

CHAPTER 33-33-03 FOOD VENDING RULES

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SECTION 1: Section 33-33-03-01 is amended as follows:

33-33-03-01. Definitions.

The following definitions shall apply in the interpretation and the enforcement of this chapter:

1. "Adulterated" means the condition of a food (a) if it bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health; (b) if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by rule, or in excess of such tolerance if one has been established; (c) if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; (d) if it has been processed, prepared, packed, or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (e) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.
2. "Approved" means acceptable to the ~~state department of health~~ based on a determination as to conformance with appropriate standards and good public health practice.
3. "Closed" means fitted together snugly leaving no openings large enough to permit the entrance of vermin.
4. "Commissary" means catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, and directly from which vending machines are serviced.

5. "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds, and sanitizing solutions which may contact it.
6. "Department" means the ~~state~~ department of health and human services.
7. "Easily cleanable" means readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.
8. "Employee" means any operator or any person employed by the operator who handles any food to be dispensed through vending machines, or who comes into contact with food-contact surfaces of containers, equipment, utensils, or packaging materials, used in connection with vending machine operations, or who otherwise services or maintains one or more such machines.
9. "Food" means any raw, cooked, processed edible substance, or combination of substances, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
10. "Food-contact surfaces" means those surfaces of equipment and utensils with which food normally comes in direct contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.
11. "Machine location" means the room, enclosure, space, or area where one or more vending machines are installed and operated.
12. "Misbranded" means the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, including signs or placards displayed in relation to such products, which is false or misleading, or which violates any applicable state or local labeling requirements.
13. "Operator" means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more vending machines, or provides space for vending machines.
14. "Perishable food" means any food of such type or in such condition as may spoil.
15. "Person" means an individual, or a firm, partnership, company, corporation, trustee, association, or any public or private entity.

16. ~~"Potentially hazardous food" means any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms.~~
17. ~~"Safe temperature" as applied to potentially hazardous~~time and temperature control for safety food, means temperatures of ~~forty-five~~forty-one degrees Fahrenheit [~~7.225.0~~7.225.0 degrees Celsius] or below, or one hundred ~~forty~~thirty-five degrees Fahrenheit [~~60~~57.22 degrees Celsius] or above.
18. ~~"Sanitize" means effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.~~
19. ~~"Single-service articles" means cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles; straws, place mats, napkins, doilies, wrapping materials; and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic synthetic, or readily destructible materials, and which are intended for one usage only, then to be discarded.~~
19. "Time and temperature control for safety food" means a food that requires time and temperature control for safety to limit pathogenic microorganisms growth or toxin formation.
20. "Vending machine" means any self-service device which upon insertion of a coin, coins, ~~or bills, tokens, or an electronic payment method,~~ dispenses food without the necessity of replenishing the device between each vending operation. The term also includes all freezers, refrigerators, and ovens used to store or prepare prepackaged, preserved foods regardless of the manner in which the food is taken from the freezer, refrigerator, or oven. Excluded from the definition of food vending machines ~~shall be~~are bottled or canned non-time and temperature control for safety food soft drink dispensers; prepackaged ice dispensers and freezers; prepackaged candy, cookie, cracker, or similar ~~nonpotentially hazardous~~non-time and temperature control for safety food dispensers; and gumball, nut, and panned candy dispensers.

History: Effective August 1, 1988; amended effective January 1, 2026.

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

Law Implemented: NDCC 19-02.1-24

SECTION 2: Section 33-33-03-02 is amended as follows:

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 ~~where~~ if that person 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 ~~thirty~~forty dollars. The plan review application fee for an operator is fifty percent of the annual license fee when a plan review application is required. For a person's initial license application, an annual license fee and a license application administration fee of one hundred dollars is required in addition to fifty percent of the annual license fee when a plan review application is required.
2. Any person desiring to operate one or more vending machines in North Dakota shall make an application in writing for each vending machine 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~~is not ~~be~~ transferable. The operator's license ~~shall~~must 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~~The order shall be effective immediately and ~~shall apply only~~ applies 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~~must be reinstated.

History: Effective August 1, 1988; amended effective January 1, 2006; April 1, 2008; January 1, 2014; January 1, 2026.

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

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