
- c. Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this code;
- d. Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
- e. Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;

- f. Employees are properly cooking potentially hazardous food being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified in section 33-33-04-42;
- g. Employees are using proper methods to rapidly cool potentially hazardous foods (time and temperature control for safety foods) that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
- h. Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified in subsection 4 of section 33-33-04-11 that the food is not cooked sufficiently to ensure its safety;
- i. Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;
- j. Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified in section 33-33-04-26;
- k. Employees are preventing cross-contamination by limiting direct hand contact with exposed, ready-to-eat food when deli tissue, spatulas, tongs, dispensing equipment, or other utensils can be used;
- l. Employees are properly trained in food safety as it relates to their assigned duties; and
- m. Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified in section 33-33-04-28.9.

History: Effective July 1, 1997; amended effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28. Employee health. Repealed effective January 1, 2008. (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. Is diagnosed with an illness due to:~~
 - ~~a. Salmonella typhi;~~
 - ~~b. Shigella spp.;~~
 - ~~c. Shiga toxin-producing E. coli O157:H7; or~~
 - ~~d. Hepatitis A virus;~~
- ~~2. Has a symptom caused by illness, infection, or other source that is:~~
 - ~~a. Associated with an acute gastrointestinal illness such as:~~
 - ~~(1) Diarrhea;~~
 - ~~(2) Fever;~~
 - ~~(3) Vomiting;~~
 - ~~(4) Jaundice; or~~
 - ~~(5) Sore throat with fever; or~~
 - ~~b. A lesion containing pus such as a boil or infected wound that is open 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. Had a past illness from:~~
 - ~~a. S. typhi within the past three months;~~

- b. ~~Shigella spp. within the past month;~~
 - c. ~~Shiga toxin-producing E. coli within the past month; or~~
 - d. ~~Hepatitis A virus; or~~
4. ~~Meets one or more of the following high-risk conditions:~~
- a. ~~Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by S. typhi, Shigella spp., shiga toxin-producing E. coli O157: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~~
 - b. ~~Lives in the same household as a person who is diagnosed with a disease caused by S. typhi, Shigella spp., shiga toxin-producing E. coli O157: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., shiga toxin-producing E. coli O157: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. Repealed effective January 1, 2008. 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.~~
- 2. ~~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 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 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;~~
 - b. ~~Is 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 shiga toxin-producing E. coli O157:H7;~~
 - c. ~~Had a past illness from S. typhi within the last three months; or~~
 - d. ~~Had a past illness from Shigella spp. or shiga toxin-producing E. coli O157:H7 within the last month.~~
4. ~~For a food employee who is jaundiced:~~
- a. ~~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. Repealed effective January 1, 2008. (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. coli* O157: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

33-33-04-28.3. Responsibility of a food employee or an applicant to report to the person in charge. Repealed effective January 1, 2008. A food employee or a person who applies for a job as a food employee shall:

1. ~~In a manner specified in section 33-33-04-28, report to the person in charge the information specified in section 33-33-04-28.~~
2. ~~Comply with exclusions and restrictions that are specified in section 33-33-04-28.1.~~

History: Effective July 1, 1997.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28.4. Reporting by the person in charge. Repealed effective January 1, 2008. The person in charge shall notify the regulatory authority of a food employee or a person who applies for a job as a food employee who is diagnosed with, or is suspected of having an illness due to, *Salmonella typhi*, *Shigella* spp., *Escherichia coli* O157:H7, or hepatitis A virus infection.

History: Effective July 1, 1997.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28.5. Obtaining information - Personal history of illness, medical examination, and specimen analysis. Repealed effective January 1, 2008. ~~The department shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:~~

- ~~1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and~~
- ~~2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.~~

History: ~~Effective July 1, 1997.~~

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

Law Implemented: ~~NDGC 19-02.1-09~~

33-33-04-28.6. Restriction or exclusion of food employee or summary suspension of license. Repealed effective January 1, 2008. ~~Based on the findings of an investigation related to an employee who is suspected of being infected or diseased, the department may issue an order to the suspected employee or licenseholder instituting one or more of the following control measures:~~

- ~~1. Restricting the employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;~~
- ~~2. Excluding the employee from a food establishment; or~~
- ~~3. Closing the food establishment by summarily suspending a license to operate in accordance with law.~~

History: ~~Effective July 1, 1997.~~

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

Law Implemented: ~~NDGC 19-02.1-09~~

33-33-04-28.7. Restriction or exclusion order - Warning or hearing not required - Information required in order. Repealed effective January 1, 2008. ~~Based on the findings of the investigation as specified in section 33-33-04-28.5 and to control disease transmission, the department may issue an order of restriction or exclusion to a suspected employee or the licenseholder without prior warning, notice of a hearing, or a hearing if the order:~~

- ~~1. States the reasons for the restriction or exclusion that is ordered;~~

- ~~2. States the evidence that the employee or licenseholder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;~~
- ~~3. States that the suspected employee or the licenseholder may request an appeal hearing by submitting a timely request as provided under law; and~~
- ~~4. Provides the name and address of the department representative to whom a request for an appeal hearing may be made.~~

History: Effective July 1, 1997.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28.8. Release of employee from restriction or exclusion.
~~Repealed effective January 1, 2008. The department shall release an employee from restriction or exclusion according to law and the following conditions:~~

- ~~1. 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.~~~~
- ~~2. 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.~~
- ~~3. An employee who was infected with Shigella spp. or shiga toxin-producing E. coli O157:H7 if the employee's stools are negative for Shigella spp., shiga toxin-producing E. coli O157:H7 based on testing of two consecutive stool specimen cultures that are taken:
 - ~~a. 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~~

33-33-04-28.9. Responsibility of permitholder, person in charge, and conditional employees.

1. The permitholder shall require food employees and conditional 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 conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as a date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

- a. Has any of the following symptoms:

- (1) Vomiting;
- (2) Diarrhea;
- (3) Jaundice;
- (4) Sore throat with fever; or
- (5) A lesion containing pus such as a boil or infected wound that is open or draining and is:
 - (a) 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;
 - (b) On exposed portions of the arms, unless the lesion is protected by an impermeable cover; or
 - (c) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage;

- b. Has an illness diagnosed by a health practitioner due to:

- (1) Norovirus;
- (2) Hepatitis A virus;
- (3) Shigella spp.;

- (4) Enterohemorrhagic or Shiga toxin-producing Escherichia coli; or
 - (5) Salmonella typhi;
 - c. Had a previous illness, diagnosed by a health practitioner, within the past three months due to Salmonella typhi, without having received antibiotic therapy, as determined by a health practitioner;
 - d. Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:
 - (1) Norovirus within the past forty-eight hours of the last exposure;
 - (2) Enterohemorrhagic or Shiga toxin-producing Escherichia coli, or Shiga spp. within the past three days of the last exposure;
 - (3) Salmonella typhi within the past fourteen days of the last exposure; or
 - (4) Hepatitis A virus within the past thirty days of the last exposure; or
 - e. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by:
 - (1) Norovirus within the past forty-eight hours of the last exposure;
 - (2) Enterohemorrhagic or Shiga toxin-producing Escherichia coli or Shigella;
 - (3) Salmonella typhi within the past fourteen days of the last exposure; or
 - (4) Hepatitis A virus within the past thirty days of the last exposure.
- 2. The person in charge shall notify the regulatory authority when a food employee is:

- a. Jaundiced; or
 - b. Diagnosed with an illness due to a pathogen as specified in subdivision b of subsection 1.
- 3. The person in charge shall ensure that a conditional employee:
 - a. Who exhibits or reports a symptom, or who reports a diagnosed illness as specified in subdivisions a through c in subsection 1, is prohibited from becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under section 33-33-04-28.11; and
 - b. Who will work as a food employee in a food establishment that serves as a highly susceptible population and reports a history of exposure, as specified in subdivisions d and e in subsection 1, is prohibited from being a food employee until the conditional employee meets the criteria as specified in subsection 9 of section 33-33-04-28.11.
- 4. The person in charge shall ensure that a food employee who exhibits or reports a symptom, or who reports a diagnosed illness or a history of exposure as specified under subdivisions a through e of subsection 1, is:
 - a. Excluded as specified under subsections 1 through 3 of section 33-33-01-28.10, and subsections 4(a), 5(a), 6(a), or 7(a) of section 33-33-04-28.10 and in compliance with the provisions specified in subsections 1 through 7 of section 33-33-04-28.11; or
 - b. Restricted as specified in subsections 4(b), 5(b), 6(b), 7(b) or subsection 8 or 9 of section 33-33-04-28.10 and in compliance with the provisions under subsections 4 through 9 of section 33-33-04-28.11.
- 5. A food employee or conditional employee shall report to the person in charge the information as specified under subsection 1.
- 6. A food employee shall:
 - a. Comply with an exclusion as specified in subsections 1 through 3 of section 33-33-04-28.10 and subsections 4(a), 5(a), 6(a), or 7(a) of section 33-33-04-28.10 and with the provisions specified subsections 1 through 7 of section 33-33-04-28.11; or
 - b. Comply with a restriction as specified under in subsections 4(b), 5(b), 6(b), 7(b), 8, or 9 of section 33-33-04-28.10, and comply with

the provisions specified under subsections 4 through 9 of section 33-33-04-28.11.

History: Effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28.10. Exclusions and restrictions. The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:
 - a. Symptomatic with vomiting or diarrhea; or
 - b. Symptomatic with vomiting or diarrhea and diagnosed with an infection from Norovirus, Shigella spp., or Enterohemorrhagic or Shiga toxin-producing E. coli.
2. Exclude a food employee who is:
 - a. Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal orally transmitted infection;
 - b. Diagnosed with an infection from hepatitis A virus within fourteen calendar days from the onset of any illness symptoms or within seven calendar days of the onset of jaundice; or
 - c. Diagnosed with an infection from hepatitis A virus without developing symptoms.
3. Exclude a food employee who is diagnosed with an infection from Salmonella typhi, or reports a previous infection with Salmonella typhi within the past three months as specified in subdivision c of subsection 1 of section 33-33-04-28.9.
4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.

5. If a food employee is diagnosed with an infection from Shigella spp. and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
6. If a food employee is diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing E. coli, and is asymptomatic:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
7. If a food employee is ill with symptoms of acute onset of sore throat with fever:
 - a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or
 - b. Restrict the food employee who works in a food establishment not serving a highly susceptible population.
8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under paragraph 5 of subdivision a of subsection 1 of 33-33-04-28.9, restrict the food employee.
9. If a food employee is exposed to a foodborne pathogen as specified under subdivision d or e of subsection 1 of section 33-33-04-28.9, restrict the food employee who works in a food establishment serving a highly susceptible population.

History: Effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28.11. Removal, adjustment, or retention of exclusions and restrictions. The person in charge may remove, adjust, or retain the exclusion or restriction of a food employee according to the following conditions:

1. Except when a food employee is diagnosed with an infection from hepatitis A or salmonella typhi:

- a. Reinstate a food employee who was excluded as specified in subdivision a of subsection 1 of section 33-33-04-28.10 if the food employee:
 - (1) Is asymptomatic for at least twenty-four hours; or
 - (2) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition.
- b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subdivision b of subsection 1 of section 33-33-04-28.10:
 - (1) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivision a or b of subsection 4 are met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subdivision a or b of subsection 4 is met.
- c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision b of subsection 1 of section 33-33-04-28.10:
 - (1) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivision a or b of subsection 5 is met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subsections 5(a) or (b), or 5(a) and 1(c)(1) of this section are met.
- d. If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga toxin-producing Escherichia coli and excluded as specified under subdivision b of subsection 1 of section 33-33-04-28.10:

- (1) Restrict the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified under subdivision a or b of subsection 6 is met; or
 - (2) Retain the exclusion for the food employee, who is asymptomatic for at least twenty-four hours and works in a food establishment that serves a highly susceptible population, until the conditions for reinstatement as specified under subdivision a or b of subsection 6 is met.
2. Reinstate a food employee who was excluded as specified under subsection 2 of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The food employee has been jaundiced for more than seven calendar days;
 - b. The anicteric food employee has been symptomatic with symptoms other than jaundice for more than fourteen calendar days; or
 - c. The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection.
3. Reinstate a food employee who was excluded as specified under subsection 3 of section 33-33-04-28.10 if:
 - a. The person in charge obtains approval from the regulatory authority; and
 - b. The food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from Shigella typhi infection.
4. Reinstate a food employee who was excluded as specified under subsections 1(b) or 4(a) of section 33-33-04-28.10 who was restricted under subsection 4(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection;

- b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than forty-eight hours have passed since the food employee became asymptomatic; or
 - c. The food employee was excluded or restricted and did not develop symptoms and more than forty-eight hours have passed since the food employee was diagnosed.
- 5. Reinstate a food employee who was excluded as specified under subsections 1(b) or 5(a) of section 33-33-04-28.10 or who was restricted under subsection 5(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:
 - (1) Not earlier than forty-eight hours after discontinuance of antibiotics; and
 - (2) At least twenty-four hours apart;
 - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than seven calendar days have passed since the food employee became asymptomatic; or
 - c. The food employee was excluded or restricted and did not develop symptoms and more than seven calendar days have passed since the food employee was diagnosed.
- 6. Reinstate a food employee who was excluded or restricted as specified under subsections 1(b) or 6(a) of section 33-33-04-28.10 or who was restricted under subsection 6(b) of section 33-33-04-28.10 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:
 - a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga toxin-producing Escherichia coli based on test results that show two consecutive negative stool specimen cultures that are taken:
 - (1) Not earlier than forty-eight hours after discontinuance of antibiotics; and

- (2) At least twenty-four hours apart:
 - b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved and more than seven calendar days have passed since the food employee became asymptomatic; or
 - c. The food employee was excluded or restricted and did not develop symptoms and more than seven days have passed since the food employee was diagnosed.
- 7. Reinstate a food employee who was excluded or restricted as specified under subsections 7(a) or (b) of section 33-33-04-28.10 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:
 - a. Has received antibiotic therapy for Streptococcus pyogenes infection for more than twenty-four hours;
 - b. Has at least one negative throat specimen culture for Streptococcus pyogenes infection; or
 - c. Is otherwise determined by a health practitioner to be free of a Streptococcus pyogenes infection.
- 8. Reinstate a food employee who was restricted as specified under subsection 8 of section 33-33-04-28.10 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:
 - a. An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;
 - b. An impermeable cover on the arm if the infected wound or pustular boil is on the arm; or
 - c. A dry, durable, tight-fitting bandage if the infected wound or pustular boil is on another part of the body.
- 9. Reinstate a food employee who was restricted as specified under subsection 9 of section 33-33-04-28.10 and was exposed to one of the following pathogens as specified under subsection 1(d) or (e) of section 33-33-04-28.9:
 - a. Norovirus and one of the following conditions is met:
 - (1) More than forty-eight hours have passed since the last day the food employee was potentially exposed; or

- (2) More than forty-eight hours have passed since the food employee's household contact became asymptomatic.
- b. Shigella spp. or Enterohemorrhagic or Shiga toxin-producing Escherichia coli and one of the following conditions is met:
 - (1) More than three calendar days have passed since the last day the food employee was potentially exposed; or
 - (2) More than three calendar days have passed since the food employee's household contact became asymptomatic.
- c. S. Typhi and one of the following conditions is met:
 - (1) More than fourteen calendar days have passed since the last day the food employee was potentially exposed; or
 - (2) More than fourteen calendar days have passed since the food employee's household contact became asymptomatic.
- d. Hepatitis A virus and one of the following conditions is met:
 - (1) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A.
 - (2) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A;
 - (3) The food employee is immune to hepatitis A virus infection because of IgG administration;
 - (4) More than thirty calendar days have passed since the last day the food employee was potentially exposed;
 - (5) More than thirty calendar days have passed since the food employee's household contact became jaundiced; or
 - (6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least thirty days after the potential exposure, as specified in subdivisions (4) and (5) of subsection 9(d) of this section, and the food employee receives additional training about:
 - (a) Hepatitis A symptoms and preventing the transmission of infection;
 - (b) Proper handwashing procedures; and

- (c) Protecting ready-to-eat food from contamination introduced by bare hand contact.

History: Effective January 1, 2008.

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.

1. Food employees shall keep their hands and exposed portions of their arms clean. Except as specified in subsection 2 4, 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:
 - a. 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;
 - b. Thorough rinsing under clean, running warm water; and
 - c. 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.
5. Food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) as specified in subsection 2 of section 33-33-04-29 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles and:
 - a. After touching bare human body parts other than clean hands and clean, exposed portions of arms;
 - b. After using the toilet room;
 - c. After caring for or handling service animals or aquatic animals as specified in subsection 2 of section 33-33-04-116;

- d. Except as specified in subsection 5 of section 33-33-04-31, after coughing, sneezing using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- e. After handling soiled equipment or utensils;
- f. During food preparation, as often as necessary to remove soil and contamination and to prevent cross-contamination when changing tasks;
- g. When switching between working with raw food and working with ready-to-eat food;
- h. Before donning gloves for working with food; and
- i. After engaging in other activities that contaminate the hands.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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 antiseptic.

1. A hand sanitizer and a chemical hand sanitizing antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:
 - a. 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;
2. If a hand ~~sanitizer~~ antiseptic or a ~~chemical hand sanitizing~~ antiseptic solution used as a hand dip does not meet the criteria specified under subdivision b of subsection 1, use shall be:
 - a. 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~~ antiseptic 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; amended effective January 1, 2008.

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 and use.

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:

1. 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 Category	Description	Maximum Lead
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

3. 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.
4. 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; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-42. Thermometers - Food. 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.

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~~ and 33-33-04-11.4. 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; January 1, 2008.

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. Sealed wood is acceptable for nonfood contact storage; however, stainless steel or equivalent is recommended. Raw wood or contact paper-lined shelving is prohibited. 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; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-44. Ventilation hoods. 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 in place while ventilation hood is operational and 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; January 1, 2008.

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.
2. 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. Food shall only contact surfaces of equipment and utensils that are cleaned and sanitized as specified in sections 33-33-04-52 through 33-33-04-54 or single-service and single-use articles.
6. Except as specified in subsection 7, if used with potentially hazardous food (time and temperature control for safety food), equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.
7. Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four hours if:
 - a. In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified in section 33-33-04-07 and the containers are cleaned with they are empty;

b. Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(1) The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature:

<u>Temperature</u>	<u>Cleaning Frequency</u>
<u>5.0°C (41°F) or less</u>	<u>24 hours</u>
<u>>5.0°C - 7.2°C (>41°F - 45°F)</u>	<u>20 hours</u>
<u>>7.2°C - 10.0°C (>45°F - 50°F)</u>	<u>16 hours</u>
<u>>10.0°C - 12.8°C (>50°F - 55°F)</u>	<u>10 hours</u>

(2) The cleaning frequency based on the ambient temperature of the refrigerated room or areas is documented in the food establishment.

c. Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under chapter 3, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every twenty-four hours;

d. Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under chapter 3;

e. Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues; and

f. The cleaning schedule is approved based on consideration of:

(1) Characteristics of the equipment and its use;

(2) The type of food used;

(3) The amount of food residue accumulation; and

(4) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

(5) In-use utensils are intermittently stored in a container of water in which the water is maintained at fifty-seven degrees

Celsius [135 degrees Fahrenheit] or more and the utensils and container are cleaned at least every twenty-four hours or at a frequency necessary to preclude accumulation of soil residues.

8. Except when drycleaning methods are used, surfaces of utensils and equipment contacting food that is not potentially hazardous (time and temperature control for safety food) shall be cleaned:
 - a. At any time when contamination may have occurred;
 - b. At least every twenty-four hours for iced tea dispensers and consumer self-service utensils such as tongs, scoops, or ladles;
 - c. Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
 - d. In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
 - (1) At a frequency specified by the manufacturer; or
 - (2) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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.

1. Cloths used for wiping food spills on from tableware, ~~such as plates or bowls, and carryout containers~~ being served to the consumer, must be clean, dry, and used for no other purpose.
2. ~~Moist cloths~~ 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.
3. ~~Moist cloths~~ 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. Sanitizing solutions in which wet wiping cloths are held between uses shall be free of food debris and visible soil.
5. 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.
6. Single-use disposable sanitizer wipes shall be used in accordance with environmental protection agency-approved manufacturer's label use instructions.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-52. Manual warewashing - Sink compartment requirements.

1. 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. 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].
 - c. 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 section 33-33-04-53.4.
 - e. Equipment and utensils must be air-dried and used only after adequate draining.

3. 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~~ 5 shall be used.
4. Equipment and utensils must be preflushed or prescraped and, when necessary, presoaked to remove gross food particles, soil, and grease.
- ~~3.~~ 5. 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:
 - a. High-pressure detergent sprayers;
 - 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; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-56. Storage.

1. Cleaned and sanitized utensils and equipment must be stored at least six inches [15.24 centimeters] above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. The food-contact surfaces of fixed equipment must also be protected from contamination. Equipment and utensils may not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Utensils must be air dried before being stored or must be stored in a self-draining position.
3. Glasses and cups must be stored inverted. Other stored utensils must be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons must be designed and used to present the handle to the employee or consumer. Unless tableware is prewrapped, holders for knives, forks, and spoons at self-service locations must protect these articles from contamination and present the handle of the utensil to the consumer.

4. Space must be provided for the adequate protective storage for kitchenware, tableware, and utensils.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-57. Single-service articles.

1. Single-service articles shall be stored at least six inches [15.24 centimeters] above the floor in the original protective package, in closed cartons or containers which protect them from contamination until used and shall not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Single-service articles shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.
3. Single-service knives, forks, and spoons packaged in bulk shall be inserted into holders or be wrapped by an employee who has washed one's hands immediately prior to sorting or wrapping the utensils. Unless single-service knives, forks, and spoons are prewrapped or prepackaged, holders shall be provided to protect these items from contamination and present the handle of the utensil to the consumer.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-62. Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water. Water piping and waste piping to all fixtures and equipment that use water shall be maintained free of leaks and in good repair.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-67. Backflow. The potable water system shall be installed to preclude the possibility of backflow. Devices shall be installed to protect against backflow and back siphonage at all fixtures and equipment where an airgap at least twice the diameter of the water supply inlet is not provided between the water supply inlet and the fixture's flood level rim. A hose shall not be attached to a faucet

unless a backflow prevention device is installed. A backflow prevention device shall be located so that it may be serviced and maintained.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-68. Grease traps. If used, grease traps must be maintained, kept clean, and shall be located to be easily cleaned accessible for cleaning.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-70. Drains. Except for properly trapped open sinks, there shall be no direct connection between the sewerage system and any drains originating from equipment in which food, portable equipment, or utensils are placed. When a dishwashing machine is located within five feet [1.52 meters] of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap. This section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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. Toilet rooms may not be used to store clean clothes or uniforms, or both.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-74. Toilet fixtures. Toilet fixtures shall be kept clean and in good repair. A supply of toilet tissue shall be provided at each toilet at all times. Easily

cleanable receptacles shall be provided for waste materials. Toilet rooms used by women shall have at least one covered waste receptacle for sanitary napkins.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

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

1. 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.
6. A separate handwashing sink must be provided in each back bar area.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-79. Garbage and refuse containers.

1. Garbage and refuse shall be kept in durable, easily cleanable, nonabsorbent, insect and rodent-proof containers that do not leak and do not absorb liquids. Plastic bags and wet-strength paper bags may be used to line these containers or for storage inside the food establishment.
2. Containers used in food preparation and utensil washing areas shall be kept covered after they are filled.
3. Containers stored outside the establishment, and dumpsters, compactors, and compactor systems shall be easily cleanable, shall be provided with tight-fitting lids, doors, or covers, and shall be

kept covered when not in actual use. In containers designed with drains, drain plugs shall be in place at all times, except during cleaning.

4. There shall be a sufficient number of containers to hold all the garbage and refuse that accumulates.
5. Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas. Suitable facilities, including hot water and detergent or steam, shall be provided and used for washing containers. Liquid waste from compacting or cleaning operations shall be disposed of as sewage.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-80. Storage.

1. Garbage and refuse on the premises shall be stored in a manner which makes them inaccessible to insects and rodents. Outside storage of unprotected plastic bags or wet-strength paper bags or baled units containing garbage or refuse is prohibited. Cardboard or other packaging materials not containing garbage or food wastes need not be stored in covered containers.
2. Garbage or refuse storage rooms, if used, shall be constructed of easily cleanable, nonabsorbent, washable materials, shall be kept clean, shall be insect-proof and rodent-proof, and shall be large enough to store the garbage and refuse containers that accumulate.
3. Outside storage areas or enclosures shall be large enough to store the garbage and refuse containers that accumulate and shall be kept clean. Garbage and refuse containers, dumpsters, and compactor systems located outside shall be stored on or above a smooth surface or nonabsorbent material, such as concrete or machine-laid asphalt, that is kept clean, maintained in good repair, and sloped to drain. Storage areas and enclosures for refuse, recyclables, or returnables shall be maintained free of unnecessary items as specified in subsection 3 of section 33-33-04-111.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-83. Openings.

1. 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:
 - a. Filling or closing holes and other gaps along floors, walls, and ceilings;
 - b. Closed, tight-fitting windows; and
 - c. Solid, self-closing, tight-fitting doors. Screens shall be in place where required and shall be tight-fitting and free of breaks.
2. 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:
 - a. 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
 - c. Limited-use so they are not used for entrance or exit from the building or purposes other than the designated emergency exit use.
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:
 - a. Sixteen mesh to one inch [16 mesh to 25.4 millimeters] screens;
 - b. Properly designed and installed air curtains to control flying insects; or
 - c. Other effective means.

5. 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; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-84. Construction and maintenance of floor construction.

Floors and floor coverings of all food preparation, food storage, and utensil-washing areas, walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms, and vestibules shall be constructed of smooth durable material, such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic, and shall be maintained in good repair. Coved baseboards of similar material shall also be provided at wall and floor junctures. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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. The use of the kitchen for the storage of personal articles such as coats, clothing, purses, etc. is not permitted.

History: Effective August 1, 1988; amended effective July 1, 1997; August 1, 2003; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-124. Servicing operations.

1. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination.
2. The mobile food unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged into a sanitary sewerage disposal system in

accordance with section 33-33-04-64 and in such a way that a public health hazard or nuisance is not created.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-134. Floors. Floors shall be constructed of concrete, asphalt, tight wood, or other similar cleanable material kept in good repair. However, dirt or gravel, when graded to drain, may be used as subflooring when covered with clean, removable platforms or duckboards, or covered with wood chips, shavings, or other ~~suitable~~ approved materials effectively treated to control dust.

History: Effective August 1, 1988; amended effective July 1, 1997; January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-138.1. Routine inspections. The department and its inspectors shall have free access and may enter any food establishment at any reasonable time to determine compliance with this chapter. For the purposes of enforcement of this chapter, the department may enter, inspect, photograph, and secure any sample, photographs, or other evidence from, any such establishment, for the purpose of enforcing this chapter. It is a violation of this chapter for any person or establishment to refuse or permit entry or inspection, the taking of samples or other evidence, the taking of photographs, or access to copy any record as authorized by this chapter, or to conceal any samples or evidence, or withhold evidence concerning them. 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; amended effective January 1, 2008.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-144. Sanitation and safety. Every food establishment must be operated with strict regard for the health and safety of its patrons. The following sanitary and safety regulations must be followed:

1. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near the food establishment.
2. Neither the dining room nor the kitchen of any food establishment may be used as a sleeping or dressing room by any employee of the restaurant or by any other person.

History: Effective January 1, 2008.

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 shellfish 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.

Appendix B-1		
Exclusions and Restrictions for Food Employees and Applicants		
Health Status	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	Exclude 33-33-04-28(1)	Exclude 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-e)	Exclude 33-33-04-28.1(3)(a)	Restrict 33-33-04-28.1(2)(a)
4. Asymptomatic but stools positive for S. Typhi , Shigella spp., or Shiga-producing E. coli	Exclude 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	Exclude 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	Exclude 33-33-04-28.1(3)(d)	No Restrictions
7. Onset of jaundice within the last seven days	Exclude 33-33-04-28.1(4)(a)	Exclude 33-33-04-28.1(4)(a)
*High-risk conditions apply only to exclusions under this subparagraph.		

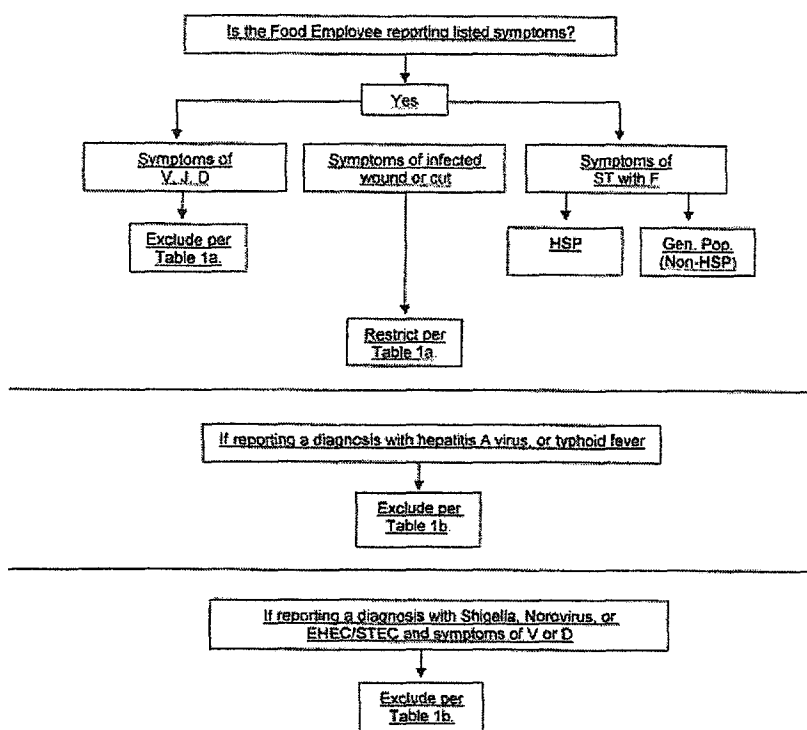
Appendix B-2

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)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or 3. Doctor* - Noninfectious condition 33-33-04-28.2(2)(a)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or 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 2. No jaundice per 33-33-04-28.2(4) 3. 33-33-04-28.1(3)(a) Noninfectious condition 33-33-04-28.2(3)	1. No illness results + no symptoms or 2. Suspect cause of illness + no symptoms + Doctor* - Stool- or blood-free or 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)	Doctor* - Stools-free 33-33-04-28.2(3)	Doctor* - Stools-free 33-33-04-28.2(2)(b)
5. Past illness from Salmonella Typhi within the last three months 33-33-04-28(3)	Doctor* - Stools-free 33-33-04-28.2(3)	NA
6. Past illness from Shigella spp., or Shiga toxin-producing E. coli within last month 33-33-04-28(3)	Doctor* - Stools-free 33-33-04-28.2(3)	NA
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 2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	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)
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 2. Suspect cause of illness + both satisfied 33-33-04-28.2(4)	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)
*Where "doctor" is indicated, nurse practitioner or physician assistant, if allowed by law, may provide documentation.		

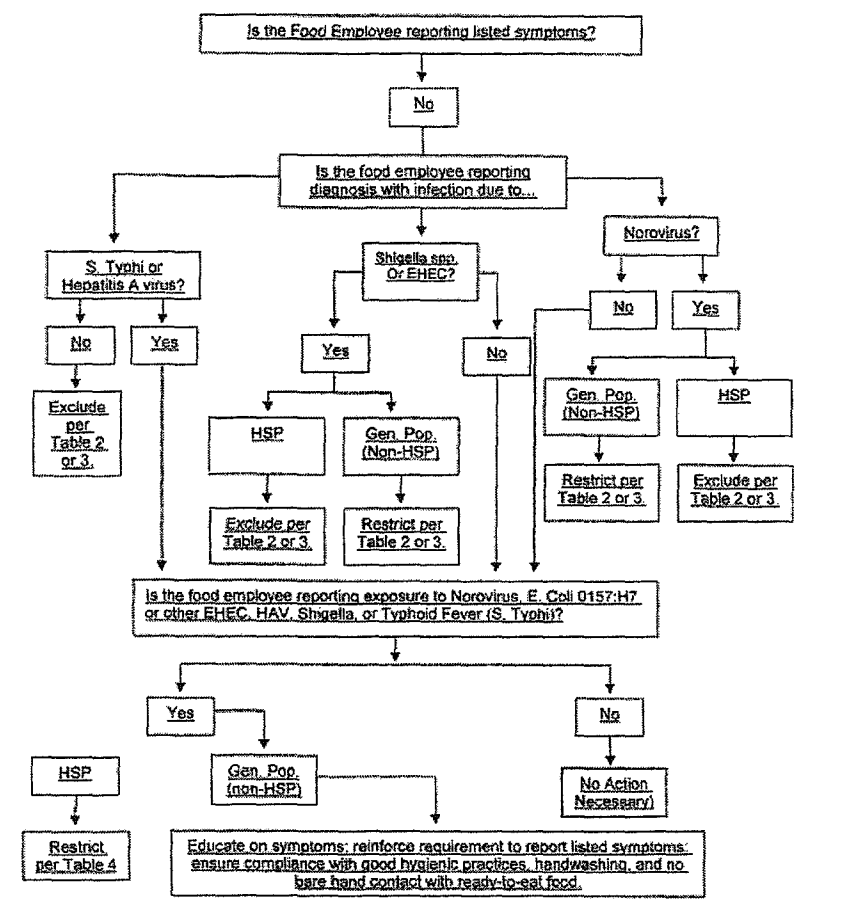
Appendix B-1. Decision Tree 1. When to Exclude or Restrict a Food Employee Who Reports a Symptom and When to Exclude a Food Employee Who Reports a Diagnosis With Symptoms Under the Food Code.



Key:

Listed Symptoms for Reporting: (V) Vomiting; (J) Jaundice; (D) Diarrhea; (ST and F) Sore Throat with Fever; (HSP) Highly Susceptible Population; (Gen. Pop.) General Population

Appendix B-2. Decision Tree 2. When to Exclude or Restrict a Food Employee Who Is Asymptomatic and Reports a Listed Diagnosis and When to Restrict a Food Employee Who Reports a Listed Exposure Under the Food Code.



Key:

(HS) Highly Susceptible Population; (Gen. Pop.) General Population

Table 1a: Summary of Requirements for Symptomatic Food Employees

Food employees and conditional employees shall report symptoms immediately to the person in charge.				
The person in charge shall prohibit a conditional employee that reports a listed symptom from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a symptomatic food employee.				
Symptom	EXCLUSION/OR RESTRICTION		Removing symptomatic food employees from exclusion or restriction	RA Approval Needed to Return to Work?
	Facilities Serving a HSP	Facilities not Serving a HSP		
Vomiting	EXCLUDE 33-33-04-28.10(1)(a)	EXCLUDE 33-33-04-28.10(1)(a)	When the excluded food employee has been asymptomatic for at least 24 hours or provides medical documentation 33-33-04-28.11(1)(a). Exceptions: If diagnosed with Norovirus, Shigella spp., E. Coli 0157:H7 or other EHEC, HAV, or typhoid fever (S. Typhi) (see Tables 1b & 2).	No if not diagnosed
Diarrhea	EXCLUDE 33-33-04-28.10(1)(a)	EXCLUDE 33-33-04-28.10(1)(a)	When the excluded food employee has been asymptomatic for at least 24 hours or provides medical documentation 33-33-04-28.11(1). Exceptions: If diagnosed with Norovirus, E. Coli 0157:H7 or other EHEC, HAV, or S. Typhi (see Tables 1b & 2).	No if not diagnosed
Jaundice	EXCLUDE 33-33-04-28.10(2)(a) if the onset occurred within the last 7 days	EXCLUDE 33-33-04-28.10(2)(a) if the onset occurred within the last 7 days	When approval is obtained from the RA 33-33-04-28.11(2), and: • Food employee has been jaundiced for more than 7 calendar days 33-33-04-28.11(2)(a), or • Provides medical documentation 33-33-04-28.11(2)(c)	Yes
Sore Throat with Fever	EXCLUDE 33-33-04-28.10(7)(a)	RESTRICT 33-33-04-28.10(7)(b)	When food employee provides written medical documentation 33-33-04-28.11(7)(a)-(c)	No
Infected wound or pustular boil	RESTRICT 33-33-04-28.10(8)	RESTRICT 33-33-04-28.10(8)	When the infected wound or boil is properly covered 33-33-04-28.11(8)(a)-(c)	No

Key for Tables 1, 2, 3, and 4:

RA = Regulatory Authority

EHEC = Enterohemorrhagic, or Shiga toxin-producing Escherichia coli

HAV = Hepatitis A virus

HSP = Highly Susceptible Population

Table 1b: Summary of Requirements for Diagnosed, Symptomatic Food Employees

Food employees and conditional employees shall report a listed diagnosis with symptoms immediately to the person in charge.			
The person in charge shall notify the RA when a food employee is jaundiced or reports a listed diagnosis.			
The person in charge shall prohibit a conditional employee that reports a listed diagnosis with symptoms from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed, symptomatic food employee.			
Diagnosis	EXCLUSION Facilities Serving HSP or not Serving HSP	Removing diagnosed, symptomatic food employees from exclusion	RA Approval Needed to Return to Work?
Hepatitis A virus	EXCLUDE if within 14 days of any symptom, or within 7 days of jaundice 33-33-04-28.10(2)(b)	When approval is obtained from the RA 33-33-04-28.11(2), and: • The food employee has been jaundiced for more than 7 calendar days 33-33-04-28.11(2)(a), or • The anicteric food employee has had symptoms of more than 14 days 33-33-04-28.11(2)(b), or • The food employee provides medical documentation 33-33-04-28.11(2)(c) (also see Table 2)	Yes
Typhoid Fever (S. Typhi)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a); and: • Food employee provides medical documentation that states the food employee is free of a S. Typhi infection 33-33-04-28.11(3)(b) (also see Table 2)	Yes
E. coli 0157:H7 or other EHEC/STEC	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	1. Serving non-HSP facility: 33-33-04-28.11(1)(d)(2): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below; 2. Serving HSP facility: 33-33-04-28.11(1)(d)(2): Remains excluded until meeting the requirements listed below: • Approval is obtained from RA 33-33-04-28.11(6), and • Medically cleared 33-33-04-28.11(6)(a), or • More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(6)(b) (also see Table 2)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

Norovirus	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	<p>1. Serving non-HSP facility: 33-33-04-28.11(1)(b)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below;</p> <p>2. Serving HSP facility: 33-33-04-28.11(1)(b)(2): Remains excluded until meeting the requirements listed below:</p> <ul style="list-style-type: none"> • Approval is obtained from the RA 33-33-04-28.11(4), and • Medically cleared 33-33-04-28.11(4)(a), or • More than 48 hours have passed since the food employee became asymptomatic 33-33-04-28.11(4)(b) (also see Table 2) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
Shigella spp.	EXCLUDE Based on vomiting or diarrhea symptoms, under 33-33-04-28.10(1)(b)	<p>1. Serving non-HSP facility: 33-33-04-28.11(1)(C)(1): May only work on a restricted basis 24 hours after symptoms resolve, and remains restricted until meeting the requirements listed below;</p> <p>2. Serving HSP facility: 33-33-04-28.11(1)(C)(2): Remains excluded until meeting the requirements listed:</p> <ul style="list-style-type: none"> • Approval obtained from the RA 33-33-04-28.11(5), • Medically cleared 33-33-04-28.11(5)(a), or • More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(5)(b) (also see Table 2) 	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

Table 2: Summary of Requirements for Diagnosed Food Employees With Resolved Symptoms

Food employees and conditional employees shall report a listed diagnosis immediately to the person in charge.				
The person in charge shall notify the RA when a food employee reports a listed diagnosis.				
The person in charge shall prohibit a conditional employee that reports a listed diagnosis from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed food employee.				
<u>Pathogen Diagnosis</u>	<u>Facilities Serving HSP</u>	<u>Facilities Not Serving HSP</u>	<u>Removing Diagnosed Food Employees</u>	<u>RA Approval Required to Return to Work</u>
Typhoid fever (S. Typhi) including previous illness with S. Typhi (see 33-33-04-28.9(1)(c))	EXCLUDE 33-33-04-28.10(3)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a), and: • Food employee provides medical documentation that states the food employee is free of a S. Typhi infection 33-33-04-28.11(3)(b) (also see Table 1b)	Yes
Shigella spp.	EXCLUDE 33-33-04-28.10(5)(a)	RESTRICT 33-33-04-28.10(5)(b)	1. Serving non-HSP facility 33-33-04-28.11(1)(c)(1): May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below: 2. Serving HSP facility: 33-33-04-28.11(1)(c)(2): Remains excluded until meeting the requirements listed below: • Approval is obtained from the RA 33-33-04-28.11(5), and: • Medically cleared 33-33-04-28.11(5)(a), or • More than 7 calendar days have passed since the food employee became asymptomatic 33-33-04-28.11(5)(c)(1) (see Table 1b)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

<u>Norovirus</u>	<u>EXCLUDE</u> <u>33-33-04-28.10(4)(a)</u>	<u>RESTRICT</u> <u>33-33-04-28.10(4)(b)</u>	<p>1. Serving non-HSP facility: <u>33-33-04-28.11(1)(b)(1):</u> May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below;</p> <p>2. Serving HSP facility: <u>33-33-04-28.11(1)(b)(2):</u> Remains excluded until meeting the requirements listed below:</p> <ul style="list-style-type: none"> • Approval is obtained from the RA <u>33-33-04-28.11(4)</u>, and; • Medically cleared <u>33-33-04-28.11(4)(a)</u>; or • More than 48 hours have passed since the food employee became asymptomatic <u>33-33-04-28.11(4)(b)</u> (also see Table 1b) 	<u>Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis on a non-HSP facility</u>
<u>E. coli 0157:H7 or other EHEC/STEC</u>	<u>EXCLUDE</u> <u>33-33-04-28.10(6)(a)</u>	<u>RESTRICT</u> <u>33-33-04-28.10(6)(b)</u>	<p>1. Serving non-HSP facility: <u>33-33-04-28.11(1)(d)(1):</u> May only work on a restricted basis 24 hours after symptoms resolve and remains restricted until meeting the requirements listed below;</p> <p>2. Serving HSP facility: <u>33-33-04-28.11(1)(d)(2):</u> Remains excluded until meeting the requirements listed below:</p> <ul style="list-style-type: none"> • Approval is obtained from the RA <u>33-33-04-28.11(6)</u>; and; • Medically cleared <u>33-33-04-28.11(6)(a)</u>, or • More than 7 calendar days have passed since the food employee became asymptomatic <u>33-33-04-28.11(6)(b)</u> 	<u>Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis on a non-HSP facility</u>
<u>Hepatitis A virus</u>	<u>EXCLUDE</u> if within 14 days of any symptom, or within 7 days of jaundice <u>33-33-04-28.10(2)(b)</u>	<u>EXCLUDE</u> if within 14 days of any symptom, or within 7 days of jaundice <u>33-33-04-28.10(2)(b)</u>	<p>When approval is obtained from the RA <u>33-33-04-28.11(2)</u>, and</p> <ul style="list-style-type: none"> • The food employee has been jaundiced for more than 7 calendar days <u>33-33-04-28.11(2)(a)</u>, or 	<u>Yes</u>

			<ul style="list-style-type: none"> • <u>The anicteric food employee has had symptoms for more than 14 days</u> 33-33-04-28.11(2)(b), or • <u>The food employee provides medical documentation</u> 33-33-04-28.11(2)(c) (see also Table 1b) 	
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Table 3: Summary of Requirements for Diagnosed Food Employees Who Never Develop Gastrointestinal Symptoms

Food employees and conditional employees shall report a listed diagnosis immediately to the person in charge.				
The person in charge shall notify the RA when a food employee reports a listed diagnosis.				
The person in charge shall prohibit a conditional employee that reports a listed diagnosis from becoming a food employee until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of a diagnosed food employee.				
<u>Pathogen Diagnosis</u>	<u>Facilities Serving HSP</u>	<u>Facilities Not Serving HSP</u>	<u>Removing Diagnosed Food Employees Who Never Develop Gastrointestinal Symptoms From Exclusion or Restriction</u>	<u>RA Approval Required to Return to Work</u>
Typhoid fever (S. Typhi) including previous illness with S. Typhi (see 33-33-04-28.9(1)(c))	EXCLUDE 33-33-04-28.10(3)	EXCLUDE 33-33-04-28.10(3)	When approval is obtained from the RA 33-33-04-28.11(3)(a), and: Food employee provides medical documentation, specifying that the food employee is free of a S. Typhi infection 33-33-04-28.11(3)(b)	Yes
Shigella spp.	EXCLUDE 33-33-04-28.10(5)(a)	RESTRICT 33-33-04-28.10(5)(b)	Remains excluded or restricted until approval is obtained from the RA, 33-33-04-28.11(4) and • Medically cleared 33-33-04-28.11(5)(a), or • More than 7 calendar days have passed since the food employee was last diagnosed 33-33-04-28.11(5)(c)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility
Norovirus	EXCLUDE 33-33-04-28.10(4)(a)	RESTRICT 33-33-04-28.10(4)(b)	Remains excluded or restricted until approval is obtained from the RA 33-33-04-28.11(4), and • Medically cleared 33-33-04-28.11(4)(a) or • More than 48 hours have passed since the food employee was diagnosed 33-33-04-28.11(4)(c)	Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility

<u>E. coli 0157:H7 or other EHEC/STEC</u>	EXCLUDE <u>33-33-04-28.10(6)(a)</u>	RESTRICT <u>33-33-04-28.10(6)(b)</u>	Remains excluded or restricted until approval is obtained from the RA <u>33-33-04-28.11(6)</u> , and: • <u>Medically cleared 33-33-04-28.11(6)(a)</u> , or • <u>More than 7 calendar days have passed since the food employee was diagnosed 33-33-04-28.11(6)(c)</u>	<u>Yes to return to HSP or to return unrestricted; Not required to work on a restricted basis in a non-HSP facility</u>
<u>Hepatitis A virus</u>	EXCLUDE <u>33-33-04-28.10(2)(c)</u>	EXCLUDE <u>33-33-04-28.10(2)(c)</u>	When approval is obtained from the RA <u>33-33-04-28.11(2)</u> , and • <u>The anicteric food employee has had symptoms for more than 14 days 33-33-04-28.11(2)(b)</u> , or • <u>The food employee provides medical documentation 33-33-04-28.11(2)(c)</u>	<u>Yes</u>

Key for Tables 1, 2, 3, and 4:

RA = Regulatory Authority

EHEC = Enterohemorrhagic, or Shiga toxin-producing Escherichia coli

HAV = Hepatitis A virus

HSP = Highly Susceptible Population

Table 4: History of Exposure, and Absent Symptoms of Diagnosis

Food employees and conditional employees shall report a listed exposure to the person in charge.				
The person in charge shall prohibit a conditional employee who reports a listed exposure from becoming a food employee in a facility serving a HSP until meeting the criteria listed in section 33-33-04-28.11 of the Food Code, for reinstatement of an exposed food employee.				
The person in charge shall reinforce and ensure compliance with good hygienic practices, symptom reporting requirements, proper handwashing and no BHC with RTE foods for all employees that report a listed exposure.				
Pathogen Diagnosis	Facilities Serving HSP	Facilities Not Serving HSP	When Can the Restricted Food Employee Return to Work?	RA Approval Needed
<u>Typhoid fever (S. Typhi)</u>	RESTRICT <u>33-33-04-28.10(9)</u>	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	<u>33-33-04-28.10(9)(c)</u> When 14 calendar days have passed since the last exposure, or more than 14 days has passed since the food employee's household contact became asymptomatic	No
<u>Shigella spp.</u>	RESTRICT <u>33-33-04-28.10(9)</u>	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	<u>33-33-04-28.10(9)(b)</u> When more than 3 calendar days have passed since the last exposure, or more than 3 days has passed since the food employee's household contact became asymptomatic	No
<u>Norovirus</u>	RESTRICT <u>33-33-04-28.10(9)</u>	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	<u>33-33-04-28.10(9)(a)</u> When more than 48 hours have passed since the last exposure, or more than 48 hours has passed since the food employee's household contact became asymptomatic	No
<u>E. coli 0157:H7 or other EHEC/STEC</u>	RESTRICT <u>33-33-04-28.10(9)</u>	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	<u>33-33-04-28.10(9)(b)</u> When more than 3 calendar days have passed since the last exposure, or more than 3 days has passed since the food employee's household contact became asymptomatic	No
<u>Hepatitis A virus</u>	RESTRICT <u>33-33-04-28.10(9)</u>	Educate food employee on symptoms to watch for and ensure compliance with GHP, handwashing and no BHC with RTE foods	<u>33-33-04-28.10(9)(d)</u> When any of the following conditions is met: • The food employee is immune to HAV infection because of a prior illness from HAV, Vaccination against HAV, or IgG administration; or	No

		<ul style="list-style-type: none"> • <u>More than 30 calendar days have passed since the last exposure; or since the food employee's household contact became jaundiced; or</u> • <u>The food employee does not use an alternative procedure that allows BHC with RTE food until at least 30 days after the potential exposure, and the employee receives additional training</u> 	
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Key for Table 4:

GHP = Good Hygienic Practices

RTE = Ready-to-Eat foods

BHC = Bare Hand Contact

CHAPTER 33-33-05

33-33-05-01. Smoke detectors required. Every sleeping room in a ~~hotel, motel, or lodginghouse~~ lodging establishment or assisted living facility shall be equipped with a smoke detection device which has been inspected and listed by underwriters laboratories, factory mutual engineering division or equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.

History: Effective August 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 23-01-03(3), 23-09-02.1

Law Implemented: NDCC 23-09-02.1

33-33-05-02. Passageway devices - General alarm. ~~Hotels, motels, or lodginghouses with any indirect~~ Lodging establishments or assisted living facilities without direct access from sleeping rooms to the outside shall have hallways or ~~ingress-egress passageways~~ exit corridors equipped with listed smoke detection devices. Hallway or ~~ingress-egress passageway~~ exit corridor smoke detection devices shall be wired into an approved general fire alarm system so as to sound a ~~general~~ an alarm when any of the smoke detection devices are activated. Audible signaling appliances shall be located so as to be clearly heard throughout the ~~area~~ facility regardless of the maximum noise level under normal conditions of occupancy. In all cases one appliance must be installed at manufacturer's recommendations or for each seventy-five feet [22.86 meters] ~~thirty feet [9.15 meters]~~ of hallway or ~~ingress-egress passageway~~ exit corridor or fraction thereof.

History: Effective August 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 23-01-03(3), 23-09-02.1

Law Implemented: NDCC 23-09-02.1

33-33-05-03. Devices for the hard of hearing. At least one sleeping room in every ~~hotel, motel, or lodginghouse~~ lodging establishment or assisted living facility shall be equipped with a listed smoke detection device capable of producing at least eighty-five decibels of sound at ten feet [3.05 meters] and capable of flashing a two hundred fifty watt bulb for a period of five minutes.

History: Effective August 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 23-01-03(3), 23-09-02.1

Law Implemented: NDCC 23-09-02.1

33-33-05-04. Initial testing and certification. After a smoke detection system has been initially installed, the ~~hotel, motel, or lodginghouse~~ lodging establishment or assisted living facility owner or manager shall certify in writing to the state department of health and ~~consolidated laboratories~~ that the system has

been tested and that each smoke detection device is working properly. Copies of written installer certifications will be accepted as owner or manager certifications.

History: Effective August 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 23-01-03(3), 23-09-02.1

Law Implemented: NDCC 23-09-02.1

33-33-05-05. System inspection - Testing - Maintenance.

1. No smoke detection device shall be approved unless the device installer:
 - a. Instructs the owner or manager in the operation of the system.
 - b. Provides the owner or manager with a set of written instructions for the proper maintenance and testing of the system.
2. The owner or manager or designee of the owner or manager of a hotel, motel, or lodginghouse lodging establishment or assisted living facility shall ~~spot test the~~ at least ten percent of the battery-operated smoke detection system at least detectors weekly and at least ten percent of the hard-wired detectors monthly on a systematic basis. The owner or manager or designee of the owner or manager shall maintain written records for two years which:
 - a. Detail the date of the test, the units tested, the name of the person conducting the test, and the results of the test.
 - b. Indicate the date, results, and name of the person conducting a complete system maintenance inspection and test. Complete tests shall be conducted once each year or more often as necessary to assure proper operational condition.
3. The owner or manager of a ~~hotel, motel, or lodginghouse~~ lodging establishment or assisted living facility is responsible for, and shall cause, the necessary maintenance service or repairs to be made to ensure proper operational conditions of the smoke detection system at all times.

History: Effective August 1, 1988; amended effective January 1, 2008.

General Authority: NDCC 23-01-03(3), 23-09-02.1

Law Implemented: NDCC 23-09-02.1

CHAPTER 33-33-06

33-33-06-18. License fees. The annual license fee paid to the department by proprietors of bed and breakfast facilities is ~~twenty-five~~ thirty-five dollars. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed on or before February first following the expiration date.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-09.1-02

CHAPTER 33-33-07

33-33-07-01. Beverage license fees. Before any beverage bottler, manufacturer, processor, importer, jobber, or other retailer sells or distributes any nonalcoholic beverage in North Dakota, that beverage must be licensed by the department. The license fees for beverages are as follows:

1. Soda water, ginger ale, root beer, and pop, each brand or class, ~~fifty-five~~ sixty-five dollars.
2. Concentrated extracts, fountain syrups, and beverage bases, each brand, ~~fifty-five~~ sixty-five dollars.
3. True fruit juices and imitation or compound fruit beverages, each brand, ~~fifty-five~~ sixty-five dollars. Mineral and spring water, and potable water sold by a private individual, firm, corporation, or limited liability company for household or culinary purposes, each brand, ~~fifty-five~~ sixty-five dollars.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

CHAPTER 33-33-08

33-33-08-01. Food establishment license fees. The following annual license fees must be paid by the proprietors of food establishments, assisted living facilities, schools, or child care centers:

1. For a restaurant with general food service, ~~seventy-five~~ ninety dollars plus fifty cents per seat, with a maximum license fee of one hundred ~~fifty~~ eighty dollars.
2. For a limited restaurant, ~~seventy-five~~ ninety dollars.
3. For a retail food store, retail meat market, or bakery with not more than two thousand five hundred square feet [232.26 square meters], ~~seventy-five~~ ninety dollars.
4. For a retail food store, retail meat market, or bakery with two thousand five hundred to five thousand square feet [232.26 to 464.52 square meters], ~~eighty-five~~ one hundred dollars.
5. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], ~~ninety-five~~ one hundred fifteen dollars.
6. For a bar or tavern dispensing beer, liquor, or other alcoholic beverages, ~~fifty-five~~ sixty-five dollars.
7. For a mobile food unit or temporary food stand, ~~seventy~~ eighty-five dollars.
8. For a food processing facility, ~~thirty-five~~ forty-five dollars.
9. For an assisted living facility, ~~eighty-five~~ one hundred dollars.
10. For a school, ~~ninety~~ one hundred fifteen dollars.
11. For a child care facility, ~~fifty~~ thirty-five dollars.

If a business operates more than one type of food establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed one hundred ~~five~~ twenty-five dollars for those establishments with not more than two thousand five hundred square feet [232.26 square meters], one hundred ~~forty~~ seventy dollars for those establishments with two thousand five hundred square feet [232.26 square meters] to not more than

five thousand square feet [464.52 square meters], and two hundred forty dollars for those establishments over five thousand square feet [464.52 square meters].

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-01-03

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-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.
2. "Certification scope enhancement programs" means those certification programs which add additional skills to or refresh existing skills obtained from the primary certification programs.
3. "Department" means the state department of health.
4. "Equivalent" means training of equal or greater value which accomplishes the same results as determined by the department.
5. "Field internship preceptor" means a qualified person designated by an emergency medical services instructor to supervise a student during field internship training.
- ~~6.~~ 7. "National registry" means the national registry of emergency medical technicians located in Columbus, Ohio.
- ~~7.~~ 8. "Prehospital emergency medical services personnel" are those persons certified or licensed under the programs defined in this chapter.
- ~~8.~~ 9. "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; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

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

1. Primary certification courses:
 - a. First responder;

- b. Emergency medical technician;
- c. ~~Emergency medical technician-basic;~~
- d. ~~Emergency medical technician-intermediate/85;~~
- e. d. Emergency medical technician-intermediate/99;
- f. ~~Emergency medical technician-paramedic;~~
- g. e. Advanced first-aid ambulance attendant;
- h. f. Emergency vehicle operations;
- i. g. Emergency medical dispatch; and
- j. h. Automobile extrication.

2. Certification scope enhancement courses:

- a. Manual defibrillation;
- b. Intravenous maintenance;
- c. ~~Flight medical crew;~~
- d. Automobile extrication instructor;
- e. d. Emergency medical services instructor;
- f. e. Epinephrine administration;
- g. f. Dextrose administration;
- h. g. Bronchodilator/nebulizer administration;
- i. h. ~~Multi-lumen~~ Limited advanced airway insertion; and
- j. i. Emergency vehicle operations instructor.

3. Certification refresher courses:

- a. First responder-refresher;
- b. Emergency medical technician-basic refresher;
- c. Emergency medical technician-intermediate/85 refresher;

- d. Emergency medical technician-intermediate/99 refresher; and
- e. ~~Emergency medical technician-paramedic~~ Paramedic refresher.

History: Effective April 1, 1992; amended effective October 1, 1992; August 1, 1994; August 1, 2003; August 1, 2004; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-03. Training, testing, certification, and licensure standards for primary certification courses. The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms requested from and provided by the department prior to conducting the course 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, in the edition specified by the department.
 - b. Textbooks. The department shall approve textbooks.
 - c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently certified as a first responder or its equivalent.
 - d. A first responder student may practice all of the skills defined in the core scope of practice for first responder while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as a first responder student.
 - e. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department or the national registry cognitive knowledge examination 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. f. Initial certification. The department shall issue initial certification to persons who meet the physical requirements described in the functional job analysis for first responder as published by the national highway traffic safety administration and have completed an authorized course and passed the testing process, or are certified as a first responder by the national registry. Persons passing the testing process between January first and June

thirtieth shall be certified until June thirtieth of the second year, or ninety days past their national registry expiration date if they are nationally registered. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year, or ninety days past their national registry expiration date if they are nationally registered.

- f. ~~g.~~ Recertification. The department shall recertify for a two-year period expiring on June thirtieth, or ninety days past their national registry expiration date if they are nationally registered, to those persons that meet the physical requirements described in the functional job analysis for first responder as published by the national highway traffic safety administration and who have met one of the following requirements:

- (1) Completion of a sixteen-hour North Dakota first responder refresher course.
- (2) Completion of a twenty-four hour emergency medical technician-basic refresher course.

2. Emergency medical technician ~~and national registry 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, in the edition specified by the department.
- b. Textbooks. The department shall approve textbooks.
- c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent.
- d. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician or its equivalent.
- e. An emergency medical technician student may practice all of the skills defined in the core scope of practice for emergency medical technician while in the classroom and during field internship while under direct supervision of an instructor or the field internship preceptor and if registered with the department as an emergency medical technician student.

- f. Testing. Students must pass the written national registry cognitive knowledge examination and a practical examination specified by the department which meets the national registry's standards or its equivalent in order to be eligible for licensure. 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.
- f. g. Emergency medical technician initial licensure. The department shall issue initial licensure as an emergency medical technician to persons under that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and are over the age of eighteen sixteen 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 shall be licensed until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be licensed until June thirtieth of the third year.
- ~~g. Emergency medical technician-basic initial licensure. 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. Persons obtaining national registry certification will be licensed by the department expiring ninety days after their national registry expiration date.~~
- h. Recertification Relicensure of emergency medical technicians. The department shall relicense for a two-year period expiring June thirtieth those persons that meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who have met all of the following requirements:
 - (1) Completion of a twenty-four hour emergency medical technician-basic refresher course which includes a cardiopulmonary resuscitation health care provider refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements; and
 - (2) Completion of forty-eight hours of continuing education as approved by the department or the national registry; or
 - (3) If currently licensed as an emergency medical technician, successful completion of the practical examination for

emergency medical technician as established by the department. The practical examination must be administered by a licensed emergency medical services training institution in accordance with section 33-36-02-10 or by the department.

- i. ~~Recertification of emergency medical technicians-basic. Emergency medical technicians-basic must be recertified by the national registry recertification policies. Persons recertified by the national registry will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.~~

3. Emergency medical technician-intermediate/85:

- a. Student prerequisite certification. Students must be ~~certified or~~ licensed as an emergency medical 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, in the edition specified by the department.
- c. Textbooks. The department shall approve textbooks.
- d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.
- e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician intermediate/85 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician intermediate/85 or its equivalent.
- f. An emergency medical technician-intermediate/85 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/85 while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/85 student.
- g. Testing. Students must pass the written cognitive knowledge and practical examinations as provided by the national registry and administered approved by the department in order to be eligible for licensure.

- g. h. Emergency medical technician-intermediate/85 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
- h. i. Relicensure of emergency medical technician-intermediate/85. Emergency medical technician-intermediate/85 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
4. Emergency medical technician-intermediate/99:
- a. Student prerequisite certification or license. A student must be ~~certified or~~ licensed as an emergency medical 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 licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.
 - e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician intermediate/99 or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as an emergency medical technician intermediate/99 or its equivalent.
 - f. An emergency medical technician-intermediate/99 student may practice all of the skills defined in the core scope of practice for emergency medical technician-intermediate/99 while in

the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as an emergency medical technician-intermediate/99 student.

- g. Testing. Students must pass the ~~written~~ cognitive knowledge and practical examinations as provided by the national registry and ~~administered~~ approved by the department in order to be eligible for licensure.
 - g- h. Emergency medical technician-intermediate/99 initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
 - h- i. Relicensure of emergency medical technician-intermediate/99. An emergency medical technician-intermediate/99 must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
5. ~~Emergency medical technician-paramedic~~ Paramedic:
- a. Student prerequisite certification. Students must be certified or licensed as an emergency medical 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, in the edition specified by the department.
 - c. Textbooks. The department shall approve textbooks.
 - d. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as ~~an emergency medical technician-paramedic~~ a paramedic or its equivalent.

- e. Course instructors. The primary course instructor must be licensed by the department as an emergency medical services instructor and must be currently licensed as ~~an emergency medical technician-paramedic~~ a paramedic or its equivalent. The primary instructor must teach at least fifty percent of the lecture portion of the course. Secondary instructors must be currently licensed as ~~an emergency medical technician-paramedic~~ a paramedic or its equivalent.
 - f. A paramedic student may practice all of the skills defined in the core scope of practice for paramedic while in the classroom and during field internship while under direct supervision of an instructor or field internship preceptor and if registered with the department as a paramedic student.
 - g. Field internship. Courses must provide field internship experience based on the curriculum requirements for patient contacts with a paramedic preceptor.
 - g. h. Testing. A student must pass the ~~written~~ cognitive knowledge and practical examinations as provided by the national registry and ~~administered~~ approved by the department in order to be eligible for licensure.
 - h. i. ~~Emergency medical technician-paramedic~~ Paramedic initial licensure. A person eighteen years of age or older that meets the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and who has completed an authorized course and passed the testing process shall obtain certification from the national registry. Persons obtaining national registry certification and in compliance with chapter 50-03-03 will be licensed by the department expiring ninety days after their national registry expiration date.
 - i. j. ~~Recertification~~ Relicensure of ~~emergency medical technician-paramedic~~ paramedic. ~~An emergency medical technician-paramedic~~ A paramedic must be recertified by the national registry recertification policies and meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration. Persons recertified by the national registry and in compliance with chapter 50-03-03 will be relicensed by the department for a two-year period expiring ninety days after their national registry expiration date.
6. Advanced first aid ambulance attendant:

- 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 June thirtieth, those persons who meet the physical requirements described in the functional job analysis for emergency medical technician as published by the national highway traffic safety administration and have completed a twenty-four hour emergency medical technician-basic refresher course, which includes a cardiopulmonary resuscitation refresher, answering correctly at least seventy percent of the questions on a written examination specified by the department and passing a local practical examination meeting the department's requirements.

7. Emergency vehicle operations:

- 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 certified by the department as an emergency vehicle operation instructor.
- c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified by the department.
- d. ~~Initial certification~~ Certification. The department shall issue ~~initial a~~ 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 June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.
- ~~e. Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course.~~

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.
 - c. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department.
 - d. ~~Initial certification~~ Certification. The department shall issue ~~initial a~~ 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 June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.
 - e. ~~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:
- a. Curriculum. The course curriculum must be approved by the department.
 - b. Course coordinator. The course coordinator 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 specified by the department.
 - d. ~~Initial certification~~ Certification. The department shall issue ~~initial a~~ 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 June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first must be certified until June thirtieth of the third year.
 - e. ~~Recertification. The department shall recertify for a two-year period those persons who complete the department's six-hour refresher course and pass a written examination specified by the department.~~

History: Effective April 1, 1992; amended effective August 1, 1994; August 1, 2003; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-03.1. Limited temporary certification or licensure of emergency medical services training course graduates.

1. An individual that has graduated from a department-authorized emergency medical services training course as an emergency medical technician, emergency medical technician - intermediate, or ~~emergency medical technician~~ paramedic and has submitted a completed application signed by a physician and an official transcript verifying program completion may be issued a limited certification or license one time. A limited temporary certification or licensure allows the graduate to be employed while awaiting results of the graduate's national registry examination. The limited temporary certification or licensure expires ninety days after the date of issue.
2. The graduate must practice under the direct supervision of a person certified or licensed at an equal or greater level. Direct supervision means close physical and visual proximity. The graduate may not be the primary care provider.

History: Effective January 1, 2006; amended effective January 1, 2008.

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 courses. The department shall authorize the conduct of courses, the testing of students, and the certification or licensure of personnel when application has been made on forms provided prior to conducting the course and in the manner specified by the department contingent on the following requirements:

1. Manual defibrillation:
 - a. Student prerequisite certification. A student must be licensed as an emergency medical technician or its equivalent.
 - b. Curriculum. The course curriculum must be that issued by the department entitled "Manual Defibrillator/Monitor Curriculum".
 - c. Course coordinator. The course coordinator must be licensed 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 specified by the department and pass all portions of a practical examination specified 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~~ Certification. The department shall issue ~~initial~~ a 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.
- f. ~~Recertification. The department shall recertify for a 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 medical technician level and certified in manual defibrillation.~~
 - (2) ~~Successful completion of a written and practical examination specified by the department.~~

2. Intravenous therapy maintenance:

- a. Student prerequisite certification. A student must be licensed as an emergency medical technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT IV Maintenance Module".
- c. Course coordinator. The course coordinator must be licensed 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 specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of performing intravenous maintenance skills on a mannequin.
- e. ~~Initial certification~~ Certification. The department shall issue ~~initial~~ a 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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.~~

~~3. Flight medical crew:~~

- ~~a. Student prerequisite certification. A student must be an emergency medical 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, in the edition specified by the department or its equivalent.~~
- ~~c. Course coordinator. The department shall approve the course 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the 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 as approved by the department.~~

~~4.~~ 3. Automobile extrication instructor:

- a. Curriculum. The course curriculum must be approved by the department.
- b. Student prerequisite. The candidate for this course must be currently certified in automobile extrication with at least two years of certified automobile extrication experience.
- c. Course coordinator. The department shall designate the course coordinator.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth of the third year.

- f. 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 before the expiration date of their certification.

5- 4. Emergency medical services instructor:

- a. Student prerequisite. An individual must be at least eighteen years of age and certified or licensed for at least two years as a patient care provider at the level the individual will instruct at, in order to be licensed.
- b. 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 or its equivalent.
- c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor.
- d. Initial licensure. The department shall issue initial licensure to persons who have completed an authorized course. Persons completing the course between January first and June thirtieth shall be licensed until June thirtieth of the second year. Persons completing the course between July first and December thirty-first shall be licensed until June thirtieth of the third year.
- e. ~~Recertification~~ Relicensure. The department shall relicense for a two-year period those persons who have ~~completed~~:
 - (1) Completed the department's eight-hour ~~recertification~~ relicensure course, ~~or those~~;
 - (2) Those persons that are employed or affiliated with a licensed training institution, may submit documentation of eight hours of adult education training to satisfy the ~~recertification~~ relicensure requirements;
 - (3) Within the current two-year licensure period the instructor has had at least a seventy percent pass rate for the following primary certification courses: emergency medical technician.

emergency medical technician - intermediate/85, emergency medical technician - intermediate/99, or paramedic; and

(4) In addition, failure to achieve a seventy percent pass rate for these courses would require the instructor to retake the entire initial licensure process for emergency medical services instructor.

6- 5. Epinephrine administration:

- a. Student prerequisite certification. A student must be certified as a first responder or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled " Epinephrine Administration Module".
- c. Course coordinator. The course coordinator must be licensed 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 specified by the department and pass all portions of a practical examination specified 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~~ Certification. The department shall issue ~~initial~~ a 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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.~~

7- 6. Dextrose administration:

- a. Student prerequisite licensure. A student must be licensed as an emergency medical technician-intermediate or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "EMT-I – 50% Dextrose Administration Module".

- c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be licensed in ~~dextrose administration~~ as a paramedic or its equivalent.
- d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all portions of a practical examination specified by the department. The practical examination must consist of administration of the drug by aseptic injection into intravenous administration tubing.
- e. ~~Initial certification~~ Certification. The department shall issue ~~initial~~ a 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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.~~

8. 7. Bronchodilator/nebulizer administration:

- a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.
- 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.
- c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and be ~~certified in bronchodilator administration~~ licensed as a paramedic 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 specified by the department.
- e. ~~Initial certification~~ Certification. The department shall issue ~~initial~~ a 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 shall be

certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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.~~

9- ~~8.~~ Multi-lumen Limited advanced airway insertion:

- a. Student prerequisite licensure. A student must be licensed as an emergency medical technician or its equivalent.
- b. Curriculum. The course curriculum must be that issued by the department entitled "Multi-Lumen Limited Advanced Airway Module".
- c. Course coordinator. The course coordinator must be licensed as an emergency medical services instructor and must be currently ~~certified in multi-lumen airway insertion or~~ licensed as a paramedic 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 specified by the department.
- e. ~~Initial certification~~ Certification. The department shall issue ~~initial a~~ 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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.~~

~~10-~~ ~~9.~~ Emergency vehicle operations instructor:

- 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 instructor. The department shall designate the course instructor.

- c. Testing. The students must correctly answer at least seventy percent of the questions on a written examination and pass a practical examination specified 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 shall be certified until June thirtieth of the second year. Persons passing the testing process between July first and December thirty-first shall be certified until June thirtieth 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; August 1, 2004; January 1, 2006; January 1, 2008.

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 courses. The department shall authorize the conduct of courses, the testing of students, and the certification of personnel when application has been made on forms requested from and provided by the department prior to conducting the course and in the manner specified by the department contingent on the following requirements:

- 1. First responder refresher:
 - 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. Textbooks. The department shall approve textbooks.
 - c. Course coordinator. The course coordinator must be licensed 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 specified 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.
- 2. Emergency medical ~~technician~~-basic technician refresher:

- 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. Textbooks. The department shall approve textbooks.
 - c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician or its equivalent.
 - d. Testing. The student must correctly answer at least seventy percent of the questions on a written examination specified by the department and pass all stations of a practical examination conducted by the course coordinator.
3. Emergency medical technician-intermediate/85 refresher:
- a. Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.
 - b. Textbooks. The department shall approve textbooks.
 - c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/85 or its equivalent.
4. Emergency medical technician-intermediate/99 refresher:
- a. Curriculum. The course coordinator shall select topics consistent with the reregistration requirements of the national registry.
 - b. Textbooks. The department shall approve textbooks.
 - c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently licensed as an emergency medical technician-intermediate/99 or its equivalent.
5. ~~Emergency medical technician-paramedic~~ Paramedic refresher:
- a. Curriculum. The course curriculum must be consistent with the reregistration requirements of the national registry.
 - b. Textbooks. The department shall approve textbooks.

- c. Course coordinator. The course coordinator must be licensed by the department as an emergency medical services instructor and must be currently ~~certified~~ licensed as ~~an emergency medical technician-paramedic~~ a paramedic or its equivalent.

History: Effective August 1, 2003; amended effective January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-05. Revocation Denial or revocation of certification or licensure. The department may deny or revoke the certification or licensure of a person who:

1. Has misrepresented to others that the person is a physician, nurse, or health care provider other than the highest level for which they are certified or licensed.
2. Is incapable of properly performing the skills for which the individual has been certified or licensed.
3. Performs a skill which exceeds those allowed by the individual's level of certification or licensure.
4. Has been charged or convicted of a felony which has a direct bearing upon the person's ability to serve the public in a capacity certified or licensed by this chapter. Persons certified or licensed who have been charged or convicted of a felony 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 or protocols.
9. 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.
10. Has had the person's national registry or other health care certification revoked or license encumbered for any reason. Persons certified or licensed as described in this chapter must report any encumbrance of their national registry or other health care certification or licensure to the department.

11. Has misrepresented to others that the person is an employee, volunteer, or agent of an ambulance service, quick response unit, or rescue squad to offer emergency medical services.
12. Unprofessional conduct, which may give a negative impression of the emergency medical services system to the public, as determined by the department.
13. As an instructor has failed to have emergency medical services training authorized as required in section 33-36-01-03, 33-36-01-04, or 33-36-01-04.1.
14. Providing emergency medical services without authorization from a physician.

History: Effective April 1, 1992; amended effective August 1, 2003; January 1, 2006; January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-01-05.1. Criminal history background checks. The department may perform criminal history background checks on any applicant requesting a certification or license or a person requesting to be listed on an ambulance service or quick response unit's roster as a driver. A driver may be denied participation in any emergency medical services operation based on the driver's criminal background history or any occurrence listed in section 33-36-01-05.

History: Effective January 1, 2008.

General Authority: NDCC 12-60-24.2, 23-27-04.3

Law Implemented: NDCC 12-60-24.2, 23-27-04.3

CHAPTER 33-36-02

33-36-02-04. Issuance and renewal of licenses.

1. The department or its authorized agent shall inspect the training institution. If minimum standards are met, the department shall issue a license.
2. A training institution may request that the department consider it in compliance with this chapter if it is fully accredited by the commission on accreditation of allied health education programs or its equivalent. The training institution must provide any additional information to the department that is required of licensed emergency medical services training institutions but not evaluated in the accreditation process.
3. Training institutions requesting their compliance with this chapter to be verified through an accrediting agency shall submit to the department appropriate documentation to include the site visit survey report and official letter from the accrediting agency citing any deficiencies. Subsequent accreditation or revisit documentation must be submitted prior to license renewal.
4. Training institutions that offer paramedic training shall have the paramedic course accredited by an accrediting agency by January 1, 2010.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-02-07. Course instructors. Primary course instructors must be certified licensed as an instructor coordinator as defined in section 33-36-01-04 and hold a certificate or license in or above the discipline that they are teaching and teach at least fifty percent of the course content. The remaining fifty percent may be taught by guest lecturers approved by the training institution director or medical director.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-02-10. Practical examination administration. A licensed training institution may conduct practical examinations under the following conditions:

1. The institution must be designated by the department to conduct practical examinations.
2. The facility must have adequate room to accommodate a test. Each test station must be well away from others so that the privacy of the

candidate and the security of the test are maintained. There must be a separate monitored room for candidates to wait. The designated department representative may shut down or cancel a test because of inadequate facilities.

3. Test site dates must be approved by the department. For an advanced life support test site, the test site coordinator must notify the department eight weeks prior to the test date and submit a roster of probable candidates for the practical test. For a basic life support test site, the test site coordinator must notify the department two weeks prior to the test date and submit a roster of probable candidates for the practical test. The test site coordinator may accept candidates from other licensed training institutions or department-authorized courses or qualified candidates from other states if the test site coordinator has verified the eligibility of the candidate.
4. The test site coordinator is responsible for all logistics of the test site. The test site coordinator must remain at the test site for the duration of the test.
5. A national registry representative approved by the department or a designated department representative must oversee the test site. The national registry or department representative's only duties are to ensure the integrity of the test site and submit results to the national registry or the department. The designated department representative may not have an affiliation with the training institution.
6. The training institution must provide an adequate number of qualified evaluators for the number of students to be tested. For every eight candidates there must be at least one evaluator. The evaluators may not be evaluate a candidate in a practical station for which the evaluator had been a guest lecturer, or had been the training institution coordinator or the primary instructors of the candidates. Evaluators must use and adhere to the department's testing evaluation forms.
7. An emergency medical technician candidate must pass all stations of a practical test site within two years of course completion. The required practical stations are:
 - a. Patient assessment management - trauma;
 - b. Patient assessment management - medical;
 - c. Cardiac arrest management/automated external defibrillator;
 - d. Spinal immobilization, seated or supine;
 - e. Bag valve mask, apneic patient with a pulse; and

- f. One of the following random skills chosen by the department:
 - (1) Long bone immobilization;
 - (2) Joint dislocation immobilization;
 - (3) Traction splinting;
 - (4) Bleeding control and shock management;
 - (5) Upper airway adjuncts and suction;
 - (6) Mouth to mask with supplemental oxygen; or
 - (7) Supplemental oxygen administration.
- 8. A candidate may fail no more than three stations at any one test site. The candidate may retest those failed stations one time on the same day at the discretion of the test site coordinator. If a candidate fails four or more stations, the candidate must retest all stations at a later date.
- 9. All emergency medical technician practical test results must be reported to the department within one week of the practical test by the department representative. The department will determine the eligibility of the candidates to retest according to department policy.
- 10. Retesting candidates that have failed all or part of the emergency medical technician practical test will be done in accordance with department policy. The number of times a candidate may retest all or part of the emergency medical technician practical test is determined by department policy.
- 11. An advanced level practical test site must be approved by the department and comply with national registry rules and policies.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-02-12. Revocation of licensure. The department may revoke the license of a training institution or license of an individual to instruct or practice under the following circumstances:

- 1. Negligence in performing or instructing emergency medical care.
- 2. Fraud, forgery, or misrepresentation of facts in procuring or attempting to procure licensure as an emergency medical service training institution.

3. Violation of this chapter promulgated to regulate emergency medical services training institutions.
4. Falsely passing candidates or discrimination of candidates at a practical test site.
5. Grossly immoral or dishonorable conduct.
6. Diversion of drugs for personal or unauthorized use.
7. The licensed training institution receives adverse accreditation action from a national accrediting agency.
8. Failing to submit required course documentation to the department either prior to the conduct of the course, for those courses that require prior authorization, or within a reasonable amount of time after the course is complete, for those courses that require course completion documentation submission.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

CHAPTER 33-36-03
SCOPE OF PRACTICE FOR UNLICENSED EMERGENCY MEDICAL
SERVICES PERSONNEL

Section

33-36-03-01

Definitions

33-36-03-02

Scopes of Practice

33-36-03-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code have the same meaning in this chapter. For purposes of this chapter:

1. "Advanced first-aid ambulance attendant" means a person that has fulfilled the training, testing, and certification process for advanced first-aid ambulance attendant as required in chapter 33-36-01.
2. "Airway adjuncts" means oxygen and oxygen delivery equipment, oropharyngeal airways, nasopharyngeal airways, bag-valve-mask ventilator, or any other mechanical ventilator or respiratory care equipment.
3. "Cardiopulmonary resuscitation" means the American heart association health care provider standards or its equivalent which includes the skills adult one-person and two-person cardiopulmonary resuscitation, adult obstructed airway, child one-person and two-person cardiopulmonary resuscitation, child obstructed airway, infant cardiopulmonary resuscitation, infant obstructed airway, and automated external defibrillator.
4. "Driver" means a person that is registered with the department as an uncertified crew member of a basic life support ambulance.
5. "First responder" means a person that has fulfilled the training, testing, and certification process for first responder as required in chapter 33-36-01.
6. "Primary care provider" means a qualified individual responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-03-02. Scopes of practice. Each level of emergency medical services provider has a scope of practice that includes the scopes of practice of all subordinate emergency medical services providers. The hierarchy of emergency medical services providers is listed sequentially in this section.

1. Driver.

- a. Scope. The driver's minimum scope of practice primarily focuses on driving the basic life support ambulance and assisting the other emergency medical services personnel on the ambulance crew with nonpatient care issues. The driver's maximum scope of practice is limited to providing cardiopulmonary resuscitation without mechanical resuscitation equipment or airway adjuncts but including the use of an automated external defibrillator if the driver is certified in cardiopulmonary resuscitation. A major difference between the layperson and the driver is the "duty to act" as part of an organized emergency medical services response.
- b. Curriculum. The driver must hold a valid operator's license under chapter 39-06 of the North Dakota Century Code.
- c. Occupational setting. Drivers may only participate in the emergency medical services system as part of a crew of a basic life support ambulance service or quick response unit. At no time may a driver respond without other higher level emergency medical services personnel.
- d. Medical oversight. Because transport is an important part of the patient care continuum, a driver functions with physician oversight through protocol.
- e. Supervision. A driver is supervised by the primary care provider.

2. First responder.

- a. Scope. The first responder's core scope of practice includes simple, noninvasive skills focused on lifesaving interventions for critical patients based on assessment findings. The first responder renders onscene emergency care while awaiting additional emergency medical services response and may serve as part of the transporting crew, but not as the primary care provider. A first responder is not prepared to make decisions independently regarding the appropriate disposition of patients. A first responder must function with an emergency medical technician or higher level personnel during the transportation of patients. The first responder's scope includes all of the skills included in the driver's scope. A major difference between a driver and a first responder is the training and skills to provide immediate lifesaving interventions.
- b. Curriculum. The educational requirements include successful completion of a state-authorized first responder training program and continued educational requirements as defined in chapter 33-36-01.

- c. Scope enhancements. First responders may provide enhanced treatments beyond the core scope if they have successfully completed training as defined in section 33-36-01-04 and have authorization to perform those skills from their medical director.
 - d. Skills. Specific skills for the first responder are defined by the department. Local medical directors may limit the specific skills that a first responder may provide and they may not exceed those specific skills defined by the department.
 - e. Occupational setting. First responders may participate in the emergency medical services system as a sole responder in a quick response unit or as part of the crew of a basic life support ambulance service but not as the primary care provider. First responders may also provide services to a private company or organization as part of a response team that is not offered to the public.
 - f. Medical oversight. A first responder provides medical care with physician oversight. A physician credentials the first responder and establishes patient care standards through protocol.
 - g. Supervision. A first responder may be the highest trained person on a quick response unit and may supervise other first responders or drivers. As part of a basic life support ambulance crew, a first responder is supervised by the primary care provider.
3. Advanced first-aid ambulance attendant.
- a. Scope. The advanced first-aid ambulance attendant's scope of practice is equal to the emergency medical technician's as defined in section 33-36-04-02.1. The advanced first-aid ambulance attendant's scope includes the skills in the first responder's scope and the driver's scope. The major difference between an advanced first-aid ambulance attendant and first responder is the knowledge and skills necessary to provide medical transportation of emergency patients.
 - b. Curriculum. The curriculum for advanced first-aid ambulance attendant is no longer supported. Therefore, no new advanced first-aid ambulance attendants can be trained. Continued educational requirements are defined in chapter 33-36-01.
 - c. Scope enhancements. Advanced first-aid ambulance attendants may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.

- d. Skills. Specific skills for the advanced first-aid ambulance attendant are defined by the department. Local medical directors may limit the specific skills that an advanced first-aid ambulance attendant may provide and they may not exceed those specific skills defined by the department.
- e. Occupational setting. Advanced first-aid ambulance attendants may participate in the emergency medical services system as a sole responder in a quick response unit or as a primary care provider on a basic life support ambulance service. Advanced first-aid ambulance attendants may also provide services to a private company or organization as part of a response team that is not offered to the public.
- f. Medical oversight. An advanced first-aid ambulance attendant provides medical care with physician oversight. A physician credentials the advanced first-aid ambulance attendant and establishes patient care standards through protocol.
- g. Supervision. An advanced first-aid ambulance attendant may be the primary care provider on a quick response unit or basic life support ambulance and may supervise other advanced first-aid ambulance attendants, first responders, or drivers.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

CHAPTER 33-36-04
SCOPE OF PRACTICE FOR EMERGENCY MEDICAL SERVICES
PROFESSIONALS

Section

33-36-04-01

Definitions

33-33-04-02

Scopes of Practice

33-36-04-01. Definitions. Words defined in chapter 23-27 of the North Dakota Century Code have the same meaning in this chapter. For purposes of this chapter:

1. "Emergency medical technician" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician as required in chapter 33-36-01.
2. "Emergency medical technician - intermediate/85" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician - intermediate/85 as required in chapter 33-36-01.
3. "Emergency medical technician - intermediate/99" means a person that has fulfilled the training, testing, certification, and licensure process for emergency medical technician - intermediate/99 as required in chapter 33-36-01.
4. "Paramedic" means a person that has fulfilled the training, testing, certification, and licensure process for paramedic as required in chapter 33-36-01.
5. "Primary care provider" means a qualified individual responsible for the care of the patient and supervision of all ambulance personnel while on the ambulance run.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

33-36-04-02. Scopes of practice. Each level of emergency medical services professional has a scope of practice that includes the scopes of practice of all subordinate emergency medical services professionals and the scopes of all emergency medical services providers listed in chapter 33-36-03. The hierarchy of emergency medical services professionals is listed sequentially in this section.

1. Emergency medical technician.
 - a. Scope. The emergency medical technician's core scope of practice includes basic, noninvasive interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and

traumatic emergencies. Emergency care is based on assessment findings. An emergency medical technician is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an advanced first-aid ambulance attendant and emergency medical technician are the educational and testing requirements required for licensure as an emergency medical technician.

- b. Curriculum. The educational requirements include successful completion of a state-authorized emergency medical technician training program and continued educational requirements as defined in chapter 33-36-01.
- c. Scope enhancements. Emergency medical technicians may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have authorization to perform those skills from their medical director.
- d. Skills. Specific skills for the emergency medical technician are defined by the department. Local medical directors may limit the specific skills that an emergency medical technician may provide and they may not exceed those specific skills defined by the department.
- e. Occupational setting. Emergency medical technicians may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians may also provide services to a private company or organization as part of a response team that is not offered to the general public.
- f. Medical oversight. An emergency medical technician provides medical care with physician oversight. A physician credentials the emergency medical technician and establishes patient care standards through protocol.
- g. Supervision. An emergency medical technician may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians, first responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician may supervise subordinate emergency medical services personnel. As part of an advanced

life support ambulance service, an emergency medical technician is supervised by a paramedic.

2. Emergency medical technician - intermediate/85.

- a. Scope. The emergency medical technician's - intermediate/85 scope of practice includes basic, limited advanced interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment findings. An emergency medical technician - intermediate/85 is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician - intermediate/85 may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an emergency medical technician and emergency medical technician - intermediate/85 are the basic, limited advanced interventions that an emergency medical technician - intermediate/85 may provide.
- b. Curriculum. The core educational requirements include successful completion of a state-authorized emergency medical technician - intermediate/85 training program and continued educational requirements as defined in chapter 33-36-01.
- c. Scope enhancements. Emergency medical technicians - intermediate/85 may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.
- d. Skills. Specific skills for the emergency medical technician - intermediate/85 are defined by department policy. Local medical directors, or hospitals if working in the hospital setting may limit the specific skills that an emergency medical technician - intermediate/85 may provide. They may not exceed those specific skills defined by department policy.
- e. Occupational setting. Emergency medical technicians - intermediate/85 may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians - intermediate/85 may work for a hospital in a nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.

- f. Medical oversight. An emergency medical technician - intermediate/85 working in a prehospital setting provides medical care with physician oversight. In this circumstance a physician credentials the emergency medical technician - intermediate/85 and establishes patient care standards through protocol. An emergency medical technician - intermediate/85 working in a hospital setting is credentialed by the hospital.
 - g. Supervision. An emergency medical technician - intermediate/85 may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians - intermediate/85, emergency medical technicians, first responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician - intermediate/85 may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service an emergency medical technician - intermediate/85 is supervised by a paramedic. Emergency medical technicians - intermediate/85 working in a hospital setting are supervised by nursing staff.
- 3. Emergency medical technician - intermediate/99.
 - a. Scope. The emergency medical technician's - intermediate/99 scope of practice includes basic, limited advanced and pharmacological interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on assessment findings. An emergency medical technician - intermediate/99 is not prepared to make decisions independently regarding the appropriate disposition of patients. The emergency medical technician - intermediate/99 may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an acute care facility. The primary differences between an emergency medical technician - intermediate/85 and emergency medical technician - intermediate/99 are the limited pharmacological interventions that an emergency medical technician - intermediate/99 may provide.
 - b. Curriculum. The core educational requirements include successful completion of a state-authorized emergency medical technician - intermediate/99 training program and continued educational requirements as defined in chapter 33-36-01.
 - c. Scope enhancements. Emergency medical technicians - intermediate/99 may provide enhanced treatments beyond the core scope if they have completed training as defined in section 33-36-01-04 and have the authorization to perform those skills from their medical director.

- d. Skills. Specific skills for the emergency medical technician - intermediate/99 are defined by department policy. Local medical directors, or hospitals if working in the hospital setting, may limit the specific skills that an emergency medical technician - intermediate/99 may provide. They may not exceed those specific skills defined by department policy.
- e. Occupational setting. Emergency medical technicians - intermediate/99 may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, or as part of the crew of an advanced life support air or ground ambulance service. Emergency medical technicians - intermediate/99 may work for a hospital in a nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.
- f. Medical oversight. An emergency medical technician - intermediate/99 working in a prehospital setting provides medical care with physician oversight. In this circumstance a physician credentials the emergency medical technician - intermediate/99 and establishes patient care standards through protocol. An emergency medical technician - intermediate/99 working in a hospital setting is credentialed by the hospital.
- g. Supervision. An emergency medical technician - intermediate '99 may be the highest trained person on a quick response unit and as the primary care provider may supervise other emergency medical technicians - intermediate/99, emergency medical technicians - intermediate/85, emergency medical technicians, first responders, or drivers. As part of a basic life support ambulance crew, an emergency medical technician - intermediate/99 may supervise subordinate emergency medical services personnel. As part of an advanced life support ambulance service an emergency medical technician - intermediate/99 is supervised by a paramedic. Emergency medical technicians - intermediate/99 working in a hospital setting are supervised by nursing staff.

4. Paramedic.

- a. Scope. The paramedic's scope of practice includes invasive and pharmacological interventions to reduce the morbidity and mortality associated with acute out-of-hospital medical and traumatic emergencies. Emergency care is based on an advanced assessment and the formulation of a field impression. The paramedic may make destination decisions in collaboration with medical oversight. The principal disposition of the patient encounter will result in the direct delivery of the patient to an

acute care facility. The major difference between the paramedic and the emergency medical technician - intermediate/99 is the ability to perform a broader range of advanced skills. These skills carry a greater risk for the patient if improperly or inappropriately performed, are more difficult to attain and maintain competency in, and require significant background knowledge in basic and applied sciences.

- b. Curriculum. The core educational requirements include successful completion of a state-authorized paramedic training program and continued educational requirements as defined in chapter 33-36-01.
- c. Skills. Specific skills for the paramedic are defined by department policy. Local medical directors, or hospitals if working in the hospital setting, may limit the specific skills that a paramedic may provide and they may not exceed those specific skills defined by department policy.
- d. Occupational setting. Paramedics may participate in the emergency medical services system as a sole responder in a quick response unit, as the primary care provider of a basic life support air or ground ambulance service, as the primary care provider of an advanced life support air or ground ambulance service, or as the primary care provider of a critical care air ambulance service. Paramedics may work for a hospital in an emergency or nonemergency setting or provide services to a private company or organization as part of a response team that is not offered to the general public.
- e. Medical oversight. A paramedic working in a prehospital setting provides medical care with physician oversight. In this circumstance a physician credentials the paramedic and establishes patient care standards through protocol. A paramedic employed by and working in a hospital setting is credentialed by the hospital.
- f. Supervision. A paramedic may supervise all subordinate levels of emergency medical services personnel. Paramedics working in a hospital setting are supervised by the hospital's nurse executive.

History: Effective January 1, 2008.

General Authority: NDCC 23-27-04.3

Law Implemented: NDCC 23-27-04.3

CHAPTER 33-39-02

33-39-02-01. License fees. The following annual license fees must be paid by proprietors of lodging establishments:

1. For a lodging establishment containing not more than three sleeping rooms, ~~thirty-five~~ forty dollars.
2. For a lodging establishment containing at least four but not more than ten sleeping rooms, ~~fifty~~ fifty-five dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, ~~seventy~~ eighty dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, ~~ninety~~ one hundred dollars.
5. For a lodging establishment containing fifty-one sleeping rooms or more, one hundred ~~fifteen~~ twenty-five dollars.

History: Effective January 1, 2006; amended effective January 1, 2008.

General Authority: NDCC 23-01-03

Law Implemented: NDCC 23-09-02

ARTICLE 33-41

TATTOO AND BODY ART

Chapter

33-41-01

Tattoo and Body Art

CHAPTER 33-41-01

TATTOO AND BODY ART

Section

33-41-01-01

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Enforcement

33-41-01-01. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code Chapter 12.1-31, except:

1. "Aftercare" means written instructions given to the client, specific to the body art procedures rendered, about caring for the body art and surrounding area. These instructions must include information about when to seek medical treatment, if necessary.
2. "Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.
3. "Body art" means the practice of physical body adornment by permitted or licensed establishments and operators using techniques including body piercing, tattooing, cosmetic tattooing, branding, scarification, and subdermal implanting. This definition does not include, for the purpose of this article, piercing of the outer perimeter or lobe of the ear with presterilized single-use stud-and-clasp ear-piercing systems.
4. "Body art establishment" means any place or premise, whether public or private, temporary or permanent, in nature of location, where the practices of body art, whether or not for profit, are performed.

5. "Body piercing" means puncturing or penetration of the skin of a person with presterilized single-use needles and the insertion of presterilized jewelry or other adornment thereto in the opening, except that puncturing the outer perimeter or lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system shall not be included in this definition.
6. "Branding" means inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.
7. "Contaminated waste" means any liquid or semiliquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semiliquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations part 1910.1030, known as "occupational exposure to bloodborne pathogens".
8. "Cosmetic tattooing" is included in the definition of tattooing.
9. "Department" means the state department of health.
10. "Disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.
11. "Ear piercing" means the puncturing of the noncartilaginous perimeter or lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following manufacturer's instructions. Under no circumstances shall ear-piercing studs and clasps be used anywhere on the body other than the outer perimeter and lobe of the ear.
12. "Equipment" means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.
13. "Handsink" means a lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.
14. "Hot water" means water that attains and maintains a temperature of at least one hundred degrees Fahrenheit.

15. "Instruments used for body art" means hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during body art procedures.
16. "Invasive" means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break, or compromise the skin or mucosa.
17. "Jewelry" means any personal adornment inserted into a newly pierced area, which may be made of surgical implant-grade stainless steel; solid fourteen karat or eighteen karat white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and which has been properly sterilized prior to use.
18. "Liquid chemical germicide" means a disinfectant or sanitizer registered with the United States environmental protection agency or an approximately one-to-one hundred dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (five hundred parts per million, one-fourth cup per gallon, or two tablespoons per quart of tap water).
19. "Mobile body art establishment or unit" means a mobile establishment or unit which is self-propelled or otherwise movable from place to place and is self-sufficient for utilities such as gas, water, electricity, and liquid waste disposal which operates at a fixed location where a permitted or licensed operator performs body art procedures.
20. "Operator" means any person who controls, operates, manages, conducts, or practices body art activities at a body art establishment and who is responsible for compliance with these rules, whether actually performing body art activities or not. The term includes an assistant technician who works under the operator and performs body art activities.
21. "Person" means an individual, any form of business or social organization or any other nongovernmental legal entity, including corporations, partnerships, limited liability companies, associations, trusts, or unincorporated organizations.
22. "Physician" means a person currently licensed by the state of North Dakota to practice medicine pursuant to the provisions of chapter 43-17 of the North Dakota Century Code.
23. "Procedure surface" means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

24. "Sanitization procedure" means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the department.
25. "Sharps" means any objects (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa, including presterilized, single-use needles; scalpel blades; and razor blades.
26. "Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the international biohazard symbol.
27. "Single-use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.
28. "Sterilization" means a process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.
29. "Tattooing" means any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa. This term includes all forms of cosmetic tattooing.
30. "Temporary body art establishment" means any place or premise operating at a fixed location where an operator performs body art procedures for no more than fourteen days consecutively in conjunction with a single event or celebration.
31. "Ultrasonic unit" means a unit approved by the department, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high-frequency oscillations transmitted through the contained liquid.
32. "Universal precautions" means a set of guidelines and controls, published by the centers for disease control and prevention (CDC) as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health Care and Public Safety Workers" in *Morbidity and Mortality Weekly Report (MMWR)*, June 23, 1989, vol. 38, no. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures", in *(MMWR)*, July 12, 1991, vol. 40, no. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids

are infectious for HIV, HBV, and other blood pathogens. Precautions include handwashing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood-contaminated and body fluid-contaminated products.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-02. Requirements for premises. Following are the minimum requirements for construction, materials, and general condition of a body art establishment:

1. The operator of a new or extensively remodeled body art establishment shall submit a scale drawing and floor plan of the proposed establishment for a plan review by the department, as part of the license application process.
2. All walls, floors, ceilings, and procedure surfaces of a body art establishment shall be smooth, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs and benches, shall be of such construction as to be easily cleaned and sanitized after each client. All body art establishments shall be completely separated by solid partitions or by walls extending from floor to ceiling, from any room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces, exposed equipment, or client procedure sites.
3. Effective measures shall be taken by the body art operator to protect against entrance into the establishment and against the breeding or presence on the premises of insects, vermin, and rodents. Insects, vermin, and rodents shall not be present in any part of the establishment, its appurtenances, or appertaining premises.
4. There shall be adequate floor space for the operator in each procedure room. Each establishment shall have procedure rooms that may be closed or screened, or both, from public view for clients requesting privacy.
5. The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty foot candles measured three feet off the floor, except that at least one hundred foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

6. No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., seeing eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.
7. A separate, readily accessible handsink with hot and cold running water, under pressure, preferably equipped with wrist-operated or foot-operated controls and supplied with liquid soap and disposable paper towels shall be readily accessible within the body art establishment. One handsink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding service sinks, and one toilet in a body art establishment.
8. At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily, and solid waste shall be removed from the premises at least weekly. All refuse containers shall be lidded, cleanable, and kept clean.
9. All instruments and supplies shall be stored in clean, dry, and covered containers.
10. Reusable cloth items shall be mechanically washed with detergent and chlorine bleach and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

History: Effective January 1, 2008

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-03. Body art operator requirements.

1. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the department:
 - a. Employee information:
 - (1) Full names and exact duties;
 - (2) Date of birth;
 - (3) Gender;
 - (4) Home address;
 - (5) Home and work telephone numbers; and
 - (6) Identification photos of all body art operator/technicians.

- b. Establishment information:
 - (1) Establishment name;
 - (2) Hours of operation; and
 - (3) Owner's name and address.
 - c. A complete description of all body art procedures performed.
 - d. An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or orders shall satisfy this requirement.
 - e. A copy of these regulations.
- 2. The body art operator must be a minimum of eighteen years of age.
 - 3. Smoking, eating, or drinking is prohibited in the area where body art is performed.
 - 4. Operators shall refuse service to any person who, in the opinion of the operator, is under the influence of alcohol or drugs.
 - 5. The operator shall maintain a high degree of personal cleanliness, conform to hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art procedures, operators must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.
 - 6. In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any nonclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed before the next set of gloves is donned. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable medical gloves does not preclude or substitute for handwashing procedures as part of a good personnel hygiene program.
 - 7. If, while performing a body art procedure, the operator's glove is pierced or torn, or otherwise contaminated, the procedure delineated in subsection 6 shall be repeated immediately. The contaminated gloves shall be immediately discarded, and the hands washed thoroughly as described in subsection 6 before a fresh pair of gloves is applied. Any item or instrument used for body art that is contaminated during

the procedure shall be discarded, and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

8. Contaminated waste that may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved red bag marked with the international biohazard symbol. It must then be disposed of by a waste hauler approved by the department or, at a minimum, in compliance with 29 CFR part 1910.1030, "occupational exposure to bloodborne pathogens". Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste that does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste onsite shall not exceed the period specified by the department or more than a maximum of thirty days, as specified in 29 CFR part 1910.1030, whichever is less.
9. No person shall perform any body art procedure upon a person under the age of eighteen years without the presence, written consent, and proper identification of a parent, legal custodial parent, or legal guardian. Nothing in this section is intended to require an operator to perform any body art procedure on a person under eighteen years of age with parental or guardian consent.
10. Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
11. The skin of the operator shall be free of rash or infection. No person or operator affected with boils, infected wounds, open sores, abrasions, keloids, weeping dermatological lesions, or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that the person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.
12. The operator shall be vaccinated against the hepatitis B virus. The operator is responsible for ensuring that all individuals working at the operator's establishment initiate the hepatitis B vaccination series within thirty days of starting work unless the individuals have previously received the complete hepatitis B vaccination series and can provide documentation to the department, antibody testing has revealed that the individual is immune, or the vaccine is contraindicated for medical reasons.

13. The operator shall be certified in cardiopulmonary resuscitation.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-04. Public notification requirements.

1. Verbal and written public educational information, approved by the department, shall be required to be given to all clients wanting to receive body art procedures. Verbal and written instructions, approved by the department, for the aftercare of the body art procedure site shall be provided to each client by the operator upon completion of the procedure. The written instructions shall advise the client to consult a physician at the first sign of infection and shall contain the name, address, and telephone number of the establishment. These documents shall be signed and dated by both parties, with a copy given to the client and the operator retaining the original with all other required records. In addition, all establishments shall prominently display a disclosure statement, provided by the department, which advises the public of the risks and possible consequences of body art services. The facility licenseholder shall also post in public view the name, address, and telephone number of the local or state department that has jurisdiction over this program and the procedure for filing a complaint. The disclosure statement and the notice for filing a complaint shall be included in the establishment license application packet.
2. All infections, complications, or diseases resulting from any body art procedure that become known to the operator shall be reported to the department by the operator within twenty-four hours.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-05. Client records.

1. So that the operator can obtain knowledge about the client's health status for receiving a body art procedure, the operator or technician shall ask for the information as follows:

So your body art procedure heals properly, we ask that you disclose if you have or have had any of the following conditions:

- a. Diabetes;
- b. History of hemophilia (bleeding);

- c. History of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants, etc.;
 - d. History of allergies or adverse reactions to pigments, dyes, or other skin sensitivities;
 - e. History of epilepsy, seizures, fainting, or narcolepsy;
 - f. Use of medications such as anticoagulants, which thin the blood or interfere with blood clotting;
 - g. Use of medications other than routine antibiotics, allergy medication, or birth control pills;
 - h. Hepatitis;
 - i. HIV positive;
 - j. High blood pressure or heart disease;
 - k. Pregnancy;
 - l. Contagious diseases;
 - m. Immune system disorder; or
 - n. Serious physical or mental health problems.
2. The operator shall ask the client to sign a release form confirming that the information described in subsection 1 was obtained or that the operator attempted to obtain the information. The client shall be asked to disclose any other information that would aid the operator in evaluating the client's body art healing process.
3. Each operator shall keep records of all body art procedures administered, including client name and signature, date of birth, date, time, identification and location of the body art procedure performed, and the operator's name. If the client is a minor, proof of parental or guardian presence and consent must be obtained and signed and the record retained. All client records shall be confidential and be retained for a minimum of three years and made available to the department upon notification.

4. Nothing in this section shall be construed to require the operator to perform a body art procedure upon a client.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-06. Records retention. The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include the name, date of birth, and address of the client; the date and time of the procedure; the name of the operator who performed the procedures; type and location of procedure performed; and the signature of the client; and, if the client is a minor, proof of parental or guardian presence and consent, i.e., signature. Such records shall be retained for a minimum of three years and shall be available to the department upon request. The department and the body art establishment shall keep such records confidential.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-07. Preparation and care of the body art area.

1. Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation, depending on the type of body art to be performed. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
2. In the event of blood flow, all products used to check the flow of blood or to absorb blood shall be single-use and disposed of immediately after use in appropriate covered containers, unless the disposal products meet the definition of biomedical waste. The use of styptic pencils or alum solids shall not be used to check the flow of blood.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-08. Sanitation and sterilization procedures.

1. All nonsingle-use, nondisposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or by following the manufacturer's instructions, to remove blood and tissue residue.

and shall be placed in an ultrasonic unit also operated in accordance with the manufacturer's instructions.

2. After being cleaned, all nondisposable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized as specified in subsection 3. All peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Peel-packs must be dated with an expiration date not to exceed six months.
3. All cleaned, nondisposable instruments used for body art shall be sterilized in a steam autoclave or dry-heat sterilizer (if approved by the department). The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the department. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. Sterilizers shall be located away from workstations or areas frequented by the public. If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.
4. Each holder of a license to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The license shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the department. These test records shall be retained by the operator for a period of three years and made available to the department upon request.
5. Tattoo needles and piercing needles are not reusable under any circumstances. After use, all needles, razors, and other sharps shall be immediately disposed of in red sharps containers, appropriately labeled with the international biohazard symbol. After sterilization, all reusable instruments used for tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.
6. All instruments used for tattooing or body piercing shall remain stored in sterile packages until just prior to the performance of a body art procedure. When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.
7. All inks, dyes, pigments, needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions. The mixing of approved inks,

dyes, or pigments or their dilution with potable water is acceptable. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single cups or cups and their contents shall be discarded.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-09. Requirements for single-use items.

1. Single-use items shall not be used on more than one client for any reason. After use, all single-use needles, razors, and other sharps shall be immediately disposed of in approved sharps containers.
2. All products applied to the skin, including body art stencils, shall be single-use and disposable. If the department approves, acetate stencils shall be allowed for reuse if sanitization procedures as specified in subsection 24 of section 33-41-01-01 are performed between uses. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination of the original container and its contents. The gauze shall be used only once and then discarded.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-10. License requirements.

1. No person, firm, partnership, joint venture, association, business trust, corporation, or organized group of persons may operate a body art establishment except with a body art establishment license from the department.
2. It is prohibited to obtain or attempt to obtain any body art establishment or operator permit by means of fraud, misrepresentation, or concealment.
3. A license for a body art establishment shall not be transferable from one place or person to another.
4. The current body art establishment license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.

5. The annual license fee for all types of body art establishments is one hundred ten dollars.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-11. Temporary establishment license. Temporary establishment licenses, when required, may be issued for body art services provided outside of the physical site of a certified facility for the purposes of product demonstration, industry trade shows, or education. Temporary establishment licenses will not be issued unless:

1. The applicant furnishes proof of compliance with section 33-41-01-10 relating to license requirements;
2. The applicant is currently affiliated with a fixed location or permanent facility which, where applicable, is licensed by the appropriate state or local jurisdiction; and
3. The temporary site complies with section 33-41-01-12 temporary demonstration license requirements.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-12. Temporary demonstration permit requirements.

1. A person who wishes to obtain a temporary demonstration license must submit the request in writing for review by the department at least thirty days prior to the event. The request must specify:
 - a. The purpose for which the license is requested.
 - b. The period of time during which the license is needed, not to exceed fourteen calendar days per event, without reapplication.
 - c. The location where the temporary demonstration license will be used.
2. The applicant's demonstration project must be contained in a completely enclosed, nonmobile facility (e.g., inside a permanent building).
3. Compliance with all of the requirements of this code includes the following:

- a. Conveniently located handwashing facilities with liquid soap, paper towels, and hot and cold water under adequate pressure shall be provided. Drainage in accordance with local plumbing codes is to be provided. Tuberculocidal single-use hand wipes, approved by the department, to augment the handwashing requirements of this section must be available in each booth or cubicle.
 - b. There shall be at least one hundred foot candles of light at the level where the body art procedure is being performed.
 - c. Facilities to properly sterilize instruments and evidence of a spore test performed on sterilization equipment thirty days or less prior to the date of the event must be provided, or only single-use, prepackaged, sterilized equipment obtained from reputable suppliers or manufacturers will be allowed.
 - d. Ability to properly clean and sanitize the area used for body art procedures is required.
4. The facility where the temporary demonstration license needed must be inspected by the department and the license issued prior to the performance of any body art procedure.
 5. Temporary demonstration licenses issued under the provisions of this code may be suspended by the department for failure of the holder to comply with the requirements of this code.
 6. All establishment licenses and the disclosure notice must be readily seen by clients.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-13. Mobile body art establishments. In addition to complying with all of the requirements of this code, mobile body art vehicles working from a mobile body art establishment shall also comply with all of the following requirements:

1. Mobile body art establishments are licensed annually, and no body art procedures are to be performed before a license is issued. Licenseholders are responsible for ensuring that all other local agency regulations are complied with, including zoning and business license requirements.
2. Body art performed pursuant to this section shall be done only from an enclosed vehicle such as a trailer or mobile home. No body art procedures shall be performed outside of the enclosed vehicle.

3. The mobile body art establishment shall be maintained in a clean and sanitary condition at all times. Doors shall be self-closing and tight-fitting. Openable windows shall have tight-fitting screens.
4. Mobile body art establishments must have approved sterilization equipment available, in accordance with all requirements of section 33-41-01-08.
5. The mobile body art establishment shall be used only for the purpose of performing body art procedures. No habitation or food preparation is permitted inside the vehicle unless the body art workstation is separated by walls, floor to ceiling, from culinary or domicile areas.
6. The mobile body art establishment shall be equipped with an equipment washing sink and a separate handsink for the exclusive use of the operator for handwashing and preparing the client for the body art procedure. The handsink shall be supplied with hot and cold running water under pressure to a mixing type faucet and liquid soap and paper towels in dispensers. An adequate supply of potable water shall be maintained for the mobile body art establishment at all times during operation. The source of the water and storage, in gallons, of the tanks shall also be identified. Tuberculocidal single-use hand wipes, approved by the department, to augment the handwashing requirements of this section, must be available.
7. All liquid wastes shall be stored in an adequate storage tank with a capacity at least fifty percent greater than the capacity of the onboard potable water supply. Liquid wastes shall be disposed of at a site approved by the department.
8. Restroom facilities must be available within the mobile body art establishment. A handsink must be available inside the restroom cubicle. The handsink shall be supplied with hot and cold running water under pressure to a mixing type faucet, as well as liquid soap and paper towels in dispensers. Restroom doors must be self-closing and adequate ventilation must be available.
9. No animals, except service animals of clients, shall be allowed in the mobile body art establishment at any time.
10. Mobile body art establishments must receive a preoperational inspection to ensure compliance with structural requirements.
11. All mobile body art establishment licenses, as well as the disclosure notice, must be readily seen by clients.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

33-41-01-14. Enforcement.

1. It is a class B misdemeanor for establishments that continue to operate without proper permits from the department or operate in violation of these regulations.
2. A representative of the department shall provide proper identification as such before entering a body art establishment to make an inspection. Such an inspection must be conducted as often as necessary throughout the year to ensure compliance with this code.
3. It is unlawful for any person to interfere with the department in the performance of its duties.
4. A copy of the inspection report must be furnished to the licenseholder or operator of the body art establishment, with the department retaining possession of the original.
5. If, after investigation, the department should find that a licensee is in violation of this code, the department may advise the licensee, in writing, of its findings and instruct the licensee to take specific steps to correct such violations within a reasonable period of time.
6. If the department has reasonable cause to suspect that a communicable disease is or may be transmitted by an operator, by use of unapproved or malfunctioning equipment, or by unsanitary or unsafe conditions that may adversely affect the health of the public, upon written notice to the owner or operator, the department may do any or all of the following:
 - a. Issue an order excluding any or all operators from the licensed body art establishment who are responsible, or reasonably appear responsible, for the transmission of a communicable disease until the department determines there is no further risk to public health.
 - b. Issue an order to immediately suspend the license of the establishment until the department determines there is no further risk to the public health. Such an order shall state the cause for the action.
7. Licenses issued under the provisions of the code may be suspended temporarily by the department for failure of the holder to comply with the requirements of this code.
8. Whenever a licenseholder or operator has failed to comply with any notice issued under the provisions of this code, the operator must be notified in writing that the license is, upon service of this notice, immediately suspended. The notice must also contain a statement informing the licenseholder or operator that an opportunity for a hearing

will be provided if a written request for a hearing is filed with the department.

9. Any person whose license has been suspended may, at any time, make application for reinstatement of the license. Within ten days of receipt of a written request, including a statement signed by the applicant, that in the applicant's opinion the conditions causing the suspension have been corrected, the department shall reinspect the body art establishment or evaluate documentation provided by an operator. If the applicant is in compliance with the provisions of this code, the license will be reinstated.
10. For repeated or serious (any code infraction that threatens the health of the client or operator) violations of any of the requirements of this code or for interference with department personnel in the performance of their duties, a license may be permanently revoked after a hearing. Before taking such action, the department shall notify the licenseholder or operator in writing, stating reasons for which the license is subject to revocation and advising the licenseholder or operator of the requirements for filing a request for a hearing. A license may be suspended for cause, pending its revocation or hearing relative thereto.
11. The department may permanently revoke a permit after five days following service of the notice unless a request for hearing is filed within the five-day period with the department by the licenseholder.
12. The hearings provided for in this section must be conducted by the department at a time and place designated by the hearing officer. On the basis of the record of the hearing, the department shall make a finding and may sustain, modify, or rescind any official notice or order considered in the hearing. A written report of the hearing decision must be furnished to the licenseholder or operator by the department.

History: Effective January 1, 2008.

General Authority: NDCC 23-01-35

Law Implemented: NDCC 23-01-35

CHAPTER 33-42-01

33-42-01-01. Applicability. This chapter applies to all persons who possess or operate tanning devices available to the public for the purpose of artificial light skin tanning, including those offered for use as part of a membership or premium offer in a health club, condominium, apartment complex activity center, or hotel or motel rental.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-02. Definitions. The terms used throughout this article have the same meaning as in North Dakota Century Code chapter 23-39 except:

1. "Applicant" means any person who applies to the department for a license to operate a tanning facility.
2. "Customer" means any member of the public who is provided access to a tanning device in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning device as a benefit of membership in or access to a health club, condominium ownership, apartment complex activity center, hotel or motel room rental, or other offer.
3. "Department" means the state department of health.
4. "operator" means an individual designated by the licenseholder to manage the tanning facility and to assist and instruct the public in the correct operation of the tanning devices.
5. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group or agency, or a representative or agent of any of these.
6. "Protective eyewear" means any apparatus designed to be worn over the eyes by a user of tanning devices which absorbs all UV-A, UV-B, and visible light up to five hundred nanometers but permits sufficient light to pass through to allow a user to safely negotiate obstacles, and that complies with the standards set forth in 21 CFR 1040.20.
7. "Radiation" means ultraviolet radiation.
8. "Ultraviolet radiation" means electromagnetic radiation with a wavelength in air of two hundred to four hundred nanometers.
9. "UV-A" means ultraviolet radiation having a wavelength in air of three hundred twenty to four hundred nanometers.

10. "UV-B" means ultraviolet radiation having a wavelength in air of two hundred ninety to three hundred twenty nanometers.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-03. Advertising.

1. No tanning facility may state in any advertising, written or verbal, that tanning is free of hazards from ultraviolet radiation or has any health benefits other than those recognized by a credible scientific or medical source.
2. No person may state or imply that any activity under a license has been approved by the department.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-04. Warning sign.

1. **Location and content.** Tanning facilities shall prominently display a warning sign in each area where a tanning device is used. A sign shall be located within one meter of each device. The sign shall be readily legible, clearly visible, and not obstructed by any barrier, equipment, or other item present so that the customer can easily view the warning sign before turning on the tanning device.
2. **Lettering.** The lettering on each warning sign shall be at least five millimeters high for the word "WARNING". All capital letters shall be at least five millimeters high and all lowercase letters shall be at least three millimeters high. The warning sign must contain the following warnings:

WARNING

DANGER - ULTRAVIOLET RADIATION

Follow Instructions.

Avoid too frequent or too lengthy exposure. Like exposure to the sun, use of a tanning device can cause eye and skin injury and allergic reactions. Repeated exposure can cause chronic sun damage, which is characterized by wrinkling, dryness, fragility and bruising of the skin, and skin cancer.

WEAR FOOD AND DRUG ADMINISTRATION-APPROVED PROTECTIVE EYEWEAR. FAILURE TO WEAR PROTECTIVE EYEWEAR MAY RESULT IN SEVERE BURNS OR LONG-TERM INJURY TO THE EYES.

Ultraviolet radiation from tanning devices will aggravate the effects of the sun, so do not sunbathe during the twenty-four hours immediately preceding or immediately following the use of a tanning device.

Medications and cosmetics may increase your sensitivity to ultraviolet radiation. Consult a physician before using a tanning device if you are using medications, have a history of skin problems, or believe that you are especially sensitive to sunlight. Women who are pregnant or using birth control pills and who use a tanning device may develop discolored skin.

If your skin does not tan when exposed to sun, it is unlikely that your skin will tan when exposed to this tanning device.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-05. Lamp replacement.

1. The tanning facility shall maintain a record of the dates on which the tubes, bulbs, or lamps were replaced.
2. The tubes, bulbs, or lamps shall be replaced at the frequency recommended by the manufacturer or when the tubes, bulbs, or lamps become damaged or defective. A replacement lamp for a tanning unit shall be compatible with the original lamp as specified by the manufacturer of the unit or shall be substantially equivalent to the manufacturer's original lamp type. In this subsection, "substantially equivalent" means within ten percent of the UV-B emission of the original lamp and meeting the performance requirements of the United States food and drug administration in 21 CFR 1040.20(c)(1).
3. The facility shall maintain the device manufacturer's literature indicating the rating, output, or intensity of the tube, lamp, or bulb required for replacement.
4. No tube, bulb, or lamp designated for medical use only may be used.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-06. Duties of the operator.

1. Use only tanning equipment manufactured and certified to comply with 21 CFR part 1040, section 1040.20, "sunlamp products and ultraviolet lamps intended for use in sunlamp products", in tanning facilities. Compliance shall be based on the standard in effect at the time of manufacture as shown on the device identification label required by 21 CFR part 1010 section 1010.3.

2. Use only tanning equipment that has a timer which complies with the requirements of 21 CFR part 1040, section 1040.20(c)(2). The timer shall be incorporated in the tanning device. The maximum timer interval shall not exceed the manufacturer's maximum recommended exposure time.
3. Ensure that protective acrylic sheets are in place when a tanning device is in use, except that the protect acrylic may be sleeves over the lamps in the upper portion of a device or over lamps in booth devices.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-07. Cleanliness and sanitation.

1. Walls, floors, and fixtures shall be kept clean at all times in the entire facility.
2. No article or equipment shall be used or offered for use by a patron unless that article has first been cleaned with an environmental protection agency-approved sanitizer. A test kit or other device that accurately measures the concentration of the sanitizing solution in parts per million shall be used to measure the strength of the sanitizing solution when the concentrate and water dilution is initially prepared and at least daily thereafter to ensure sufficient strength of the sanitizing solution.
3. Paper towels or a clean cloth towel shall be provided. If reusable cloth towels are provided, they shall be mechanically washed with detergent and mechanically dried after each use. The cloth towels must be stored in a dry, clean environment until used.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-08. Reports of injury. If a customer of a tanning facility reports a sunburn injury to that facility resulting from the use of its tanning device, the owner shall provide the customer with written information on how to report the alleged injury to the department on a form prescribed by the department. The report shall be sent to the department as soon as possible and shall include:

1. The name of the affected individual and date of the actual or alleged injury.
2. The name and location of the tanning facility.
3. The nature of the alleged injury and duration of the tanning exposure.

4. Information on the device involved, such as manufacturer and model number and any other information considered relevant to the situation.
5. The name and address of the health care provider and treatment, if any.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-09. Recordkeeping.

1. The operator of a tanning facility shall maintain the following records:
 - a. Each customer's total number of tanning visits and dates and duration of tanning exposure.
 - b. Each customer's signature and acknowledgment that the customer has read and understands the written notice as required in subsection 2 of section 23-39-03 of the North Dakota Century Code and the warning sign as prescribed in section 33-42-01-04 of this chapter.
 - c. Each parental or legal guardian's written consent for customers under eighteen years of age as required in subdivision a of subsection 1 of section 23-39-05 of the North Dakota Century Code.

All customer records shall be maintained for three years after the last tanning visit.

2. The operator shall maintain the following information for each tanning device:
 - a. Manufacturer's equipment or operator's manual and any service-related material.
 - b. Inspections, maintenance, and notifications performed on the tanning device, including the date of service and dates of bulb replacement. Device records shall be maintained for three years.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-10. Permits - Licenses. A person may not operate a tanning facility without a license issued by the department. The department will conduct a preoperational inspection prior to initial licensure or changes in ownership to insure operator compliance and understanding of all laws and regulations. License renewals must be submitted to the department during December every year. An

additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date. A reduced license fee in the amount of one-half of the applicable license fee must be charged for a new facility that begins operation after July first of each year. Licenses are not transferable. The annual license fee for a tanning facility is ninety dollars for facilities with up to ten tanning beds and one hundred ten dollars for facilities with more than ten beds.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

33-42-01-11. Denial, suspension, or revocation of license.

1. The department may deny issuance of a license or suspend or revoke a license issued under this chapter if the applicant or licenseholder does not comply with or violates chapter 23-39 of the North Dakota Century Code or any provision of this chapter or if the applicant or licenseholder does any of the following:
 - a. Submits false or misleading information in the application or in reports.
 - b. Fails to construct, operate, or maintain the tanning facility in accordance with the application.
 - c. Operates the tanning facility in a way that causes or creates a nuisance or hazard to the public health or safety.
 - d. Violates any condition upon which the license was issued.
 - e. Fails to allow the department or a duly authorized agent to inspect the facility at a reasonable hour and in a reasonable manner for the purpose of determining compliance with this chapter.
 - f. Fails to pay the license fee.
2. Whenever the proprietor of any tanning facility fails to comply with this chapter, the operator must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

History: Effective January 1, 2008.

General Authority: NDCC 23-39-07

Law Implemented: NDCC 23-39-07

TITLE 43
INDUSTRIAL COMMISSION

JANUARY 2008

CHAPTER 43-02-03

43-02-03-01. Definitions. The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapter 38-08 except:

1. "Adjusted allowable" means the allowable production a proration unit receives after all adjustments are applied.
2. "Allocated pool" is one in which the total oil or natural gas production is restricted and allocated to various proration units ~~and fractional proration units~~ therein in accordance with proration schedules.
3. "Allowable production" means that number of barrels of oil or cubic feet of natural gas authorized to be produced from the respective proration units ~~and fractional proration units~~ in an allocated pool.
4. ~~"Back allowable" means the authorized accumulative underage or shortage for a given proration unit or fractional proration unit.~~
5. "Barrel" means forty-two United States gallons [158.99 liters] measured at sixty degrees Fahrenheit [15.56 degrees Celsius] and fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter].
6. ~~5.~~ "Barrel of oil" means forty-two United States gallons [158.99 liters] of oil after deductions for the full amount of basic sediment, water, and other impurities present, ascertained by centrifugal or other recognized and customary test.
7. ~~6.~~ "Bottom hole or subsurface pressure" means the pressure in pounds per square inch gauge under conditions existing at or near the producing horizon.
8. ~~7.~~ "Bradenhead gas well" means any well capable of producing gas through wellhead connections from a gas reservoir which has been successfully cased off from an underlying oil or gas reservoir.

- ~~9-~~ 8. "Casinghead gas" means any gas or vapor, or both gas and vapor, indigenous to and produced from a pool classified as an oil pool by the commission.
- ~~10-~~ 9. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.
- ~~11-~~ 10. "Common purchaser for natural gas" means any person now or hereafter engaged in purchasing, from one or more producers, gas produced from gas wells within each common source of supply from which it purchases, for processing or resale.
- ~~12-~~ 11. "Common purchaser for oil" means every person now engaged or hereafter engaging in the business of purchasing oil in this state.
- ~~13-~~ 12. "Common source of supply" is synonymous with pool and is a common accumulation of oil or gas, or both, as defined by commission orders.
- ~~14-~~ 13. "Completion" means an oil well shall be considered completed when the first oil is produced through wellhead equipment into tanks from the ultimate producing interval after casing has been run. A gas well shall be considered complete when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after casing has been run. A dry hole shall be considered complete when all provisions of plugging are complied with as set out in this chapter.
- ~~15-~~ 14. "Condensate" means the liquid hydrocarbons recovered at the surface that result from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.
- ~~16-~~ 15. "Cubic foot of gas" means that volume of gas contained in one cubic foot [28.32 liters] of space and computed at a pressure of fourteen and seventy-three hundredths pounds per square inch absolute [1034.19 grams per square centimeter] at a base temperature of sixty degrees Fahrenheit [15.56 degrees Celsius].
- ~~17-~~ 16. "Director" means the director of oil and gas of the industrial commission, the assistant director of oil and gas of the industrial commission, and their designated representatives.
- ~~18-~~ 17. "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool, which artificial means or application includes pressuring, cycling, pressure maintenance, or injection to the pool of a substance or form of energy but does not include the injection in a well of a substance or form of energy for the sole purpose of:

- a. Aiding in the lifting of fluids in the well; or
 - b. Stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.
- 49- 18. "Exception well location" means a location which does not conform to the general spacing requirements established by the rules or orders of the commission but which has been specifically approved by the commission.
- 20- ~~"Fractional proration unit for oil" means a tract of land containing more or less than forty acres [16.19 hectares] predominantly situated within the confines of a pool.~~
- 21- 19. "Gas lift" means any method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.
- 22- 20. "Gas-oil ratio" means the ratio of the gas produced in cubic feet to a barrel of oil concurrently produced during any stated period.
- 23- 21. "Gas-oil ratio adjustment" means the reduction in allowable of a high gas-oil ratio proration unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.
- 24- 22. "Gas transportation facility" means a pipeline in operation serving one or more gas wells for the transportation of natural gas, or some other device or equipment in like operation whereby natural gas produced from gas wells connected therewith can be transported.
- 25- 23. "Gas well" means a well producing gas or natural gas from a common source of gas supply as determined by the commission.
- 26- 24. "High gas-oil ratio proration unit" means a proration unit with a producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool.
- 27- 25. "Injection or input well" means any well used for the injection of air, gas, water, or other fluids into any underground stratum.
- 28- 26. "Limiting gas-oil ratio" means the gas-oil ratio assigned by the commission to a particular oil pool to limit the volumes of casinghead gas which may be produced from the various oil-producing units within that particular pool.
- 29- 27. "Log or well log" means a systematic, detailed, and correct record of formations encountered in the drilling of a well, including commercial electric logs, radioactive logs, dip meter logs, and other related logs.

30. ~~"Marginal unit" means a proration unit or fractional proration unit that cannot produce at a rate equal to the top unit allowable for the proration period for the pool.~~
31. ~~"Minimum allowable" means the minimum amount of production from an oil or gas well which will encourage the continued operation of such well and below which the well might be threatened with premature plugging and resulting waste.~~
32. 28. "Multiple completion" means the completion of any well so as to permit the production from more than one common source of supply.
33. 29. "Natural gas or gas" means and includes all natural gas and all other fluid hydrocarbons not herein defined as oil.
34. ~~"Nonmarginal unit" means a proration unit or a fractional proration unit that can produce at a rate equal to the top unit allowable for the proration period for the pool.~~
35. ~~"Normal unit allowable" means the amount of allowable production allocated to proration units which are producing from a depth of five thousand feet [1524 meters] or above.~~
30. "Occupied dwelling" or "permanently occupied dwelling" means a residence which is lived in by a person at least six months throughout a calendar year.
36. 31. "Official gas-oil ratio test" means the periodic gas-oil ratio test made by order of the commission and by such method and means and in such manner as prescribed by the commission.
37. 32. "Offset" means a well drilled on a forty-acre [16.19-hectare] tract cornering or contiguous to a forty-acre [16.19-hectare] tract having an existing oil well, or a well drilled on a one hundred sixty-acre [64.75-hectare] tract cornering or contiguous to a one hundred sixty-acre [64.75-hectare] tract having an existing gas well; provided, however, that for wells subject to a fieldwide spacing order, "offset" means any wells located on spacing units cornering or contiguous to the spacing unit or well which is the subject of an inquiry or a hearing.
38. 33. "Oil well" means any well capable of producing oil or oil and casinghead gas from a common source of supply as determined by the commission.
39. 34. "Operator" is the principal on the bond covering a well and such person shall be responsible for drilling, completion, and operation of the well, including plugging and reclamation of the well site.

- 40- 35. "Overage or overproduction" means the amount of oil or the amount of natural gas produced during a proration period in excess of the amount authorized on the proration schedule.
- 41- 36. "Potential" means the properly determined capacity of a well to produce oil, or gas, or both, under conditions prescribed by the commission.
- 42- 37. "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to increase or maintain the existing pressure in such reservoir or to retard the natural decline in the reservoir pressure.
- 43- 38. "Proration day" consists of twenty-four consecutive hours which shall begin at seven a.m. and end at seven a.m. on the following day.
- 44- 39. "Proration month" means the calendar month which shall begin at seven a.m. on the first day of such month and end at seven a.m. on the first day of the next succeeding month.
- 45- ~~"Proration period" means for oil the proration month and for gas six consecutive calendar months which shall begin at seven a.m. on the first day of a calendar month and end at seven a.m. on the first day of the seventh succeeding month.~~
- 46- 40. "Proration schedule" means the periodic order of the commission authorizing the production, purchase, and transportation of oil or of natural gas from the various units of oil or of natural gas proration in allocated pools.
- 47- 41. "Proration unit for gas" consists of such geographical area as may be prescribed by special pool rules issued by the commission.
- 48- ~~"Proration unit for oil" consists of a tract of land containing forty acres [16.19 hectares] predominantly situated within the confines of a pool.~~
- 49- 42. "Recomplete" means the subsequent completion of a well in a different pool.
- 50- 43. "Reservoir" means pool or common source of supply.
- 51- 44. "Saltwater handling facility" means and includes any container such as a pit, tank, or pool, whether covered or uncovered, used for the handling, storage, disposal of deleterious substances obtained, or used, in connection with the drilling or operation of wells.
- 52- 45. "Shut-in pressure" means the pressure noted at the wellhead when the well is completely shut in, not to be confused with bottom hole pressure.

- 53- ~~46.~~ "Spacing unit" is the area in each pool which is assigned to a well for drilling, producing, and proration purposes in accordance with the commission's rules or orders.
- 54- ~~47.~~ "Stratigraphic test well" means any well or hole, except a seismograph shot hole, drilled for the purpose of gathering information in connection with the oil and gas industry with no intent to produce oil or gas from such well.
- 55- ~~48.~~ "Tank bottoms" means that accumulation of hydrocarbon material and other substances which settle naturally below crude oil in tanks and receptacles that are used in handling and storing of crude oil, and which accumulation contains basic sediment and water in an amount rendering it unsalable to an ordinary crude oil purchaser; provided, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet thereto.
- 56- ~~"Top unit allowable for gas" means the maximum number of cubic feet of natural gas, for the proration period, allocated to a proration unit for gas in an allocated gas pool.~~
- 57- ~~"Top unit allowable for oil" means the maximum number of barrels of oil daily for each calendar month allocated to a proration unit for oil in a pool to nonmarginal units.~~
- 58- ~~49.~~ "Treating plant" means any plant permanently constructed or portable used for the purpose of wholly or partially reclaiming, treating, processing, or in any manner making tank bottoms or any other waste oils marketable.
- 59- ~~"Underage" means the amount of oil or the amount of natural gas during a proration period by which a given proration unit failed to produce in an amount equal to that authorized on the proration schedule.~~

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-16.3. Recovery of a risk penalty. The following govern the recovery of the risk penalty pursuant to subsection 3 of North Dakota Century Code section 38-08-08 and subsection 3 of North Dakota Century Code section 38-08-09.4:

1. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-08, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the risk and cost of drilling a well,

including reentering a plugged and abandoned well, or the risk and cost of reentering an existing well to drill deeper or a horizontal lateral. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.

- a. The invitation to participate in drilling must contain the following:
 - (1) The location of the proposed or existing well and its proposed depth and objective zone.
 - (2) An itemization of the estimated costs of drilling and completion.
 - (3) The approximate date upon which the well was or will be spudded or reentered.
 - (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
- b. An election to participate must be in writing.
- c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
- d. An election to participate is only binding upon an owner electing to participate if the well is spudded or reentry operations are commenced within on or before ninety days after the date the owner extending the invitation to participate sets as the date upon which a response to the invitation is to be received. It also expires if the permit to drill or reenter expires without having been exercised. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

2. An owner may recover the risk penalty under the provisions of subsection 3 of North Dakota Century Code section 38-08-09.4, provided the owner gives, to the owner from whom the penalty is sought, a written invitation to participate in the unit expense. If the nonparticipating owner's interest is not subject to a lease or other contract for development, an owner seeking to recover a risk penalty must also make a good-faith attempt to have the unleased owner execute a lease.
 - a. The invitation to participate in the unit expense must contain the following:
 - (1) A description of the proposed unit expense, including the location, objectives, and plan of operation.
 - (2) An itemization of the estimated costs.
 - (3) The approximate date upon which the proposal was or will commence be commenced.
 - (4) The time within which the invitation must be accepted. At least thirty days should be given, for it is presumed that at least thirty days is needed to adequately consider and respond to an invitation. In unusual circumstances, however, the owner seeking the risk penalty may allow less than thirty days in which to respond to the invitation, but in no circumstances may less than fifteen days be allowed.
 - (5) Notice that the participating owners plan to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty, or if no such petition has been filed, by filing an application or request for hearing with the commission.
 - b. An election to participate must be in writing.
 - c. An invitation to participate and an election to participate must be served personally, by mail requiring a signed receipt, by facsimile transmission followed within one business day by mailing, or by overnight courier or delivery service requiring a signed receipt. Failure to accept mail requiring a signed receipt constitutes service.
 - d. An election to participate is only binding upon an owner electing to participate if the unit expense is commenced within ninety days after the date the owner extending the invitation request to participate sets as the date upon which a response to the request invitation is to be received. If an election to participate lapses, a risk penalty can only be collected if the owner seeking it again complies with the provisions of this section.

- e. An invitation to participate in a unit expense covering monthly operating expenses shall be effective for all such monthly operating expenses for a period of five years if the unit expense identified in the invitation to participate is first commenced within ninety days after the date set in the invitation to participate as the date upon which a response to the invitation to participate must be received. An election to participate in a unit expense covering monthly operating expenses is effective for five years after operations are first commenced. If an election to participate in a unit expense comprised of monthly operating expenses expires or lapses after five years, a risk penalty may only be assessed and collected if the owner seeking the penalty once again complies with this section.
3. Upon its own motion or the request of a party, the commission may include in a pooling order requirements relating to the invitation and election to participate, in which case the pooling order will control to the extent it is inconsistent with this section.

History: Effective December 1, 1996; amended effective May 1, 2004; January 1, 2006; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04, 38-08-08

43-02-03-18.1. Exception location. If upon application for an exception location, the commission finds that a well drilled at the location prescribed by any applicable rule or order of the commission would not produce in paying quantities, that surface conditions would substantially add to the burden or hazard of such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery from oil and gas, the commission may enter an order, after notice and hearing, permitting the well to be drilled at a location other than that prescribed and shall include in such order suitable provisions to prevent the production from that well of more than its just and equitable share of the oil and gas in the pool. The application for an exception well location shall set forth the names of the lessees of adjoining properties and the names of any unleased mineral owners of the adjoining properties. The application shall be accompanied by a plat or sketch accurately showing the property for which the exception well location is sought, the location of the proposed well, and all other completed and drilling wells on this property and on the adjoining properties. The applicant or its attorney shall certify that a copy of the application has been sent ~~by certified or registered mail~~ to all lessees and all unleased mineral owners of properties adjoining the tract which would be affected by the exception location. If the applicant is the lessee of adjoining tracts that would be affected by the exception, the applicant must give notice, as prescribed above, to its lessors of such tracts.

History: Effective January 1, 1983; amended effective May 1, 1990; May 1, 1994; July 1, 1996; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-07

Law Implemented: NDCC 38-08-04, 38-08-07

43-02-03-19. Reserve pit for drilling mud and drill cuttings - Reclamation of surface. In the construction of a drill site, access road, and all associated facilities, the topsoil shall be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event shall this be deemed to be more than the top eight inches [20.32 centimeters] of soil.

In order to assure a supply of proper material or mud-laden fluid to confine oil, gas, or water to its native strata during the drilling of any well, each operator shall provide, before drilling is commenced, a container or reserve pit of sufficient size to contain said material or fluid, and the accumulation of drill cuttings. A reserve pit may be utilized to contain solids and fluids used and generated during well drilling and completion operations, providing the pit can be constructed, used and reclaimed in a manner that will prevent pollution of the land surface and freshwaters. In special circumstances, the director may prohibit construction of a reserve pit or may impose more stringent pit construction and reclamation requirements. Under no circumstances shall reserve pits be used for disposal, dumping, or storage of fluids, wastes, and debris other than drill cuttings and fluids used or recovered while drilling and completing the well.

Reserve pits shall not be located in, or hazardously near, bodies of water, nor shall they block natural drainages. No reserve pit shall be wholly or partially constructed in fill dirt unless approved by the director.

When required by the director, the reserve pit or site or appropriate parts thereof must be fenced.

1. Within a reasonable time, but not more than one year, after the completion of a well, the reserve pit shall be reclaimed. Prior to reclaiming the pit, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a pit reclamation plan. Verbal approval to reclaim the pit may be given. The notice shall include, but not be limited to:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner;
 - c. The location and name of the disposal site for the pit water; and
 - d. A description of the proposed work, including details on treatment and disposition of the drilling waste.

All pit water and oil on the pit must be removed prior to reclamation. Drilling waste should be encapsulated in the pit and covered with at least four feet [1.22 meters] of backfill and topsoil and surface sloped, when practicable, to promote surface drainage away from the reclaimed pit area.

2. Within a reasonable time, but not more than one year, after a well is plugged, the well site, access road, and other associated facilities constructed for the well shall be reclaimed as closely as practicable to original condition, or in the case of a completed well, the unused portion of the site shall be reclaimed. Prior to site reclamation, the operator or the operator's agent shall file a sundry notice (form 4) with the director and obtain approval of a reclamation plan. Verbal approval to reclaim the site may be given. The notice shall include, but not be limited:
 - a. The name and address of the reclamation contractor;
 - b. The name and address of the surface owner;
 - c. A description of the proposed work, including reclamation plans for the access road and other associated facilities; and
 - d. Reseeding plans, if applicable.

All production equipment, waste, and debris shall be removed from the site. Flow lines shall be purged in a manner approved by the director. Flow lines shall be removed if buried less than three feet [91.44 centimeters] below final contour.

3. Gravel or other surfacing material shall be removed and the well site, access road, and other associated facilities constructed for the well shall be reshaped as near as is practicable to original contour.
4. The stockpiled topsoil shall be evenly distributed over the disturbed area, and where applicable the area revegetated with native species or according to the reasonable specifications of the appropriate government land manager or surface owner.
5. Within thirty days after completing any reclamation, the operator shall file a sundry notice with the director reporting the work performed.
6. The director, with the consent of the appropriate government land manager or surface owner, may waive the requirement of reclamation of the site and access road after a well is plugged.

History: Amended effective March 1, 1982; January 1, 1983; May 1, 1992; July 1, 2002; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-22. Defective casing or cementing. In any well that appears to have defective casing or cementing, the operator shall report the defect to the director on a sundry notice (form 4). Prior to attempting remedial work on any casing, the operator must obtain approval from the director and proceed with diligence to conduct tests, as approved or required by the director, to properly

evaluate the condition of the well bore and correct the defect. The director is authorized to require a pressure test to verify casing integrity if its competence is questionable. The director may allow the well bore condition to remain if correlative rights can be protected without endangering potable waters. The well shall be properly plugged if requested by the director.

Any well with open perforations above a packer shall be considered to have defective casing.

History: Amended effective January 1, 1983; May 1, 1992; September 1, 2000; July 1, 2002; May 1, 2004; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-28. Safety regulation. During drilling operations all oil wells shall be cleaned into a pit or tank, not less than forty feet [12.19 meters] from the derrick floor and one hundred fifty feet [45.72 meters] from any fire hazard.

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

No well shall be drilled nor production equipment installed less than ~~three five~~ hundred ~~thirty~~ feet [~~100.58~~ 152.40 meters] from ~~a building or residence~~ an occupied dwelling unless agreed to in writing by the surface owner or authorized by order of the commission.

Subsurface pressure must be controlled during all drilling, completion, and well-servicing operations with appropriate fluid weight and pressure control equipment.

History: Amended effective January 1, 1983; May 1, 1990; September 1, 2000; January 1, 2006; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-30. Notification of fires, leaks, spills, or blowouts. All persons controlling or operating any well, pipeline, receiving tank, storage tank, or production facility into which oil, gas, or water is produced, received, stored, processed, or through which oil, gas, or water is injected, piped, or transported, shall verbally notify the director within twenty-four hours after discovery of any fire,

leak, spill, blowout, or release of fluid. Notification requirements prescribed by this section shall not apply to any leak, spill, or release of fluid that is less than one barrel total volume and remains onsite of a facility. The verbal notification must be followed ~~within ten days~~ by a written report within ten days after cleanup of the incident, if unless deemed ~~necessary~~ unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, cause of the accident, and action taken to prevent reoccurrence. The signature, title, and telephone number of the company representative must be included on such report. If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall also notify the surface owners upon whose land the incident occurred or traveled.

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

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

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-31. Well log, completion, and workover reports. After the plugging of a well, a plugging record (form 7) shall be filed with the director. After the completion of a well, recompletion of a well in a different pool, or drilling horizontally in an existing pool, a completion report (form 6) shall be filed with the director. In no case shall oil or gas be transported from the lease prior to the filing of a completion report unless approved by the director. The operator shall cause to be run an open hole electrical, radioactivity, or other similar log, or combination of open hole logs, of the operator's choice, from which formation tops and porosity zones can be determined. The operator shall cause to be run a gamma ray log from total depth to ground level elevation of the well bore. The operator shall cause to be run a log from which the presence and quality of bonding of cement can be determined in every well in which production or intermediate casing has been set. The obligation to log may be waived by the director if the necessity therefor can be demonstrated to the director's satisfaction. Waiver will be contingent upon such terms and conditions as the director deems appropriate. All logs run shall be available to the director at the well site prior to proceeding with plugging or completion operations. Two copies of all logs run shall be submitted to the director free of charge. Logs shall be submitted as one paper copy and one digital LAS (log ASCII) formatted copy, or a format approved by the director. In addition, operators shall file two copies of drill stem test reports and charts, formation water analyses, core analyses, and noninterpretive lithologic logs or sample descriptions if compiled by the operator.

All information furnished to the director on new permits, except the operator name, well name, location, spacing or drilling unit description, spud date, rig

contractor, and any production runs, shall be kept confidential for not more than six months if requested by the operator in writing. The six-month period shall commence on the date the well is completed or the date the written request is received, whichever is earlier. If the written request accompanies the application for permit to drill or is filed after permitting but prior to spudding, the six-month period shall commence on the date the well is spudded.

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

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

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

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

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

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; May 1, 1994; July 1, 1996; September 1, 2000; July 1, 2002; January 1, 2006; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-55. Abandonment of wells - Suspension of drilling.

1. The removal of production equipment or the failure to produce oil or gas, other than a gas well shut in for lack of a market, for one year constitutes abandonment of the well. The removal of injection equipment or the failure to use an injection well for one year constitutes abandonment of the well. An abandoned well must be plugged and its site must be reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.
2. The director may waive for one year the requirement to plug and reclaim an abandoned well by giving the well temporarily abandoned status. This status may only be given to wells that are to be used for purposes related to the production of oil and gas. If a well is given temporarily abandoned status, the well's perforations must be isolated, the integrity of its casing must be proven, and its casing must be sealed at the surface, all in a manner approved by the director. The director may extend a well's temporarily abandoned status beyond one year. A fee of one hundred dollars shall be submitted with each application to extend the temporary abandonment status of any well.
3. In addition to the waiver in subsection 2, the director may also waive the duty to plug and reclaim an abandoned well for any other good cause found by the director. If the director exercises this discretion, the director shall set a date or circumstance upon which the waiver expires.
4. The director may approve suspension of the drilling of a well. If suspension is approved, a plug must be placed at the top of the casing to prevent any foreign matter from getting into the well. When drilling has been suspended for thirty days, the well, unless otherwise authorized by the director, must be plugged and its site reclaimed pursuant to sections 43-02-03-34 and 43-02-03-19.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1990; May 1, 1992; August 1, 1999; January 1, 2008.

General Authority: NDCC 38-08-04

Law Implemented: NDCC 38-08-04

43-02-03-63. Regulation of pools. To prevent waste and to protect correlative rights, when the commission finds that total production in an area significantly exceeds the reasonable market demand and undue marketing discrimination is occurring, the commission ~~shall~~ may prorate or distribute the allowable production among the proration units ~~and fractional proration units in a pool~~ upon a reasonable basis through rules, regulations, or orders pertaining to any pool or area after notice and hearing.

~~After notice and hearing, the commission, in order to prevent waste and protect correlative rights, may promulgate rules, regulations, or orders pertaining to any pool.~~

History: Amended effective January 1, 1983; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-64. Rate of producing wells. In allocated oil and gas pools the owner or operator of any ~~producing~~ proration unit shall not produce from any ~~proration~~ the unit during any proration period more oil or gas than the allowable production from such units as shown by the proration schedule, provided that such owners or operators shall be permitted to maintain a uniform rate of production for each unit during the proration period. In order to maintain a uniform rate of production from the pool during any proration period, any operator may produce a total volume of oil and gas equal to that shown on the applicable proration schedule plus or minus five days ~~top unit allowable~~, and any such overproduction shall may be deducted from the total allowable for the well in the second month following; ~~and any such underproduction shall be added to the total allowable on the well for the second month following; provided, that if the underproduction shall exceed five days top unit allowable for the unit, none of the underproduction shall be added to the allowable for the second month following, except as provided in section 43-02-03-65.~~

~~A fractional proration unit shall be allowed to produce only in the proportion that the acreage content thereof bears to forty acres [16.19 hectares].~~

~~Where the commission has adopted special established spacing rules in any pool, wells drilled in accordance with those special rules shall be allowed to produce a daily amount of oil and gas equal to the top unit allowable as set by the commission multiplied by a factor, the numerator of which shall be the number of acres assigned to a spacing unit in the pool and the denominator of which shall be forty proration units shall consist of spacing units.~~

History: Amended effective January 1, 1983; September 1, 2000; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-65. Authorization for production, purchase, and transportation. When necessary the commission shall hold a hearing to set the normal proration unit allowable allowables for the state.

The commission shall consider all evidence of market demand for oil and gas, including sworn statements of individual demand as submitted by each purchaser or buyer in the state, and determine the amount to be produced from all pools. The amount so determined will be allocated among the various pools in accordance with existing regulations and in each pool in accordance with regulations governing each pool. In allocated pools, effective the first day of each proration period, the commission will issue a proration schedule which will

authorize the production of oil and gas from the various units in strict accordance with the schedule, and the purchase and transportation of such production. Allowable for wells completed after the first day of the proration period will become effective from the date of well completion. A supplementary order will be issued by the commission to the operator of a newly completed or recompleted well, and to the purchaser or transporter of the production from a newly completed or recompleted well, establishing the effective date of completion, the amount of production permitted during the remainder of the proration period, and the authority to purchase and transport same from said proration units and fractional proration units unit.

~~When it appears that a single normal unit allowable will not supply the amounts of oil or gas required by the markets available, the commission may designate separate marketing districts within the state and prescribe separate normal unit allowables for each district.~~

~~A marginal unit shall be permitted to produce any amount of oil which it is capable of producing up to and including the top unit allowable for that particular pool for the particular proration period; provided the operator of such unit shall file with the commission for a supplemental order covering the difference between the amount shown on the proration schedule and the top unit allowable for the pool. The commission shall issue such supplemental order setting forth the daily amount of production which such unit shall be permitted to produce for the particular proration period and shall furnish such supplemental order to the operator of the unit and a copy thereof to the transporter authorized to transport the production from the unit.~~

~~Underages may be made up or unavoidable and lawful overages compensated for during the third proration period next following the proration period in which such underages or overages occurred.~~

~~All back allowables authorized for purchase will be published in a proration schedule. No back allowable, except as provided in section 43-02-03-64, shall be placed on the proration schedule unless requested by the producer. In requesting back allowables, the producer shall indicate the reason for the underage and the director may approve any portion of the request. The usual grounds for back allowable which may be considered are (1) failure of purchaser to transport assigned allowable, (2) mechanical failure or repairs to well equipment during the proration period, and (3) testing or gathering engineering data.~~

~~In order to preclude premature plugging, a common purchaser within its purchasing area is authorized and directed to make one hundred percent purchases from units of settled production producing ten barrels or less daily of oil, or sixty thousand cubic feet [169.9 cubic meters] or less daily of gas, in lieu of ratable purchases or takings. Provided such purchaser's takings are curtailed below ten barrels per unit of oil daily, or below sixty thousand cubic feet [169.9 cubic meters] per unit of gas daily, then such purchaser is authorized and directed to purchase~~

~~equally from all such units within its purchasing area regardless of their producing ability insofar as they are capable of producing.~~

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

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-66. Application for allowable on new oil wells. No well shall be placed on the proration schedule until a completion report (form 6) has been filed with the director.

~~The first four wells in discovery well of any field or pool hereafter discovered shall be allowed to produce any amount of oil it is capable of producing but in no case to exceed a maximum of two hundred barrels of oil per day if the same can be done without waste and provided further, that a market can be obtained for such oil produced: at a maximum efficient rate until such time as proper spacing is set for the pool, and shall produce thereafter, only pursuant to the general proration rules and regulations of the commission.~~

~~The allowable production provided for above shall continue in effect for a period of not more than eighteen months from the date of completion of the first well in the field or pool, or until the completion of the fifth well in the pool, whichever shall occur first~~

~~The producer or operator of any well claiming a discovery allowable under this section shall report to the director, not later than the tenth of each month, the results of a potential test, made on or about the first day of the month, in accordance with the provisions of section 43-02-03-40.~~

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; September 1, 2000; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-67. Oil proration. ~~The allocation between pools shall be in accordance with the top of the producing depth of the pool and the corresponding proportional factor set out below. The depth to the casing shoe or the top perforation in the casing, whichever is the higher in the first well completed in a pool determines the depth classification for the pool. Top unit allowables shall be calculated for each of the several ranges of depth in the following proportions: At the beginning of each calendar month, the distribution or proration to the respective proration units in each pool shall be changed in order to take into account all new wells which have been completed and were not in the proration schedule during the previous calendar month. Where any well is completed between the first and last day of the calendar month, its proration unit shall be assigned an allowable in accordance with whether such unit is marginal or nonmarginal, beginning at seven a.m., on the date of completion and for the remainder of that calendar month.~~

	Pool Depth Range	Proportional Factor
from	0 to 5,000 feet	1.00
	5,000 to 6,000 feet	1.33
	6,000 to 7,000 feet	1.77
	7,000 to 8,000 feet	2.33
	8,000 to 9,000 feet	3.00
	9,000 to 10,000 feet	3.77
	10,000 to 11,000 feet	4.67
	11,000 to 12,000 feet	5.67
below	12,000 feet	6.75

~~The normal unit allowable shall be set by the commission and shall be uniform for all proration units within all pools producing from five thousand feet [1524 meters] or above.~~

~~Top unit allowables for each range of depth shall then be determined by multiplying the normal unit allowable by the proportional factor for each depth range as set out in the table hereinabove; any fraction of a barrel shall be regarded as a full barrel for both normal and top unit allowables.~~

History: Amended effective January 1, 1983; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-68. Gas-oil ratio limitation. In allocated pools containing a well or wells producing from a reservoir which contains both oil and gas, each proration unit shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top proration unit oil allowable ~~for the depth of the pool and~~ currently assigned to the pool. In the event the commission has not set a gas-oil ratio limit for a particular oil pool, the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] of gas for each barrel of oil produced.

A gas-oil limit shall be placed on all allocated oil pools, and all proration units ~~or fractional proration units~~ having a gas-oil ratio exceeding the limit for the pool shall be adjusted unless previously exempted by the commission after hearing, in accordance with the following formula:

1. Any proration unit which, on the basis of the latest official gas-oil ratio test has a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which it is located, shall be permitted to produce ~~daily~~ that number of barrels of oil which shall be determined by multiplying the current top proration unit allowable by the fraction, the numerator of which shall be the limiting gas-oil ratio for the pool and the denominator of which shall be the official gas-oil ratio test of the well.

2. Any unit containing a well or wells producing from a reservoir which contains both oil and gas shall be permitted to produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the ~~top proration~~ unit allowable currently assigned to the pool.
- ~~3. A marginal unit shall be permitted to produce the same total volume of gas which it would be permitted to produce if it were a nonmarginal unit.~~
- ~~4. All gas produced with the current oil allowable determined in accordance with this rule shall be deemed to have been lawfully produced.~~

All proration units to which gas-oil ratio adjustments are applied shall be so indicated in the proration schedule with adjusted allowables stated. The adjustment shall be made effective on the first day of the month following that in which the gas-oil ratio tests were reported for the pool, as set forth in the special field rules applicable to the pool.

In cases of new pools the limiting gas-oil ratio shall be two thousand cubic feet [56.63 cubic meters] per barrel until such time as changed by the commission after a hearing. After notice and hearing, the commission shall determine or redetermine, the specific gas-oil ratio limit which is applicable to a particular allocated oil pool.

History: Amended effective January 1, 1983; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

43-02-03-69. Allocation of gas production. When the commission determines that allocation of gas production in a designated gas pool is necessary to prevent waste, and to protect correlative rights, the commission, after notice and hearing, shall consider the nominations of purchasers from that gas pool and other relevant data, and shall fix the allowable production of that pool, and shall allocate production among the proration units ~~and fractional proration units~~ in the pool delivering to a gas transportation facility upon a reasonable basis.

The commission shall include in the proration schedule of such pool any proration unit ~~or fractional proration unit~~ which it finds is being unreasonably discriminated against through denial of access to a gas transportation facility which is reasonably capable of handling the type of gas producible from such proration unit ~~or fractional proration unit~~.

History: Amended effective January 1, 1983; January 1, 2008.

General Authority: NDCC 38-08-04, 38-08-06

Law Implemented: NDCC 38-08-04, 38-08-06

CHAPTER 43-02-07

43-02-07-06. Permit required. A permit is required prior to the commencement of operations for the drilling, boring, excavating, construction, or substantial modification of a geothermal energy extraction facility. A permit is not required for ~~private residential heating or cooling purposes, nor for facilities that use a treated municipal water supply as its sole source of water.~~ A permit may be required by the state department of health or the water utility, or both, for facilities hooked into a municipal water supply. The state geologist may grant a permit for up to ten years upon receipt of a permit application on a form provided by the commission, the furnishing of a bond (if required) as provided in section 43-02-07-08, and the payment of a fee of one hundred dollars for each commercial facility permit or twenty dollars for each residential facility permit. The state geologist may waive the fee requirement if the applicant is an instrumentality of the state. The application for a permit must be accompanied by an accurate plat showing the location of the proposed facility with reference to the nearest lines of a governmental section.

The state geologist may deny an application for permit if the construction of a geothermal energy extraction facility would violate correlative rights or would cause, or tend to cause, waste, damage to the environment, or contaminate underground sources of drinking water. The applicant may appeal the decision of the state geologist to the commission.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992; January 1, 2008.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03, 38-19-04

43-02-07-15. Plugging and abandonment. Notice of intention to abandon any geothermal energy extraction facility must be filed with the state geologist by the producer prior to the commencement of plugging operations, on a form prescribed by the state geologist. The notice must state the name and location of the well or well field and the name of the producer.

Before any geothermal energy extraction facility is abandoned, it must be plugged in a manner which will confine permanently all subsurface minerals, oil, gas, and water in the separate strata originally containing them. This operation must be accomplished by the use of mud-laden fluid, cement, and plugs, used singly or in combination as may be approved by the state geologist. Casing must be cut off three feet [.91 meters] below the surface of the ground. The top plug in any hole must be set at least three feet [.91 meters] below ground level, and the land surface must be restored as nearly as possible to its original condition.

Shallow closed-loop systems using an approved heat transfer fluid may, upon approval of the state geologist, be abandoned by permanently sealing all of the loop ends and burying all pipes at least three feet [.91 meters] below ground. Closed-loop systems ~~containing anything other than approved heat transfer fluids~~ must be completely purged of heat transfer fluid prior to plugging. This fluid must

be disposed of in accordance with the provisions of North Dakota Century Code chapter 61-28 and other state laws and regulations.

History: Effective March 1, 1984; amended effective October 1, 1990; December 1, 1992; January 1, 2008.

General Authority: NDCC 38-19-03

Law Implemented: NDCC 38-19-03

CHAPTER 43-02-12

43-02-12-06. Notification of work performed. Within thirty days following the completion of geophysical exploration by any person within this state, such person shall file with the commission a seismic completion report in the form of an affidavit deposing that the seismic project was completed in accordance with chapter 43-02-12, and incorporating a postplot map displaying the actual source point location and the location of all undetonated (loaded) holes, blowouts, and flowing holes or any other problem holes the director deems necessary. If obtained by the contractor, the latitude and longitude of each source and receiver point shall be submitted to the commission to the nearest tenth of a second.

Any person plugging a seismic hole must submit a plugging report and an affidavit of plugging detailing the line number, shot point number, hole depth, drill type, hole condition (wet, dry), bentonite used (sacks, capsules), and the depth at which the surface plug was set, and all other information necessary to describe the conditions of the shot hole.

The director is authorized to suspend operations of the entire geophysical exploration project, or any portion thereof, if further activity will cause excessive damage to the surface of the land. The geophysical exploration activity may continue upon the director approving a plan to mitigate the damage.

History: Effective December 1, 1997; amended effective September 1, 2000; May 1, 2004; January 1, 2008.

General Authority: NDCC 38-08.1

Law Implemented: NDCC 38-08.1-02, 38-08.1-05

