

NORTH DAKOTA ADMINISTRATIVE CODE

Supplements 110 through 113

July 1988
August 1988
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Prepared by the Legislative Council staff
for the
Administrative Rules Committee

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TITLE 4.5

Board of Addiction Counseling Examiners

AUGUST 1988

STAFF COMMENT: Title 4.5 contains all new material but is not underscored so as to improve readability.

ARTICLE 4.5-01

GENERAL ADMINISTRATION

Chapter
4.5-01-01 Organization of the Board

CHAPTER 4.5-01-01
ORGANIZATION OF THE BOARD

Section
4.5-01-01-01 Organization of Board of Addiction Counseling
Examiners

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 seven members appointed by the governor. Four members are licensed

practicing addiction counselors, two members are lay persons, and one member is a director or coordinator of an addiction counselor training program. Each board member serves a term of three years. No member may serve more than two successive terms on the board.

3. **Board officers.** The board annually elects from its membership a chairperson, vice chairperson, and a treasurer. The board may hire a secretary at its discretion.
4. **Inquiries.** Inquiries regarding the board may be addressed to:

Board of Addiction Counseling Examiners
1406 2nd Avenue NW
Mandan, ND 58554

History: Effective August 1, 1988.

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

Law Implemented: NDCC 43-45-03

ARTICLE 4.5-02

ADDICTION COUNSELING EXAMINERS LICENSURE

Chapter	
4.5-02-01	Initial Licensure and Renewals
4.5-02-02	Code of Professional Conduct
4.5-02-03	Grievances

CHAPTER 4.5-02-01- INITIAL LICENSURE AND RENEWALS

Section	
4.5-02-01-01	Licensure Application
4.5-02-01-02	Licensure Renewal
4.5-02-01-03	Fees
4.5-02-01-04	Academic Requirements
4.5-02-01-05	Practicum Requirements
4.5-02-01-06	Internship
4.5-02-01-07	Examinations
4.5-02-01-08	Reciprocity
4.5-02-01-09	Approved Training Program
4.5-02-01-10	Internship Sites
4.5-02-01-11	Continuing Education

4.5-02-01-01. **Licensure application.** An application for a license to addiction counsel must be made to the state board of addiction counseling examiners on forms approved by the board upon request. Each application for a license must be accompanied by each of the following:

1. A required fee.
2. An official transcript verifying academic requirements.
3. An official document verifying practicum requirements.
4. Documentation verifying completion of a minimum one year full-time internship.
5. Documentation verifying a passing score on the prescribed examinations or, if applicable, documentation of participation into an existing training program as of July 1, 1987. Such program must have been approved by the department of human services.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-02. **Licensure renewal.** Licenses are renewable annually providing that each of the following conditions have been met:

1. Proof of completion of required continuing education units by December first of renewal year.
2. License is not in suspension or revocation.
3. Renewal application form completed and submitted prior to December first of each year.
4. Renewal application fee submitted.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-03. **Fees.** The board has adopted the following fee payment schedule:

- | | |
|----------------------------|----------|
| 1. Initial license fee: | \$100.00 |
| 2. Renewal of license fee: | \$ 50.00 |

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

Law Implemented: NDCC 43-45-04

4.5-02-01-04. Academic requirements. Academic requirements related to the licensing of addiction counselors must be completed at an accredited college or university. A bachelors degree is required after January 1, 1992. The following academic courses are also required:

1. Psychopathology, the equivalent to a three-quarter-hour course in abnormal psychology from the upper division level.
2. Theories of personality, the equivalent to a three-quarter-hour course from an upper division level.
3. Theories in practice of psychotherapy, the equivalent to a three-quarter-hour course from an upper division level.
4. Pharmacology, the equivalent to a three-quarter-hour course from an upper division level, focusing on the physiological and pathological effects of mood altering drugs.
5. Introduction to group counseling, the equivalent to a three-quarter-hour course from an upper division level.
6. Introduction to individual counseling, the equivalent to a three-quarter-hour course from an upper division level.
7. Advanced counseling or marriage and family counseling, or both, the equivalent to a three-quarter-hour course from an upper division level.
8. Dynamics of addiction, the equivalent to a three-quarter-hour course from an upper division level.
9. Professional ethics, the equivalent to a one-quarter-hour course, including confidentiality laws, commitment laws, counselor code of ethics, patient rights, and referral procedures.
10. Marriage and the family, the equivalent to a three-quarter-hour course from an upper division level.
11. Child psychology or development, the equivalent to a three-quarter-hour course from an upper division level.
12. Adolescent psychology or development, the equivalent to a three-quarter-hour course from an upper division level.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-05. Practicum requirements. A practicum is successful completion of a full-time nonsalaried training experience in a board-approved training program. Completion of this requirement must be verified by the training program or consortium. The practicum is a minimum of nine months of clinical training and must be a combination of inpatient and outpatient treatment. Each component must be completed in a separate facility unless specially approved by the board. The full-time clinical experience may include a maximum of six academic credits exclusive of credits for the practicum during the nine-month period. If additional academic work is taken during the clinical experience, a minimum of twelve months of clinical training is required.

The clinical practicum may be extended due to additional supervisory recommendations, individual circumstances, health circumstances, or other personal matters. Extension of the clinical portion of training is the responsibility of the director of the training program.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-06. Internship. The internship is a minimum of a twelve-month full-time addiction counseling professional experience or employment under the supervision of an approved clinical supervisor in a licensed addiction treatment facility approved by the board for internship training. Completion of the internship is documented by an evaluation from the intern's supervisor or the clinical director, or both, of the program. An individual may remain an intern for a maximum of two years before completion of all examinations is required.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-07. Examinations. Two levels of examinations occur in the licensing process:

1. A written examination consisting of a knowledge based objective test.
2. An oral examination using a performance based case presentation method.

The written examination may be taken when offered any time in the clinical training process. Successful completion of the written examination is required before an individual is eligible to take the case presentation method of examination. Only individuals who have completed their clinical training and successfully completed the written examination will be considered eligible for the case presentation method oral examination.

In the case of an applicant certified as having passed the case presentation method in another state, the applicant would be required to have successfully completed the North Dakota written examination before being considered for the addiction counselor license.

Applicants may take the examination when offered. The individual will be responsible for fee payment with each examination. An individual may remain an intern for only two years before being required to be licensed in North Dakota.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-08. Reciprocity. Out-of-state applicants who have completed training in addiction counseling in another state or in a work or training setting which has not been approved by the board of addiction counseling examiners must document equivalencies in all areas of training including academic coursework, clinical training, and work experience and must also satisfactorily complete the written and performance examinations if required by the board. A person need not reside in the state or be employed in the state to make application or be licensed in North Dakota.

Related clinical professional applicants who have related clinical proficiencies must document equivalencies in all areas of training including the academic coursework, clinical training, and work experience and must satisfactorily complete the written and performance examinations as prescribed by the board.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-09. Approved training program.

1. Each training program or consortium for addiction counseling training must be approved biannually by the board of addiction counseling examiners. The training program or consortium must provide at a minimum, an application which must include documentation of the academic and clinical training experiences, proposed training methods, conditions, and schedules for supervision; syllabi of academic courses or other evidence of the academic quality of those courses; evidence of licensure of addiction treatment facilities; evidence of certification of academic institutions involved, clinical supervisors' credentials and other information requested by the board. There must be a minimum of one clinical supervisor per trainee in residence.

An approved training program or consortium must meet the following conditions:

- a. Practicum training experiences must meet a combination of inpatient and outpatient addiction treatment experience in an approved addiction training program. The inpatient and outpatient experience must be provided in separate facilities unless specially approved by the board.
 - b. Each program may establish the length of the practicum with a nine-month minimum requirement.
 - c. Academic instructor and clinical training supervisors must be board approved to perform their teaching and clinical supervisory function.
2. Training programs must have clinical supervisors that meet the following criteria:
- a. Have two years experience as a certified or licensed addiction counselor; and
 - b. Be approved by the board as a clinical supervisor.
3. Academic instructors of training programs must have an appropriate academic degree and otherwise be qualified in the specific field of instruction, and be a member of a college or university academic staff in order to be approved.
4. Individualized training proposals may be board approved when they are submitted by and under the auspices of an approved training program or consortium, and are approved by the board providing information as required by the board.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-10. Internship sites. Facilities may apply to the board for approval as an internship site by providing the following information:

1. Completed application form.
2. Names of approved clinical supervisors within the facility.
3. Plan of supervision. This plan must be approved by the board on an individual site basis.
4. Evidence of licensure as an addiction treatment facility.

All individuals working in the state as addiction counselors and who are not either licensed or in an approved training program or consortium as an addiction counselor trainee must be in an approved internship site.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-01-11. Continuing education. Continuing education credit is an award given to a participant of 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 certification or 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 be related to the practice of addiction counseling and have the potential to increase the attendees proficiency in addiction counseling.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

CHAPTER 4.5-02-02 CODE OF PROFESSIONAL CONDUCT

Section

4.5-02-02-01	Code of Professional Conduct
4.5-02-02-02	Disciplinary Action
4.5-02-02-03	Ethics Subcommittee
4.5-02-02-04	Complaint Procedure

4.5-02-02-01. Code of professional conduct. The board has adopted and incorporated into this title a code of professional conduct for addiction counselors. The following constitutes unacceptable professional conduct for an addiction counselor and shall subject the counselor or training program to sanction.

1. Exploiting relationships with clients such as participating in or soliciting sexual relationships during the time of services and for twelve months following the termination of services.
2. Taking financial advantage of client, or using one's position within an agency to enhance one's private practice or the private practice of others for personal gain.
3. Entering into any illegal acts with a client.

4. Participating in, condoning, or being an accessory to dishonesty, fraud, deceit, or misrepresentation in the practice of addiction counseling.
5. Not providing clients with accurate and complete information regarding the extent and nature of the services available to them.
6. Convicted of a criminal act which affects the practice of the profession. (North Dakota Century Code section 12.1-33-02.1)
7. Violating the federal or state confidentiality client care regulation statutes.
8. Violating the federal or state discrimination statutes or regulations.
9. Refusal to seek adequate and appropriate treatment for any illness or disorder which interferes with professional functioning or ability to perform the basic expected functions, or both, of an addiction counselor.
10. Using misrepresentation in the procurement of licensing as an addiction counselor or knowingly assisting another in the procurement of licensing through misrepresentation. Misrepresentation of professional qualifications, certifications, accreditations, affiliation, and employment experiences.
11. Failure to report through the proper channels the incompetent, unethical, or illegal practice of any licensed addiction counselor who is providing addiction counseling.

History: Effective August 1, 1988.

General Authority: NDCC 43-45-04

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

4.5-02-02-02. Disciplinary action. A violation of any of the grounds for discipline contained in this section may result in the following:

1. Denial of license.
2. Reprimand.
3. Suspension of license.
4. Revocation of license.
5. Revocation of training program or internship site approval.

History: Effective August 1, 1988.

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

4.5-02-02-03. Ethics subcommittee. An ethics subcommittee must be established for the sole purpose of investigating and making recommendations on the merits of any complaint received and to present the facts and its recommendations to the board of examiners.

The ethics subcommittee shall consist of three board members. The members must be chosen by the chairperson and confirmed by the board. They shall serve two-year terms beginning at the time of appointment.

History: Effective August 1, 1988.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04

4.5-02-02-04. Complaint procedure. The complainant shall submit a written statement describing the nature of the complaint and the facts supporting the complaint, and:

1. All complaints must be signed by the complainant and contain complainant's home address.
2. The ethics subcommittee chairperson shall acknowledge receipt of the complaint and request further information if necessary.
3. The ethics subcommittee shall decide if the complaint merits investigation. If the complaint has no merit, the complainant must be so notified.
4. All hearings and appeals will be conducted in accordance with North Dakota Century Code chapter 28-32.

History: Effective August 1, 1988.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04, 43-45-07

CHAPTER 4.5-02-03 GRIEVANCES

Section
4.5-02-03-01 Grievance Procedure

4.5-02-03-01. Grievance procedure. Grievances must be processed in accordance with North Dakota Century Code chapter 28-32.

History: Effective August 1, 1988.
General Authority: NDCC 43-45-04
Law Implemented: NDCC 43-45-04

TITLE 24
Electrical Board

AUGUST 1988

24-02-01-21. Examination and annual license fees.

1. The examination fees are as follows:

<u>a. Master examination</u>	<u>\$50.00</u>
<u>b. Journeyman examination</u>	<u>\$25.00</u>
<u>c. Class B examination</u>	<u>\$40.00</u>
<u>d. Apprentice registration</u>	<u>\$10.00</u>

2. The annual license fees are as follows:

<u>a. Master license</u>	<u>\$50.00</u>
<u>b. Journeyman license</u>	<u>\$25.00</u>
<u>c. Class B license</u>	<u>\$40.00</u>

History: Effective August 1, 1988.

General Authority: NDCC 43-09-05

Law Implemented: NDCC 43-09-13

TITLE 32
Cosmetology, Board of

JULY 1988

32-01-01-01. Organization of board of cosmetology.

1. **History and functions.** The 1927 legislative assembly passed a Cosmetology Practice and Training Act, codified as North Dakota Century Code chapter 43-11. This chapter requires the governor to appoint a state board of cosmetology. The board regulates and licenses all ~~hairdressers~~ and cosmetologists, instructors, students, schools, and salons. It is the duty of the board to protect the public against poorly trained ~~hairdressers~~ and cosmetologists as well as to protect the public health, welfare, and safety through the prevention of the creating and spreading of infectious and contagious diseases.
2. **Board membership.** The board consists of three members appointed by the governor. Each member has a three-year term, and the terms are so arranged that only one term expires on June thirtieth of each year.
3. **Board officers.** Each year the board meets and elects a president and secretary from their own number. ~~The secretary of the board keeps all of the records of the board~~ All records of the board shall be kept at the board office.
4. **Board office.** The address of the board office is:

North Dakota State Board of
Cosmetology
1102 South Washington
~~P.O. Box 2177~~ Suite 310
Bismarck, North Dakota ~~58502~~ 58501

History: Amended effective October 1, 1987; July 1, 1988.
General Authority: NDCC 28-32-02.1

Law Implemented: NDCC ~~28-32-02.1~~ 43-11-03, 43-11-04

32-01-02-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 43-11, except:

1. "Cosmetology establishment" includes businesses, premises, and schools required to have a certificate of registration from the North Dakota board of ~~hairdressers and cosmetologists~~ cosmetology pursuant to North Dakota Century Code chapter 43-11.
2. "Cosmetology salon" means the same as ~~hairdresser and cosmetologist~~ cosmetology shop as defined in subsection 4 of North Dakota Century Code section 43-11-01.
3. "Cosmetology school" means any school teaching any or all of the practices of cosmetology.
4. "Good repair" means that an item is soil free with no holes, frayed wires, or tears in covering and fully operational for the purpose intended.
5. "Sanitized" means rendered free of dust, foreign material, and agents of disease or infestation through use of effective cleaning and disinfecting processes.
6. "Sanitizer" means a container holding a sanitizing agent which is large and deep enough to completely submerge the tools and implements to be disinfected.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~28-32-02, 43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-01, ~~43-11-13, 43-11-15, 43-11-16~~ 43-11-11

32-01-03-01. Comply with laws. All cosmetology salons and schools and all operators, manager-operators, instructors, student instructors, students, and demonstrators shall comply with the rules contained in this title and all applicable federal, state, and local laws, ordinances, rules, regulations, and codes.

General Authority: NDCC ~~43-11-13~~ 43-11-05, 43-11-35

Law Implemented: NDCC 43-11-11 through ~~43-11-35~~ 43-11-36

32-01-03-02. Board determination. Any investigation, inquiry, or hearing by the board regarding North Dakota Century Code chapter ~~43-11~~ or the rules in this title may be held or undertaken by, or before any member or members of, the board. The finding or order of such member or members shall be deemed to be the finding of the board when approved and confirmed by the board. Repealed effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~, ~~43-11-32~~
Law Implemented: NDCC ~~43-11-13~~, ~~43-11-32~~

32-01-03-03. Hearings and appeals. All board hearings shall be held pursuant to the provisions of North Dakota Century Code chapter ~~43-11~~ and the applicable provisions of North Dakota Century Code chapter ~~28-32~~. All appeals from board action taken under the provisions of North Dakota Century Code chapter ~~43-11~~ or this title, regarding the refusal to grant, suspension, or revocation of a certificate, may appeal to the district court of the county in which the person feeling aggrieved resides. Repealed effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~, ~~43-11-33~~, ~~43-11-34~~
Law Implemented: NDCC ~~43-11-13~~, ~~43-11-32~~, ~~43-11-33~~, ~~43-11-34~~

32-01-03-04. Board to determine qualifications of applicant. The sufficiency of the qualifications of all applicants for admission to board examinations of all students and student instructors or for registration or licensing of students, student instructors, instructors, demonstrators, operators, and manager-operators shall be determined by the board. The board may delegate such authority to the secretary of the board, and anyone feeling aggrieved by the board secretary's decision may in writing request a hearing before the board on the matter. The board hearing shall be conducted pursuant to the provisions of North Dakota Century Code chapters 43-11 and 28-32.

General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-13~~, ~~43-11-15~~, ~~43-11-16~~, ~~43-11-19~~, ~~43-11-21~~, ~~43-11-22~~, ~~43-11-24~~, ~~43-11-25~~, ~~43-11-26~~, ~~43-11-27~~, ~~43-11-28~~, ~~43-11-29~~, ~~43-11-30~~, ~~43-11-31~~, ~~43-11-32~~, ~~43-11-35~~

32-01-03-05. Invalid rules. If any provision or section of the rules in this title is declared to be invalid or unlawful, the declaration shall not operate to render the remaining rules of this title void.

General Authority: NDCC ~~43-11-11~~, ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-11~~ through ~~43-11-35~~

32-02-01-01. Rules posted. The owner or manager of every cosmetology salon and school shall keep a copy of the rules of sanitation posted in a conspicuous place in each shop salon and school for the information and guidance of all persons employed or studying therein and the public generally.

General Authority: NDCC ~~43-11-11~~ 43-11-05
Law Implemented: NDCC ~~43-11-11~~

32-02-01-02. Space dimensions and requirements.

1. **Cosmetology salon.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology salon shall have a minimum work space of one hundred fifty square feet [13.94 square meters] for a cosmetology salon operated by a licensed manager-operator. In addition to such work space, the cosmetology salon ~~shop~~ shall have a reception room, supply room, toilet facilities, facilities to maintain sanitary conditions, and hallways. There shall be a minimum of an additional thirty square feet [2.79 square meters] for each additional operator or manager-operator in the ~~shop~~ salone.
 - a. Separate entrance. Each cosmetology salon shall have a separate public entrance and exit approved by the board.
 - b. Cosmetology salon separate. Each cosmetology salon shall be separated from living quarters and any other business by a solid, nontransparent wall from floor to ceiling containing no openings or doors.
 - c. Resident salons. Each cosmetology salon in a residential building shall maintain an entrance separate from the entrance to living quarters and remaining space, and entrances through garages or any other rooms are not permitted. There shall be a solid wall with no openings or doors between the ~~shop~~ salon and living quarters and remaining space.
 - d. Mobile home salons. Mobile homes, motor homes, trailers, or any type of recreational vehicles containing a cosmetology salon shall be permanently set on a foundation. Each cosmetology salon in such mobile home, motor home, trailer, or any type of recreational vehicle shall maintain an entrance separate from the living quarters and remaining space, and there shall be a solid wall with no openings or doors between the ~~shop~~ salon and living quarters and remaining space.
2. **Cosmetology schools.** To maintain adequate conditions of sanitation and in the interest of the public health and welfare, each cosmetology school shall have a minimum space of three thousand square feet [278.71 square meters] of floor space, and such floor space shall include a business office, reception room, clinic laboratory, practice room, dispensary, student lounge, two lavatories, hallways, and classrooms for teaching a minimum of forty students. An additional thirty square feet [2.79 square meters] of floor space per student shall be required for each student enrolled over the original forty students.

- a. Separate entrance. Each cosmetology school shall have a separate public entrance and exit approved by the board.
- b. ~~Hairdresser~~ and Cosmetologist school separate. Each ~~hairdresser and cosmetologist~~ school shall be separated from living quarters and any other business by a solid nontransparent wall from floor to ceiling containing no openings or doors.

History: Amended effective July 1, 1988.
 General Authority: NDCC ~~43-11-11~~ 43-11-05
 Law Implemented: NDCC 43-11-11

32-02-01-03. Lighting and fire - Exhaust fans - Fire extinguishers. Each cosmetology establishment shall be well lighted (fifty foot-candles of light), and well ventilated, with an exhaust fan in the work area capable of removing two hundred forty cubic feet {6.80 cubic meters} of air per minute per worker amounting to approximately twelve air changes per hour in the room with replacement air provided pursuant to good engineering practices, and each shall maintain on the premises a fire extinguisher the minimum size of which shall be five pounds {2.27 kilograms} for class A, B, and C fires or five pounds {2.27 kilograms} carbon dioxide with a traveling footage of fifty square feet {4.65 square meters} for a minimum square footage of one hundred fifty square feet {13.94 square meters}. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

1. Each cosmetology establishment shall have artificial light in an amount yielding fifty foot-candles intensity for each operating station.
2. Each cosmetology establishment shall be equipped with an exhaust fan pursuant to good engineering practices.
3. Each cosmetology establishment shall maintain on the premises a five-pound [2.27-kilogram] ABC fire extinguisher mounted in public view. All employees and students shall be instructed in the proper operation and use of the fire extinguisher.

History: Amended effective July 1, 1988.
 General Authority: NDCC ~~43-11-11~~ 43-11-05
 Law Implemented: NDCC 43-11-11

32-02-01-04. Sanitary premises. All walls, floors, furniture, and fixtures of each cosmetology establishment shall be sanitary and kept clean and soil free at all times. All furniture shall be covered with washable fabric.

1. Walls, floors, and fixtures must be kept clean and in good repair at all times.

2. All floors must be kept clean and free of hair and other debris at all times and must be in good repair. Carpeting is not permitted in the working area. Carpeting will only be permitted in the reception and drying areas only.
3. Windows and mirrors should be clean.
4. Shampoo bowls must be free from all hair, implements, and debris and cleansed immediately after each use.
5. The dispensing area must be neat and clean. The supply area may not be accessible to the public.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-05. Water supply and waste disposal. Each cosmetology establishment shall be equipped with an adequate supply of hot and cold running water and proper plumbing. Each ~~shop~~ salon and school shall:

1. Have a safe water supply, approved by the local health authority or the state department of health and consolidated laboratories.
2. Dispose of sewage and other liquid wastes in a sanitary manner, approved by the local health authority or the state department of health and consolidated laboratories.
3. Store and collect solid waste so as to avoid health hazards, rodent harborages, insect breeding areas, and accidents.
4. Have solid wastes collected at least once each week, and an adequate number of approved covered containers ~~(galvanized cans)~~ shall be provided for storage of solid waste pending collection.

All plumbing in every cosmetology establishment shall comply with the state and local plumbing code.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-06. Personal hygiene. Every operator, manager-operator, instructor, and student, while on the cosmetology establishment premises, shall be neat and clean in person and in attire, and free from any infectious or communicable disease.

1. ~~Uniform:~~ Each operator, ~~manager-operator, instructor, student instructor,~~ and student shall wear a clean washable outer

garment and professional shoes while on the shop or school premises. No slacks or uniforms may be worn unless they are a coordinated uniform outfit

Attire. All employees of a salon shall wear clean washable professional attire.

2. **Hands.** Every operator, manager-operator, instructor, student instructor, and student shall wash one's hands with soap and water immediately before serving each client.
3. **Carrying combs.** Combs or other instruments shall not be carried in uniform pockets.
4. **Contagious diseases.** No operator, manager-operator, instructor, student instructor, or student who has an infectious or contagious disease shall knowingly serve the public in a cosmetology establishment while such disease is in a communicable stage. (Common colds and flu are two common examples of contagious diseases.)
5. **Smoking.** No operator, manager-operator, instructor, student instructor, or student shall smoke while actively engaged in serving the public.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-07. **First aid kit.** Every cosmetology establishment shall have and maintain a complete first aid kit in a readily accessible location on the premises.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-08. **Sanitary articles.** All tools, instruments, shampoo bowls, and other articles which come in contact with a client shall be washed and disinfected before use on each client. Each cosmetology establishment shall have at least one wet sanitizer ready for use at all times containing a disinfectant solution. The use of any instrument which cannot be rendered sanitary is prohibited.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-09. **Laundry and storage of cloth items.**

1. Clean cloth and linen items. All clean cloth and linen towels, robes, and similar items shall be kept in an enclosed, dustproof cabinet in cosmetology establishments until used.
2. Soiled cloth items and laundering. No cloth or linen towel, robe, or similar item shall be used more than once without proper laundering, and any cloth or linen towel, robe, or similar item used once shall be considered soiled and shall be placed in a proper receptacle until properly laundered and disinfected. All laundry for a cosmetology establishment may be laundered in a washing machine with laundry detergent, and all such laundry not done in the cosmetology establishment in strict compliance with these requirements shall be sent to a commercial laundry or provided by a commercial service. All such items laundered at a cosmetology establishment shall be washed and rinsed in water of at least one hundred sixty degrees Fahrenheit [~~71.1~~ degrees Celsius], and such items shall not be washed or rinsed in cold or cool water. Each towel, robe, and linen article may be used only once and then must be properly laundered. After use, and until laundering, each item must be placed in a fire retardant container. All soiled towels and linens must be laundered in a washing machine with laundry detergent in water of a temperature of at least one hundred sixty degrees Fahrenheit [71.1] degrees Celsius. Commercial laundering is acceptable.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-10. Method of disinfection. The disinfection process shall consist of three steps, and the elimination of any one of the steps shall render the process ineffective. The three steps to be followed are:

1. Cleaning. Clean hair out of combs, brushes, tools, and instruments and wash them thoroughly with hot water and a synthetic detergent in order to remove all traces of soil.
2. Rinse. Thoroughly rinse in clear water to remove all traces of detergent from the combs, brushes, tools, and instruments.
3. Immersion. Completely immerse combs and brushes in an appropriate utensil with an effective germicidal solution prepared and used in accordance with directions on the label, after which the combs, brushes, tools, and instruments shall be removed, dried, and stored in a clean, covered, and dustproof cabinet in the cosmetology establishment until used.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-11. Particular aspects of disinfecting.

1. **Germicides.** In disinfecting tools, instruments, and implements, any department of health and consolidated laboratories approved germicide prepared specifically for germicidal treatment of tools, instruments, and implements shall be used in accordance with the directions of the manufacturer. All germicidal solutions shall be fresh, clean, and free from contaminants.
2. **Fluids, creams, and powders.** All fluids, semifluids, creams, and powders shall be kept in a clean, covered container at all times and shall be dispensed with a clean sanitized spatula or from a shaker, dispenser pump, or spray-type container. Spatulas made of a washable, nonabsorbent material may be sanitized and used again, and spatulas made of wood shall be discarded after use. Fluids, semifluids, creams, and powders shall be applied only by sanitary, disposable applicators, and the applicators shall be discarded after use.
3. **Tools and instruments.** All permanent wave equipment, clips, rollers, pins, shampoo and comb-out capes, nets, as well as all other tools, instruments, and implements shall be kept in a clean, sanitized condition at all times. Neck strips shall be used in lieu of a clean towel whenever applicable in order to prevent such materials from coming in contact with the skin or hair of each client. Such neck strips shall not be used more than once, and all other reusable items shall be washed, sanitized, and disinfected before use on each client.
4. **Containers.** All bottles and containers shall be correctly and distinctly labeled to disclose their contents, and all bottles and containers containing poisonous substances shall be so designated.
5. **Waste container.** Each work station in a cosmetology establishment shall be provided with a covered waste container which shall be emptied and washed daily. All chemical waste material must be deposited immediately in a closed fire-retardant container and frequently disposed of in a sanitary manner.
6. **Protective coverings.** All protective coverings used on a client shall be kept clean and in good condition, and such protective coverings shall be stored in a closed cabinet when not in use.
7. **Wet and dry sanitizers.** Each cosmetology establishment shall have wet and dry sanitizers of sufficient size and quantity to sanitize all tools, instruments, and implements of the establishment, and such sanitizers shall be readily accessible to all persons serving the public therein. Such sanitizers

shall contain a commercial sanitizing agent approved by the department of health and consolidated laboratories and the board, and such sanitizing agent shall be used according to the manufacturers' directions.

8. **Metal instruments.** All metal tools, instruments, and implements shall be sanitized with a seventy percent ethyl alcohol or a ninety-five percent isopropyl alcohol solution after each use and stored in a dry sanitizer until the next use. A small amount of oil may be added to the alcohol solution when used to sanitize metal instruments.
9. **Storage of supplies.** Every cosmetology establishment shall have a separate cabinet or storage area for the storage of supplies, and any supplies containing any caustic or other material harmful to humans shall be stored in a place not readily accessible to clients or the public.
10. **Combs and brushes.** Each operator, manager-operator, instructor, and student shall have a minimum of twelve professional combs and twelve professional brushes. All shall be in good usable condition.
11. **Electric tools and outlets.** All electric tools, instruments, and implements, including but not limited to blowers and irons, shall be kept in proper stands or holders when not in use, and each cosmetology establishment shall have a sufficient number of electrical outlets so that no cord or electrical connection constitutes a hazard, fire or otherwise, to the public or persons employed or learning in the establishment.
12. Brush rollers and neck brushes. No salon or school may use brush rollers of any kind or neck brushes.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-12. Toilet facilities. All cosmetology establishments shall have adequate toilet facilities conveniently located and readily accessible to the public patronizing the establishment. Such toilet facilities shall be clean, sanitary, and properly maintained at all times.

General Authority: NDCC ~~43-11-11~~ 43-11-05

Law Implemented: NDCC 43-11-11

32-02-01-13. Pets. No animals, birds, or other pets (except guide dogs for the blind) shall be permitted in any cosmetology establishment.

General Authority: NDCC ~~43-11-11~~ 43-11-05
Law Implemented: NDCC 43-11-11

32-02-01-14. **Infants and children.** No cosmetology establishment premises shall be used in any manner for the care or babysitting of infants or small children.

General Authority: NDCC ~~43-11-11~~ 43-11-05
Law Implemented: NDCC 43-11-11

32-02-01-15. **Inspections.** Certificates of registration for cosmetology establishments shall only be issued to establishments inspected and approved by the board. A board inspection and approval shall be required for all new ~~shops~~ salons and schools as well as when changes of ownership or address take place. All salon premises must be open for inspection during normal business hours. If a salon is not open every day, the salon owner must inform the board office of the days the salon is open for business.

History: Amended effective July 1, 1988.
General Authority: NDCC ~~43-11-11~~ 43-11-05
Law Implemented: NDCC 43-11-11, 43-11-13, 43-11-17

32-03-01-01. **Salon applications.** All persons, firms, associations, corporations, partnerships, and other entities desiring to operate a cosmetology salon shall make application to the board for a certificate of registration not less than ~~four~~ six weeks prior to commencing business. The application shall be made on a form provided by the board and shall be accompanied by the fee of ~~fifty~~ seventy-five dollars. All renewal applications of cosmetology salons shall be made to the board before December thirty-first in each year. Renewal applications shall be accompanied by the fee of ~~ten~~ twenty-five dollars. Four Six weeks prior to any change of ownership, name, location, or address, a cosmetology salon shall apply for reregistration with the board, and the same information, documents, and registration fee required of new applicants shall be submitted to the board. For rural salons, owners shall supply a detailed map indicating the salon's exact location and directions for driving to that salon.

History: Amended effective July 1, 1988.
General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-17, 43-11-28

32-03-01-02. **Floor plan.** Every application for a certificate ~~to operate a cosmetology salon~~ of registration shall be accompanied by a detailed floor plan of the proposed salon premises, ~~and the floor plan shall be~~ drawn to scale. The floor plan shall show entrances, exits, electrical outlets, water and sewer facilities, air-conditioning, ~~ventilation~~ exhaust fans, locations of equipment, reception room, supply

room, toilet facilities, hallways, and facilities to maintain sanitary conditions. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the salon premises.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-11, ~~43-11-13~~, ~~43-11-15~~

32-03-01-03. Zoning. Every new application and every application involving a change of location for a cosmetology salon shall be accompanied by written proof of the proper zoning board's approval of the location to be used as a hairdresser and cosmetologist salon. Repealed effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~

Law Implemented: NDCC ~~43-11-11~~, ~~43-11-13~~, ~~43-11-17~~

32-03-01-03.1. Salon transfer. Purchasers of existing salons shall meet the requirements of a new salon.

History: Effective July 1, 1988.

General Authority: NDCC ~~43-11-05~~

Law Implemented: NDCC 43-11-11

32-03-01-04. Certificates displayed. Every cosmetology salon shall conspicuously display its certificate of registration in the reception area of the salon.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-14

32-03-01-05. Separate establishments. Cosmetology salons shall be located separately from cosmetology schools.

General Authority: NDCC ~~43-11-16~~ 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-16

32-03-01-06. Changes in operators or manager-operators. Every cosmetology salon shall notify the board in writing of any change in its operators or manager-operators prior to such change whenever possible but not more than five days after such change.

1. Name, address, and certificate number. The written notification provided to the board by the salon shall contain the name, current home address, and certificate number of each operator or manager-operator employed or terminated.

2. **Current staff.** Each cosmetology salon shall be responsible to keep the board informed by written notice of the current operators and manager-operators employed.
3. **Manager-operator.** Each cosmetology salon shall notify the board in writing the name, home address, and certificate number of the manager-operator responsible for the operation, management, and conduct of the salon. Any changes in the manager-operator responsible shall be reported to the board in writing pursuant to the provisions of this section.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~ 43-11-14, 43-11-15, ~~43-11-21~~, ~~43-11-26~~, 43-11-28

32-03-01-07. Manager-operator. Every cosmetology salon shall have a manager-operator who shall be responsible for the operation, conduct, and management of the salon, and the manager-operator shall be present on the salon premises at all times during business hours. Each salon owner or manager-operator shall provide the office with an accurate schedule of the days and hours the salon is open for business.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-15, ~~43-11-26~~

32-03-01-08. Tools and supplies. Each cosmetology salon shall maintain tools, supplies, instruments, and equipment adequate for the number of operators and manager-operators employed and adequate to serve the public in cosmetology.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-11, ~~43-11-13~~, ~~43-11-15~~

32-03-01-09. Signs.

1. **Entrance signs.** Every cosmetology salon shall display and maintain a sign, that is clearly visible to anyone approaching the entrance to the salon. The sign shall designate the establishment as a cosmetology establishment and give the name of the salon.
2. **Signs for ~~shop~~ salon areas.** The entrances to the various rooms and areas of each salon premises shall be clearly and suitably marked with signs.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-11, 43-11-13

32-03-01-10. Booth space. In the event any salon premises are divided into booth space allotments to be leased to others, each person, firm, association, partnership, corporation, or other entity whose name appears on the application as owner of the cosmetology salon shall be responsible for the sanitary conditions of the salon and shall be responsible for the entire salon and its operation being in compliance with federal, state, and local laws, ordinances, rules, regulations, and codes. The owner shall be responsible for keeping the entire salon open for inspection by the board or board inspectors, and the board shall examine and inspect the entire salon premises regardless of any booth space allotments.

Each booth space allotment shall be licensed as a separate salon having a separate and independent certificate of registration, and each booth space allotment shall be operated only by a manager-operator.

1. **Compliance as salon.** Each booth space allotment shall be self-sufficient and meet all of the requirements of a salon contained in North Dakota Century Code chapter 43-11 and this article, except that there may be common reception areas and common toilet facilities.
2. **Certificates displayed.** The certificate of registration for each booth space allotment shall be displayed in the booth.
3. **Signs.** For each booth, the signs required of cosmetology salons shall be displayed at the entrances to the premises and at the entrance to each booth.
4. **Premises used.** Each manager-operator operating a booth space salon shall be responsible for all professional services performed and for all of the premises used.
5. **Entrances.** All entrances shall be approved by the board.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-11, ~~43-11-13~~, 43-11-15, 43-11-17

32-03-01-11. Salon discontinuance. Each cosmetology salon intending to discontinue its operation shall notify the board office in writing at least thirty days prior to the final date of operation.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15

32-04-01-01. School applications. All persons, firms, associations, partnerships, corporations, and other entities desiring to operate a cosmetology school shall make application to the board for a certificate not less than ~~four weeks~~ three months prior to commencing business. The application shall be made on a form provided by the board

and shall be accompanied by the fee of ~~one hundred~~ five hundred dollars. All renewal applications of cosmetology schools shall be made to the board before December first in each year. Renewal applications shall be accompanied by the fee of ~~one~~ two hundred dollars. ~~Four~~ Six weeks prior to any change of ownership, name, location, or address, a cosmetology school shall apply for reregistration with the board, and the same information, documents, bond, and registration fee required of new applicants shall be submitted to the board.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-16, 43-11-17

32-04-01-02. Floor plan. Every application for a certificate of registration to conduct a cosmetology school shall be accompanied by a detailed floor plan of the proposed school premises, ~~and the floor plan shall be~~ drawn to scale. The floor plan shall show entrances, exits, electrical outlets, water and sewer facilities, air-conditioning, ~~ventilation~~ exhaust fans, locations of equipment and the arrangement of the business office, reception room, classrooms, clinic laboratory, dispensary, student lounge, toilet facilities, practice room, and hallways. A revised floor plan shall be filed with the board in the event of any change of location or major changes in the school premises.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~ 43-11-11, 43-11-16

32-04-01-03. Bond. Each cosmetology school application and renewal application shall be accompanied by a bond in the penal sum of ten thousand dollars running in favor of the board, as agent of the state. Each cosmetology school shall maintain its bond in force at all times the school certificate is in effect. Repealed effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~

Law Implemented: NDCC ~~43-11-16, 43-11-20.1~~

32-04-01-04. Certificates displayed. Every cosmetology school shall conspicuously display its certificate of registration in the reception area of the school.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-14

32-04-01-05. Separate establishments. Cosmetology schools shall be located separately from cosmetology salons.

General Authority: NDCC ~~43-11-16~~ 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-06. Student registration. Each cosmetology school shall register students taking a complete course of study before the tenth day of each month.

1. **Student contract.** Each cosmetology school shall provide the board with a true copy of the student contract for each student and student instructor enrolled. The student contract shall contain the entire contract between the parties, including a complete list of tools, books, and supplies provided to the student or student instructor. Such student contract shall be provided to the board by the tenth day of the month when each student and student instructor is enrolled.
2. **Registration.** Each cosmetology school shall furnish the board for each student and student instructor enrolled with the completed registration and education forms provided by the board. The registration and education forms shall be accompanied by a copy of the birth certificate for each such student and student instructor. All such materials shall be provided to the board by the tenth of the month when each student and student instructor is enrolled.
3. **Credit before approval.** No student or student instructor shall be given credit for any time prior to the receipt and approval of the student's or student instructor's registration by the board.
4. **Reregistration.** Upon reregistration for any reason, the provisions of this section shall be complied with where applicable.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-16, 43-11-19

32-04-01-07. Student transfers.

1. **Domestic transfers.** A student of a North Dakota cosmetology school desiring to transfer to another school shall petition the school and the board before transferring, and approval of the board must be given in writing before any transfer is made.
2. **Foreign transfer.** Any student of a cosmetology school located in another state, country, or territory desiring to transfer to a North Dakota school shall make an application to the board in the same manner as a new student. A certified copy of the student's records shall accompany the application.

Approval of the board must be given in writing before any transfer is made.

3. Credit hours.

- a. North Dakota school credit hours will be credited for five years.
- b. Out-of-state credit hours will be credited for two years.
- c. All credit hours will be honored if the student completes the course in the student's home state. If the student transfers before completing the course, only credit for two-thirds of the student's credit hours will be honored.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-15, 43-11-16, 43-11-19, ~~43-11-20.3~~

32-04-01-08. Discontinuance of students. Each cosmetology school shall notify the board in writing within five days after the discontinuance of the course. The written notification shall contain the name of the student, the last known address or home address of the student, the reason for the discontinuance, a statement of the hours completed by the student, and the amount of refund to the student or the reason for no refund to the student. Upon reentrance to the school, an application shall be submitted to the board in the same manner as new student applications.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-19, ~~43-11-20.3~~

32-04-01-09. Change in instructors. Every cosmetology school shall notify the board in writing of any change in the staff of instructors prior to the change whenever possible but not more than five days after the change.

1. **Name, address, and certificate number.** The written notification provided to the board by the school shall contain the name, current home address, and certificate of registration number of each instructor employed or terminated.
2. **Current staff.** Each cosmetology school shall be responsible to keep the board informed by written notice of the current staff of instructors.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, ~~43-11-27~~ 43-11-17

32-04-01-10. School discontinuance. Each cosmetology school intending to transfer ownership or discontinue its operation shall notify the board in writing at least sixty days prior to the final date of operation, and all proper and full credits for all students and student instructors currently enrolled shall be certified in writing to the board for the protection of the students and student instructors.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-19, ~~43-11-20~~

32-04-01-11. Attendance reports. Each cosmetology school shall submit a written monthly report to the board office. The report shall be on forms furnished by or acceptable to the board and shall contain the full name of each student attending during the calendar month, the date the student enrolled, the number of hours of training had by each student during the calendar month, and the total number of hours of training credited the student since the date of enrollment. The monthly report shall be filed with the board not later than the tenth day of the succeeding month.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-19, ~~43-11-20~~,
43-11-22

32-04-01-12. Signs and advertising.

1. **Entrance sign.** Every cosmetology school shall display and maintain a sign, clearly visible to anyone approaching the entrance to the school, designating it as a school and giving the name of the school. The sign shall have lettering of not less than twelve inches [30.48 centimeters].
2. **Student services sign.** Every cosmetology school shall prominently display signs stating "all services performed by students". The signs shall be clearly visible in the clinic laboratory area and the reception area.
3. **Signs for entrances to school areas.** The entrances to the various rooms and areas of each school premises shall be clearly and suitably marked with signs.
4. **Price signs.** Signs listing prices charged for clinic work shall be prominently displayed in the reception area.
5. **Advertising.** All advertising of cosmetology schools shall disclose that services are performed by students.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~ 43-11-11, 43-11-16, 43-11-18

32-04-01-13. **Equipment and library.** Each cosmetology school shall have the following minimum equipment and library:

1. **Minimum equipment:**

First 25 students	26-50	51-75	76-100
1-Chart of anatomy			
a. Bones			
b. Muscles			
c. Nerves			
d. Circulatory system			
e. Skin			
1-Blackboard four feet by six feet [1.22 meters by 1.83 meters] for each theory room			
2-Master dry sterilizers or electric sterilizers			
2-Large wet sterilizers	3	4	6
4-Shampoo basins	6	8	10
6-Facial chairs	8	10	12
12-Hair dryers	15	25	30
6-Manicure tables	8	10	10
12-Work stations with mirrors	25	35	45
1-Therapeutic lamp two-colored bulbs			
300-Cold wave rods and other cold wave supplies			
6-Waste containers	10	14	20
1-Full length mirror			
2-Soiled towel containers	4	8	10
2-Towel cabinets			
2-Supply cabinets			
1-Bulletin board - conspicuously located			
Solution dispensers adequate for enrollment			
Fireproof cabinet for school and student records			
Adequate supply of facial supplies			

2. **Minimum school library:**

- a. Standard dictionary.
- b. Dictionary of medical words.
- c. Standard textbook.
- d. References on iron curling.
- e. References on hair straightening.

- f. References on hair coloring.
- g. Copy of cosmetology law.
- h. Copy of sanitary rules and regulations.
- i. Copy of minimum prices.
- j. Trade magazines.
- k. Slides and films pertaining to cosmetology.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~ 43-11-11, 43-11-16

32-04-01-14. Tools and supplies. ~~Each~~ The cosmetology school shall provide each student with the tools and supplies listed in the student contract; ~~and lost or broken tools and supplies shall be replaced by the school.~~

1. **Mannequin.** Each cosmetology school shall furnish each student with a mannequin.
2. **Removing tools and supplies.** Registered students shall not remove any tools, supplies, or equipment from the school premises without permission of the school management.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-16

32-04-01-15. School rules and regulations. Upon enrollment, each student shall be furnished with a copy of rules and regulations of the cosmetology school.

1. **Receipt.** Each student receiving a copy of the school rules and regulations shall sign a receipt for the copy and the school shall keep the receipt in its file for each student.
2. **Rules and regulations filed with the board.** Each cosmetology school shall furnish the board with a true copy of its rules and regulations; ~~and each~~ School rules must include rules for absenteeism and tardiness. No penalties may be imposed that are not written in school rules and regulations. The school shall be responsible for providing the board with any changes or amendments to the rules and regulations.
3. **Students to read rules.** Each student shall read and be familiar with the school rules and regulations.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-13~~ 43-11-11, 43-11-16

32-04-01-16. **Lockers.** Every cosmetology school shall provide each student with a locker and lock. Each student locker shall be of adequate size for the storage of personal effects, books, tools, instruments, and etc.

General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-13~~ 43-11-11, 43-11-16

32-04-01-17. **Name tags.** Each instructor, student instructor, and student shall wear name tags bearing the person's name. The name tags shall be worn at all times while on the premises of a cosmetology school.

General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-13~~, 43-11-16, ~~43-11-19~~, ~~43-11-20~~

32-04-01-18. **Curriculum.** Each cosmetology school shall teach branches and areas of cosmetology, which shall include theory and practice in subjects required, provided, and approved by the board.

1. **Hours.** The course of instruction shall consist of one thousand eight hundred hours over a period of twelve months.
2. **Theory classes.** Each cosmetology school shall conduct theory classes during the first hour of each day of the week ~~except Saturday and Sunday~~ for a minimum of four days per week.
3. **Student credit hour and credit record.** The requirements set forth in the student hour and credit record provided by the board shall be completed within a twelve-month period unless the student has excused absences approved by the board. Each cosmetology school shall keep the student hour and credit record current for each student, and the record shall be current by the fifth of each month the student is enrolled. Within five days of a student's completion of the course, transfer, or discontinuance, the school shall furnish the board with the record.

History: Amended effective July 1, 1988.
General Authority: NDCC ~~43-11-13~~ 43-11-05
Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-22

32-04-01-19. **Credit and deductions.** No student shall be given credit, full or partial, for any time or work unless the time or work is wholly performed and completed by the student. No earned credit hours

of any student shall be deducted by any cosmetology school for any reason whatsoever.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-22

32-04-01-20. Class schedule. Each cosmetology school shall keep a class schedule, and the class schedule shall be posted on the school bulletin board two weeks in advance of the classes to be held. The schedule shall also show the classes already held. The school shall maintain a true copy of the schedules in its permanent files, and the schedules shall be subject to the inspection and approval of the board.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16

32-04-01-21. Instructors at school. Each instructor of a cosmetology school shall be present in classrooms of the school during classes, and each instructor shall be present and supervise all student work and activities on the school premises. All work stations in the school clinic laboratory shall be open and arranged so instructors can supervise each student on the clinic floor. Instructors and student instructors shall not provide any professional service to the public while employed at a hairdresser and cosmetologist cosmetology school.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-27

32-04-01-22. Student compensation and guaranteed position. A student registered in a cosmetology school may provide clinic services, while attending and on the premises of a school, if the student is under the immediate direction and supervision of a licensed instructor. No student shall be paid a salary or commission for the performance of the clinic services. A student may be assisted in obtaining a position after graduation from a hairdresser and cosmetologist cosmetology school, but no student shall be guaranteed any position by the cosmetology school.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-20

32-04-01-23. Certain student use prohibited. Students shall not be called from any theory class to perform services on the public, and students shall not be permitted to instruct or teach fellow students.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16

32-04-01-24. **Student complaints.** A student of a cosmetology school may file a complaint with the board concerning the school in which the student is enrolled. A student complaint shall be made to the board in writing clearly and concisely stating the complaint, and the complaint must be signed by the student.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16

32-04-01-25. **Examinations.**

1. **School examinations.** Each student must have successfully passed thirty-six weekly examinations and secured a seventy-five percent average in the cosmetology school final examination in both written and practical work before making application to take the board examination. The marks obtained in the school examination shall be retained by the school until the student has successfully passed the board examination.
2. **Board examinations.** The time, place, and date of board examinations shall be set by the board, and there shall be a minimum of four board examinations per year. ~~Any student failing a board examination shall be required to take a minimum of an additional two hundred hours training, and one hundred of such hours shall be in the subject or subjects failed in the board examination.~~
3. Failing applicant. Applicants who fail any portion of the examination shall reregister and pay the required fee before being permitted to retake the portion of the examination they have failed.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC ~~43-11-13~~, 43-11-16, 43-11-22, 43-11-23

32-04-01-26. Solicitor's permit. All persons who solicit or sell any course of instruction shall obtain a permit. Applications must be accompanied by a surety bond in the penal sum of one thousand dollars for each solicitor. The permit fee is twenty-five dollars.

History: Effective July 1, 1988.

General Authority: NDCC 43-11-05

Law Implemented: NDCC 43-11-16

32-05-01-01. **Operators.** Every person desiring to be licensed by the board as an operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to operators and shall make

application to the board for a certificate prior to commencing any activity as an operator.

1. **Fee and proof.** The application shall be accompanied by the required proof of qualification applicable to the applicant and the examination fee of ~~fifteen~~ twenty dollars or the fee of ~~thirty-five~~ dollars for applicants licensed as a hairdresser and cosmetologist operator other than in North Dakota.
2. **Renewal.** Every operator shall renew the operator's certificate by annually making written application to the board before December thirty-first each year, and such renewal application shall be accompanied by the ~~eight-dollar~~ ten dollar fee.
3. **Penalty fee.** If the licensee fails to renew the licensee's license following the expiration date, a penalty fee of ten dollars is required.
4. **Change of name or address.** Every operator shall notify the board in writing of any change of name or change of residence within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.
- ~~4-~~ 5. **Certificates displayed.** Every operator shall conspicuously display the operator's certificate of registration in the booth or work area of the cosmetology salon.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-21, 43-11-22, 43-11-23, 43-11-24, 43-11-25, 43-11-28

32-05-01-02. Manager-operators. Every person desiring to be licensed by the board as a manager-operator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to manager-operators and shall make written application to the board for a certificate prior to commencing any activity as a manager-operator to register for the manager-operator's examination.

1. **Fee and proof.** The application shall be accompanied by the fee of ~~ten~~ forty dollars and the required proof of qualification.
2. **Renewal.** Every manager-operator shall renew the manager-operator's certificate by annually making an application to the board before December thirty-first each year, and the

renewal application shall be accompanied by the ~~ten-dollar~~ fifteen dollar fee.

3. Penalty fee. If the licensee fails to renew the licensee's license following the expiration date, a penalty fee of ten dollars is required.
4. Change of name or address. Every manager-operator shall notify the board in writing of any change of name or change of residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.
- ~~4~~ 5. Certificates displayed. Every manager-operator shall conspicuously display the manager-operator's certificate of registration in the booth or work area of the cosmetology salon.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, 43-11-22, 43-11-23,
43-11-26, 43-11-28

32-05-01-03. Instructors. Every person desiring to be an instructor shall have the qualifications and passed the examination required by North Dakota Century Code chapter 43-11 applicable to student instructors and instructors and shall make application in writing to the board pursuant to North Dakota Century Code section 43-11-27 and this section.

1. Renewal. Every instructor shall renew the instructor's certificate by annually making written application to the board before December thirty-first each year, and the renewal application shall be accompanied by the ~~ten-dollar~~ fifteen dollar fee and evidence of attendance at a board-approved seminar during the previous year.
2. Penalty fee. If the licensee fails to renew the licensee's license following the expiration date, a penalty fee of ten dollars is required.
3. Seminars. Every instructor shall attend a board-approved seminar annually. Before attending any seminar, every instructor shall apply in writing to the board for approval of the seminar.
- ~~3~~ 4. Change of name or address. Every instructor shall notify the board in writing of any change of name or change of

residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and certificate number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the certificate number.

- ~~4~~ **5. Certificate displayed.** Every instructor shall conspicuously display the instructor's certificate of registration in the clinic laboratory area of the cosmetology school.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, ~~43-11-16~~, ~~43-11-18~~, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-04. Student instructors. Every person desiring to be a student instructor shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to student instructors and shall make application in writing to the board before enrollment in a registered cosmetology school. Upon board approval of the application, the person may enroll in a licensed cosmetology school.

1. **Fee.** There shall be ~~no~~ a ten dollar fee for application and registration of student instructors with the board.
2. **Contents and certification.** The cosmetology school of the approved student shall certify in writing to the board the name, age, and qualifications of the student instructor, and the board shall record the information in a student instructor register.
3. **Application.** Upon completion of the required course prescribed for student instructors, the student instructor shall make written application to the board on a form provided by the board, and the written application shall be accompanied by a fee of ~~ten~~ thirty dollars.
4. **Examination.** The time, place, and date of the examinations for instructor's certificates shall be set by the board. The examination fee is fifty dollars.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, 43-11-14, ~~43-11-16~~, ~~43-11-18~~, 43-11-22, 43-11-23, 43-11-27, 43-11-28

32-05-01-05. Demonstrators. Every person desiring to be licensed by the board as a demonstrator shall have the qualifications required by North Dakota Century Code chapter 43-11 applicable to

demonstrators and shall make written application to the board for a license prior to commencing any activity as a demonstrator.

1. **Fee and proof.** The application shall be accompanied by the fee of ~~five dollar~~ fifteen dollar and the required proof of qualification.
2. **Renewal.** Every demonstrator shall renew the demonstrator's license by annually making an application to the board before December thirty-first each year, and the renewal application shall be accompanied by the ~~five dollar~~ fifteen dollar fee.
3. **Change of name or address.** Every demonstrator shall notify the board in writing of any change of name or change of residence address within thirty days after the change. In the event of a change of name, the notice shall state the full name before the change and the full name after the change together with the current address and the license number. In the event of a change of residence address, the notice shall state the full name, the new residence address, and the license number.

History: Amended effective July 1, 1988.

General Authority: NDCC ~~43-11-13~~ 43-11-05

Law Implemented: NDCC 43-11-13, ~~43-11-15,~~ ~~43-11-16,~~ 43-11-27, 43-11-28

TITLE 33

Health and Consolidated Laboratories, Department of

JULY 1988

33-17-01-02. **Definitions.** For the purpose of this chapter the following definitions shall apply:

1. "Best available technology" or "BAT" means the best technology, treatment techniques, or other means which the department finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting maximum contaminant levels for synthetic organic chemicals, any best available technology must be at least as effective as granular activated carbon.
2. "Community water system" means a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.
- ~~2.~~ 3. "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.
- ~~3.~~ 4. "Cross connection" means any connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.
- ~~4.~~ 5. "Department" means the North Dakota state department of health and consolidated laboratories.
- ~~5.~~ 6. "Disinfectant" means any oxidant, including, but not limited to, chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process,

that is intended to kill or inactivate pathogenic micro-organisms.

- ~~6-~~ 7. "Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.
- ~~7-~~ 8. "Halogen" means one of the chemical elements chlorine, bromine, or iodine.
- ~~8-~~ 9. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user except those resulting from corrosion of piping and plumbing caused by water quality are excluded from this definition.
- ~~9-~~ 10. "Maximum total trihalomethane potential" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of twenty-five degrees Celsius [77 degrees Fahrenheit] or above.
- ~~10-~~ 11. "Noncommunity water system" means a public water system that is not a community system and primarily provides service to transients.
12. "Nontransient noncommunity water system" means a public water system that is not a community water system and that regularly serves at least twenty-five of the same persons over six months per year.
- ~~11-~~ 13. "Person" means an individual, corporation, company, association, partnership, municipality, or any other entity.
- ~~12-~~ 14. "Potable water" means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the physical, chemical, biological, or radiological quality conforming to applicable maximum permissible contaminant levels.
- ~~13-~~ 15. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. A public water system is either a "community" water system, a "nontransient noncommunity", or a "noncommunity" water system.

- ~~14.~~ 16. "Sampling schedule" means the frequency required for submitting drinking water samples to a certified laboratory for examination.
- ~~15.~~ 17. "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation, and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation, and maintenance for producing and distributing safe drinking water.
- ~~16.~~ 18. "Supplier of water" means any person who owns or operates a public water system.
- ~~17.~~ 19. "Total trihalomethanes" means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures.
- ~~18.~~ 20. "Trihalomethane" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.
- ~~19.~~ 21. "Water system" means all sources of water and their surroundings and shall include all structures, conducts, and appurtenances by means of which the water is collected, treated, stored, or delivered.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-02, 61-28.1-03

33-17-01-03. Coverage. This chapter applies to all public water systems except those public water systems which meet all of the following conditions:

1. Consists only of distribution and storage facilities and does not have any collection and treatment facilities;
2. Obtains all of its water from a public water system to which these regulations apply;
3. Does not sell water to any person; and
4. Is not a carrier which conveys passengers in interstate commerce.

Inorganic chemical monitoring is required of all applicable community water systems. Nitrate monitoring is required of all noncommunity water systems. Organic chemical monitoring is required of all applicable community water systems. Volatile synthetic organic chemical monitoring

is required of all nontransient noncommunity water systems. Unregulated contaminants monitoring is required of all applicable community and nontransient noncommunity water systems. Turbidity monitoring is required of all applicable community and noncommunity water systems. Radioactivity monitoring is required of all applicable community water systems. Microbiological monitoring is required of all community and noncommunity water systems.

The department may require confirmation samples for positive or negative results. If a confirmation sample is required by the department, then the sample result should be averaged with the first sampling result and used for compliance determination. The department has the discretion to delete results of obvious monitoring errors from this calculation.

History: Amended effective July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03

33-17-01-04. Designated responsible individuals. The owner or operating entity of each public water system shall designate an individual, or individuals, who shall be responsible for communicating with the department in matters relating to system construction or alteration, monitoring and sampling, maintenance, operation, recordkeeping, and reporting required by these regulations. Any changes in designated individuals or assigned responsibilities shall be promptly reported to the department.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-06~~ 61-28.1-03

33-17-01-05. Approved laboratories and analytical procedures. All samples shall be examined by ~~the division of public health laboratories~~ of the department or by any other laboratory certified by the department for such drinking water purposes, except that measurements for ~~temperature, pH,~~ turbidity and free chlorine may be performed by any person acceptable to the department. All methods of sample preservation and analyses shall be as prescribed by the department.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC 61-28.1-03, 61-28.1-07

33-17-01-06. Maximum contaminant levels.

1. **Inorganic chemicals.** The maximum contaminant levels for inorganic chemical contaminants are as follows:

<u>CONTAMINANT</u>	<u>LEVEL</u> <u>MILLIGRAM(S) PER LITER</u>
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<u>Arsenic</u>	<u>0.05</u>
<u>Barium</u>	<u>1</u>
<u>Cadmium</u>	<u>0.010</u>
<u>Chromium</u>	<u>0.05</u>
<u>Lead</u>	<u>0.05</u>
<u>Mercury</u>	<u>0.002</u>
<u>Nitrate (as N)</u>	<u>10</u>
<u>Selenium</u>	<u>0.01</u>
<u>Silver</u>	<u>0.05</u>
<u>Fluoride</u>	<u>4.0</u>

a. The maximum contaminant level for nitrate is applicable to both community and noncommunity water systems. At the discretion of the department, nitrate levels not to exceed twenty milligrams per liter may be allowed in a noncommunity water system if the supplier of water demonstrates to the satisfaction of the department that:

- (1) a. Such water will not be available to children under six months of age;
- (2) b. There will be continuous posting of the fact that nitrate levels exceed ten milligrams per liter and the potential health effect of exposure;
- (3) c. Local and state public health authorities will be notified annually of nitrate levels that exceed ten milligrams per liter; and
- (4) d. No adverse health effects shall result.

The levels for other inorganic chemicals apply only to community water supply systems.

b. Fluoride at optimum levels in drinking water has been shown to have beneficial effects in reducing the occurrence of tooth decay. While optimum levels of fluoride have beneficial effects, the maximum contaminant level was established to protect against above optimum levels of fluoride which may cause dental fluorosis.

The maximum contaminant levels for inorganic chemical contaminants are as follows:

Contaminant	Level Milligram Per Liter
Arsenic	0.05
Barium	1
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002

Nitrate (as N)	10
Selenium	0.01
Silver	0.05
Fluoride	2.4

2. **Organic chemicals.** The maximum contaminant levels for organic chemical contaminants, applicable only to community water supply systems, are as follows:

CONTAMINANT	LEVEL MILLIGRAM PER LITER
<u>Chlorinated Hydrocarbons hydrocarbons:</u>	
Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-1,4-endo,endo-5,8-dimethanonaphthalene dimethanonaphthalene)-	0.0002
Lindane (1,2,3,4,5,6-hexachloro-cyclohexane, gamma isomer)-	0.004
Methoxychlor (+, +, + 1,1,1-Trichloro-2,2-bis [p-methoxyphenyl] ethane)-	0.1
Toxaphene (C ₁₀ H ₁₀ Cl ₈ -Technical chlorinated camphene, 67-69% chlorine)-	0.005
<u>Chlorophenoxys:</u>	
2,4-D (2,4-Dichlorophenoxyacetic acid)-	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)-	0.01
<u>Total trihalomethanes. The sum of the concentrations of:</u>	
Bromodichloromethane, Dibromochloromethane, Tribromomethane (bromoform) and Trichloromethane (chloroform)-	0.10
<u>Volatile synthetic organic chemicals:</u>	
Benzene	0.005
Vinyl chloride	0.002
Carbon tetrachloride	0.005
1,2-Dichloroethane	0.005
Trichloroethylene	0.005
1,1-Dichloroethylene	0.007

1,1,1-Trichloroethane]
para-Dichlorobenzene

0.20
0.075

3. **Turbidity.** The maximum contaminant levels for turbidity are applicable to both community water systems and noncommunity water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point to the distribution system, are as follows:
- a. One turbidity unit as determined by a monthly average except that five or fewer turbidity units may be allowed if the supplier of water system can demonstrate to the department that the higher turbidity does not do any of the following:
 - (1) Interfere with disinfection-;
 - (2) Prevent maintenance of an effective disinfectant agent throughout the distribution system-; or
 - (3) Interfere with microbiological determinations.
 - b. Five turbidity units based on an average for two consecutive days.
4. **Radionuclides Radioactivity.** The maximum contaminant levels for ~~radionuclides~~, radioactivity applicable only to community water supply systems, radioactivity are as follows:

CONTAMINANT	LEVEL PICOCURIES PER LITER
Combined radium-226 and radium-228-	5
Gross alpha particle activity, including radium-226, but excluding radon and uranium-	15

5. **Microbiological.** The maximum contaminant levels for coliform bacteria, ~~applicable to both community and noncommunity water supply systems~~, are as follows:
- a. Membrane filter method. When the membrane filter method is used, the number of coliform bacterial colonies shall not exceed:
 - (1) One per one hundred milliliters as the arithmetic mean of all routine samples examined per month.

- (2) (a) Four per one hundred milliliters in more than one sample when less than twenty are examined per month; or
 - (b) Four per one hundred milliliters in more than five percent of the samples when twenty or more are examined per month.
- b. Fermentation tube method. When the fermentation tube method and ten milliliter standard portions are used, coliform bacteria shall not be present in:
- (1) More than ten percent of the portions from routine samples examined in any month.
 - (2) (a) Three or more portions in more than one sample when less than twenty samples are examined during the sampling period; or
 - (b) Three or more portions in more than five percent of the samples when twenty or more samples are examined per month.
- c. For community or noncommunity water systems that are required to sample at a rate of less than four per month, compliance of this section shall be based upon sampling during a three-month period except that, at the discretion of the department, compliance may be based upon sampling during a one-month period.
- d. At the discretion of the department, systems required to take ten or fewer samples per month may be authorized to exclude one positive routine sample per month from the monthly calculation if:
- (1) On a case-by-case basis the department determines and indicates in writing to the public water ~~supply~~ system that no unreasonable risk to health existed. The determination should be based on a number of factors not limited to the following:
 - (a) The system had provided and maintained an active disinfectant residual in the distribution system-;
 - (b) The potential for contamination as indicated by a sanitary survey-; and
 - (c) The history of the water quality ~~at~~ of the public water system.
 - (2) The supplier submits, within twenty-four hours after notification, a check sample collected on each of two

consecutive days from the same sampling point and each of these check samples shall be negative.

- (3) The original positive routine sample be reported and recorded by the supplier.

The supplier shall report to the department compliance with conditions specified in this section and summarize the corrective action taken to resolve the problem. If a positive routine sample is not used for the monthly calculation, another routine sample must be analyzed for compliance purpose. This provision may be used only once during two consecutive compliance periods.

- e. If an average maximum contaminant level violation is caused by a single sample maximum contaminant level violation, the case shall be treated as one violation with respect to public notification requirements.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-07. Inorganic chemical sampling and monitoring requirements.

1. Sampling frequency for community water systems.

- a. Surface water supplies. ~~The suppliers of water for all community~~ Community water systems utilizing surface water sources shall sample for inorganic chemical contaminants ~~within six months after October 1, 1977. These analyses shall be repeated at yearly intervals.~~
- b. Ground water supplies. ~~The suppliers of water for all community~~ Community water systems utilizing ground water sources shall sample for inorganic chemical contaminants ~~within eighteen months after October 1, 1977. These analyses shall be repeated at three-year intervals.~~

2. Sampling frequency for noncommunity water systems. ~~The supplier of water for noncommunity~~ Noncommunity water systems shall sample for nitrate (as N) ~~within eighteen months after October 1, 1977. The analysis shall be repeated at intervals determined by the department.~~

3. Sampling frequency for check samples.

- a. If the result of an analysis indicates that the level of any contaminant exceeds the maximum contaminant level, the ~~supplier of water~~ system shall report to the department

within seven days and initiate three additional analyses at the same sampling point within one month.

- b. When the average of four analyses exceeds the maximum contaminant level, the supplier of water system shall notify the department and give notice to the public. Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption, or enforcement action shall become effective.
- c. b. Compliance with the maximum contaminant level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within twenty-four hours and if the mean of the two analyses exceeds the maximum contaminant level, the supplier of water system shall report the supplier's findings to notify the department and shall notify give notice to the public.

History: Amended effective July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-08. Organic chemical sampling and monitoring requirements.

- 1. Organic chemicals other than trihalomethanes Chlorinated hydrocarbons and chlorophenoxys.
 - a. Sampling frequency for community water systems.
 - (1) Surface water supplies. The suppliers of water for community Community water systems utilizing surface water sources shall sample for organic chemical contamination within six months after October 1, 1977. These analyses shall be repeated at intervals specified by the department, but in no event, less frequently than at three-year intervals. Samples analyzed shall be collected during the period of the year designated by the department as the period when contamination by pesticides is most likely to occur.
 - (2) Ground water systems supplies. Analysis of samples for organic contamination for community Community water systems utilizing ground water sources shall be completed by those systems sample when specified by the department.

- b. Sampling frequency for check samples. If the result of an analysis indicates that the level of any contaminant exceeds the maximum contaminant level, the supplier of water system shall report to the department within seven days and initiate three additional analyses at the same sampling point within one month. When the average of four analyses exceeds the maximum contaminant level, the supplier of water system shall report to notify the department and give notice to the public. Monitoring after public notification shall be at a frequency designated by the department and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, ~~exemption~~, or enforcement action shall become effective.

2. Trihalomethanes Total trihalomethanes.

- a. Coverage. The suppliers of water for all community Community water systems which serve a population of ten thousand or more individuals and which add a disinfectant ~~(oxidant)~~ to the water in any part of the drinking water treatment process shall collect samples for the purpose of analysis for total trihalomethanes.

~~b. Effective dates:~~

~~(1) Sampling and analyses: Sampling and analyses shall begin not later than November 29, 1982.~~

~~(2) Regulations: Compliance with the regulations for total trihalomethanes shall take effect November 29, 1983.~~

- ~~c. b.~~ Sampling frequency for community water systems. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system. Multiple wells drawing raw water from a single aquifer may, with the department's approval, be considered one treatment plant.

All samples taken within an established frequency shall be collected within a twenty-four-hour period.

- (1) Routine sampling. Analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least twenty-five percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining seventy-five percent shall be taken at representative locations in the distribution system, taking into

account number of persons served, different sources of water and different treatment methods employed.

(2) Reduced sampling frequency.

- (a) Systems utilizing surface water or ~~ground water, or both~~ a combination of surface and ground water. The sampling frequency may be reduced to a minimum of one sample analyzed per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's ~~monitoring~~ sampling frequency may only be reduced upon written request ~~of~~ by the water system and upon ~~written~~ a determination by the department that data from at least one year of sampling at a frequency of four samples collected per calendar quarter per water treatment plant used by the system and ~~that~~ local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis exceeds the maximum contaminant level and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately resume sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

- (b) Systems utilizing only ground water. The sampling frequency ~~for systems utilizing only ground water sources~~ may be reduced to a minimum of one sample analyzed per year per water treatment plant taken at a point in the distribution system reflecting the maximum residence time of the water in the system.

The system's sampling frequency may only be reduced upon written request ~~of~~ by the water system and upon a ~~written~~ determination by the department that, ~~based upon the data submitted by the system,~~ the system has a maximum total trihalomethane potential of less than ~~one-tenth~~

milligram per liter the maximum contaminant level and ~~that~~ local conditions demonstrate that the system is not likely to approach or exceed the maximum contaminant level.

If at any time during which the reduced sampling frequency is in effect, the result from any analysis ~~taken by the system~~ for maximum total trihalomethane potential is equal to or exceeds the maximum contaminant level and such results are confirmed by at least one check sample ~~taken promptly after such results are received~~, the system shall immediately ~~begin~~ resume sampling on a routine basis of four samples per quarter per treatment plant used by the system. Such increased sampling shall continue for at least one year before the frequency may be reduced again.

In the event of any significant change to the system's source of water or treatment program, the system shall immediately analyze an additional sample for maximum total trihalomethane potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must begin sampling on a routine basis of four samples per quarter per treatment plant used by the system.

(3) Increased sampling frequency. At the option of the department, sampling frequencies may be increased above the minimum in those cases where it is necessary to detect variations of total trihalomethane levels within the distribution system.

d. Compliance. Compliance with the maximum contaminant level shall be determined based on a running annual average of quarterly ~~samples~~ analyses.

If the average of ~~samples~~ analyses covering any twelve-month period exceeds the maximum contaminant level, sampling shall be at a frequency designated by the department and shall continue until a sampling monitoring schedule as a condition to a variance, ~~exemption~~ or enforcement action becomes effective.

~~Unless the analytical results are invalidated for technical reasons, all samples collected shall be used in the computation of the quarterly average running annual average of quarterly samples, and in the determination of whether a system is eligible for a reduced sampling frequency.~~

If the average of analyses covering any twelve-month period exceeds the maximum contaminant level, or if the system fails to monitor, the system shall notify the department and give notice to the public.

- e. Reporting. ~~The results of all~~ All analyses shall be reported to the department within thirty days of the system's receipt of such results.
- f. Modification of treatment methods for reduction of ~~trihalomethane~~ total trihalomethanes. Before a community water system makes any significant ~~modifications~~ modification to its existing treatment process for the ~~purposes~~ purpose of achieving compliance with the trihalomethane regulations, the system must submit and obtain ~~departmental~~ department approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the water will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the department approved plan. At a minimum, the department approved plan shall require the system modifying its disinfection practice to:
 - (1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;
 - (2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;
 - (3) Provide baseline water quality survey data of the distribution system as the department may require;
 - (4) Conduct additional monitoring to assure continued maintenance of optimal ~~biological~~ microbiological quality in finished water; and
 - (5) Demonstrate an active disinfectant residual throughout the distribution system at all times during and after the modification.

3. Volatile synthetic organic chemicals.

- a. Coverage and effective dates. Community and nontransient noncommunity water systems serving more than ten thousand people shall analyze samples, as appropriate, beginning no later than January 1, 1988. Community and nontransient noncommunity water systems serving from three thousand three hundred to ten thousand people shall analyze samples, as appropriate, no later than January 1, 1989. Other community and nontransient noncommunity water

systems shall analyze samples, as appropriate, no later than January 1, 1991.

b. Sampling frequency.

- (1) Ground water systems. Systems shall sample at points of entry to the distribution system representative of each source unless the sources are combined before distribution, then the system must sample at an entry point to the distribution system during periods of normal operating conditions. Systems must sample every three months if volatile synthetic organic chemicals are detected in the initial sample or in any subsequent sample. Sampling must be conducted at the same location or a more representative location each quarter. Systems must sample every three years if volatile synthetic organic chemicals are not detected in the initial sample or in any subsequent sample but the system is vulnerable and has more than five hundred service connections. Systems must sample every five years if volatile synthetic organic chemicals are not detected in the initial sample or in any subsequent sample and the system is not vulnerable or is vulnerable but has five hundred or less service connections.

Analysis for vinyl chloride is required only for systems that have detected one or more of the following two-carbon organic compounds: trichloroethylene; tetrachloroethylene; 1,2-dichloroethane; 1,1,1-trichloroethane; cis-1,2-dichloroethylene; trans-1,2-dichloroethylene; or 1,1-dichloroethylene. The analysis for vinyl chloride is required at each distribution or entry point at which one or more of the two-carbon organic compounds were found. If the first analysis does not detect vinyl chloride, the department may reduce the frequency of vinyl chloride monitoring to once every three years for that sample location or other sample locations which are more representative of the same source.

- (2) Surface water systems. Systems shall sample at points of entry to the distribution system representative of each source unless the sources are combined before distribution, then the system must sample at an entry point to the distribution system after any application of treatment during periods of normal operating conditions. Systems must sample every three months if volatile synthetic organic chemicals are detected in the initial sample or in any subsequent sample. Sampling must be conducted at the same location or a more representative location

each quarter. Systems must sample quarterly for the first year and every three years thereafter if volatile synthetic organic chemicals are not detected but the system is vulnerable and has more than five hundred service connections. Systems must sample quarterly for the first year and every five years thereafter if volatile synthetic organic chemicals are not detected but the system is vulnerable and has five hundred or less service connections. Systems may be required to monitor at department discretion if volatile synthetic organic chemicals are not detected in the first year of quarterly sampling and the system is not vulnerable.

Systems may be required to analyze for vinyl chloride at the discretion of the department.

c. Reduced sampling frequency. The department may reduce the frequency of monitoring to once per year for a system detecting volatile synthetic organic chemicals at levels consistently less than the maximum contaminant level for three consecutive years.

d. Vulnerability. Vulnerability of systems shall be determined by the department based upon an assessment of the following:

(1) Previous monitoring results;

(2) Number of persons served by the system;

(3) Proximity of a smaller system to a larger system;

(4) Proximity to commercial or industrial use, disposal, or storage of volatile synthetic organic chemicals; and

(5) Protection of the water source.

A system is deemed to be vulnerable for a period of three years after any volatile synthetic organic chemical or unregulated contaminant, except for disinfection byproducts, is detected.

e. Reporting. The results of all analyses must be reported to the department within thirty days of the system's receipt of such results.

f. Compliance. Compliance must be determined based on the results of running annual average of quarterly sampling for each sampling location. If one location's average is greater than the maximum contaminant level, then the system must be deemed to be out of compliance. For

systems that only take one sample per location, compliance must be based on that one sample.

The department has the authority to allow the use of monitoring data collected after January 1, 1983, for purposes of monitoring compliance. If the data is consistent with the other requirements of these rules, the department may use that data to represent the initial monitoring if the system is determined by the department not to be vulnerable.

The department has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by a sanctioned representative or agency.

g. Public notification. If a system fails to monitor or comply with a maximum contaminant level, the system shall notify the department and give notice to the public.

4. Unregulated contaminants.

a. Coverage and effective dates. Community and nontransient noncommunity water systems serving more than ten thousand people shall analyze samples, as appropriate, beginning no later than January 1, 1988. Community and nontransient noncommunity water systems serving from three thousand three hundred to ten thousand people shall analyze samples, as appropriate, no later than January 1, 1989. Other community and nontransient noncommunity water systems shall analyze samples, as appropriate, no later than January 1, 1991. Systems may use monitoring data collected any time after January 1, 1983, to meet the requirements for unregulated contaminants; provided, that the monitoring program was consistent with the requirements of these rules.

b. Sampling frequency.

(1) Ground water systems. Systems shall sample at points of entry to the distribution system representative of each source unless the sources are combined before distribution, then the system must sample at an entry point to the distribution system during periods of normal operating conditions. The minimum number of samples is one sample per entry point to the distribution system.

(2) Surface water systems. Systems shall sample quarterly for one year at points of entry to the distribution system representative of each source unless the sources are combined before distribution, then the system must sample at an entry point to the

distribution system during periods of normal operating conditions. The minimum number of samples is one year of quarterly samples per water source.

(3) Repeat monitoring. Systems shall repeat the monitoring for unregulated contaminants every five years from the effective dates.

c. Monitoring requirements. Systems shall monitor for the following unregulated contaminants:

- (1) Chloroform.
- (2) Bromodichloromethane.
- (3) Chlorodibromomethane.
- (4) Bromoform.
- (5) trans-1,2-Dichloroethylene.
- (6) Chlorobenzene.
- (7) m-Dichlorobenzene.
- (8) Dichloromethane.
- (9) cis-1,2-Dichloroethylene.
- (10) o-Dichlorobenzene.
- (11) Dibromomethane.
- (12) 1,1-Dichloropropene.
- (13) Tetrachloroethylene.
- (14) Toluene.
- (15) p-Xylene.
- (16) o-Xylene.
- (17) m-Xylene.
- (18) 1,1-Dichloroethane.
- (19) 1,2-Dichloropropane.
- (20) 1,1,2,2-Tetrachloroethane.
- (21) Ethylbenzene.

- (22) 1,3-Dichloropropane.
- (23) Styrene.
- (24) Chloromethane.
- (25) Bromomethane.
- (26) 1,2,3-Trichloropropane.
- (27) 1,1,1,2-Tetrachloroethane.
- (28) Chloroethane.
- (29) 1,1,2-Trichloroethane.
- (30) 2,2-Dichloropropane.
- (31) o-Chlorotoluene.
- (32) p-Chlorotoluene.
- (33) Bromobenzene.
- (34) 1,3-Dichloropropene.

Systems must monitor for ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP) only if the department determines they are vulnerable to contamination by either or both of these substances. A vulnerable system is defined as a system which is potentially contaminated by ethylene dibromide and 1,2-dibromo-3-chloropropane, including surface water systems where these two compounds are applied, manufactured, stored, disposed of, or shipped upstream, and for ground water systems in areas where the compounds are applied, manufactured, stored, disposed of, or shipped in the ground water recharge basin, or for ground water systems that are in proximity to underground storage tanks that contain leaded gasoline.

Monitoring for the following unregulated contaminants is required at the discretion of the department:

- (1) 1,2,4-Trimethylbenzene.
- (2) 1,2,4-Trichlorobenzene.
- (3) 1,2,3-Trichlorobenzene.
- (4) n-Propylbenzene.
- (5) n-Butylbenzene.

- (6) Naphthalene.
- (7) Hexachlorobutadiene.
- (8) 1,3,5-Trimethylbenzene.
- (9) p-Isopropyltoluene.
- (10) Isopropylbenzene.
- (11) Tert-butylbenzene.
- (12) Sec-butylbenzene.
- (13) Fluorotrichloromethane.
- (14) Dichlorodifluoromethane.
- (15) Bromochloromethane.

Instead of performing the monitoring for unregulated contaminants, a system serving fewer than one hundred fifty service connections may send a letter to the department stating that its system is available for sampling. This letter must be sent to the department no later than January 1, 1991.

- d. Reporting. The results of all analyses must be reported to the department within thirty days of the system's receipt of such results.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-09. Turbidity sampling and analytical monitoring requirements.

1. Sampling frequency for surface water systems. The suppliers of water for both community water systems Community and noncommunity water systems shall sample at a representative entry point to the water distribution system, at least once a day, for the purpose of making turbidity measurements. The measurements shall be made by a nephelometric method approved by the department.

If the department determines that a reduced sampling frequency in a noncommunity water system will not pose a risk to health, it can reduce the sampling frequency. The option of reducing the turbidity sampling frequency shall be permitted only when the noncommunity water systems practice system practices

disinfection and ~~maintain~~ maintains an active residual disinfectant in the distribution system, and when the department has indicated in writing that no unreasonable risk to health exists.

2. Sampling frequency for check samples. If the result of a turbidity analysis indicates that the maximum allowable limit contaminant level has been exceeded, the sampling and measurement analysis shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample analysis confirms that the maximum allowable limit contaminant level has been exceeded, the supplier of water system shall report to notify the department within forty-eight hours.

The repeat sample analysis shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples analyses exceeds the maximum allowable limit contaminant level, or if the average of two samples analyses taken on consecutive days exceeds five turbidity units the maximum contaminant level, the supplier of water system shall report to notify the department and notify give notice to the public.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-10. Radioactivity sampling and monitoring requirements.

1. Sampling frequency for community water systems. The suppliers of water for community Community water systems, utilizing both surface water and ground water sources, shall sample and monitor for gross alpha particle activity, radium-226 and radium-228. Initial sampling to determine compliance shall begin within eighteen months after October 1, 1977, and the analysis shall be completed within thirty months. Sampling and analysis shall be repeated at four-year intervals.

More frequent monitoring sampling shall be conducted when ordered by the department in the event of possible contamination of surface or ground water sources or when changes in the water supply distribution systems system or treatment processing occur process occurs which may increase the concentration of radioactivity in finished water.

Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analysis analyses of four samples obtained at quarterly intervals.

The department may at its discretion, when an annual record has established that the average annual concentration is less than half the maximum contaminant ~~levels established level~~, substitute a single sample for the quarterly sampling procedure.

2. **Sampling frequency for check samples.** A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided, that the measured gross alpha particle activity does not exceed five picocuries per liter at a confidence level of ~~ninety five percent~~. The department may require radium-226 or radium-228, or both, analyses when the gross alpha particle activity exceeds two picocuries per liter.

When the gross alpha particle activity exceeds five picocuries per liter, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds three picocuries per liter, the same or an equivalent sample shall be analyzed for radium-228.

A community water system using two or more water sources having different concentrations of radioactivity shall monitor sample source water, in addition to water from a free flowing outlet of the ultimate user, when ordered by the department.

Monitoring for compliance after the initial period need not include radium-228 except when required by the department, provided, that the average annual concentration of radium-228 has been analyzed at least once using the quarterly sampling procedure.

Suppliers of water Systems shall conduct annual monitoring of any community water system in which when the radium-226 concentration exceeds three picocuries per liter when ordered by the department.

If the average annual maximum contaminant level for gross alpha particle activity or total radium is exceeded, the supplier of a community water system shall give notice to notify the department within forty-eight hours and notify give notice to the public. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, ~~exemption,~~ or enforcement action shall become effective.

History: Amended effective July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02,~~ 61-28.1-03, ~~61-28.1-05,~~ 61-28.1-06, ~~61-28.1-07~~

33-17-01-11. Microbiological contaminant sampling and analytical monitoring requirements.

1. **Sampling frequency for community water systems.** Suppliers of water for community water systems shall collect samples of water from representative points on the water distribution system and analyze for coliform bacteria at a frequency established by the department. The number of samples required shall be determined by the population served by the system and in no event shall the frequency be less than as set forth below:

POPULATION SERVED:	MINIMUM NUMBER OF SAMPLES PER MONTH
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11
10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20
18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,300	25
22,301 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,001 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50
46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65
59,001 to 64,000	70

64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100

Community water systems with ground water supplies serving twenty-five to one thousand persons may, with written permission from the department, reduce this sampling frequency to one sample per calendar quarter provided that:

- a. A sanitary survey by the department shows the ground water supply to be adequately protected.
 - b. The water supply has a history of no coliform contamination.
2. **Sampling frequency for noncommunity water systems.** The supplier of water for a noncommunity water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. If the department, on the basis of a sanitary survey, the existence of additional safeguards such as a protective and enforced well code, or accumulated analytical data, determines that some other frequency is more appropriate, that frequency shall be the frequency required under this chapter. Such frequency shall be confirmed or changed on the basis of subsequent surveys or data. The frequency shall not be reduced until the noncommunity water system has performed at least one coliform analysis of its drinking water and found to be in compliance with maximum microbiological contaminant levels.
3. **Sampling frequency for check samples.** When the coliform bacteria colonies in a single sample, as determined by the membrane filter procedure, exceeds four per one hundred milliliters, at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily or at a frequency established by the department until the results obtained from at least two consecutive check samples show less than one coliform bacteria colony per one hundred milliliters.

When coliform bacteria, as determined by the fermentation tube method, occur in three or more ten milliliter portions of a single sample, at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily or at a frequency established by the department until the results obtained from at least two consecutive check samples show no positive tubes.

The location at which the check samples were taken shall not be eliminated from future sampling without approval of the department. The results from all coliform bacterial analyses performed except those obtained from check samples and special purpose samples shall be used to determine compliance with the maximum contaminant level for coliform bacteria. Check samples shall not be included in calculating the total number of samples taken each month to determine compliance.

When the presence of coliform bacteria in water taken from a particular sampling point has been confirmed by any check samples, the supplier of water shall report to the department within forty-eight hours.

When a maximum contaminant level is exceeded, the supplier of water shall report to the department and notify the public.

Special purpose samples, such as those taken to determine whether disinfection practices following pipe placement, replacement, or repair have been sufficient, shall not be used to determine compliance.

4. **Substitution of chlorine residuals.** A supplier of water of a public water system may, with the approval of the department and based upon a sanitary survey, substitute the use of chlorine residual monitoring for not more than seventy-five percent of the required microbiological samples; provided, that the supplier of water takes chlorine residual samples at points which are representative of the conditions within the distribution system. Four samples for chlorine analysis shall be substituted for each microbiological sample.

There shall be at least daily determinations of chlorine residual. The supplier of water shall maintain no less than two-tenths ~~milligrams~~ milligram per liter free chlorine at the extremities of the public water distribution system. When a particular sampling point has been shown to have a free chlorine residual less than two-tenths ~~milligrams~~ milligram per liter, the water at the location shall be retested as soon as practicable and in any event, within one hour.

If the original analysis is confirmed, this fact shall be reported to the department within forty-eight hours. Also, if the analysis is confirmed, a sample for coliform bacterial analysis must be collected from that sampling point as soon as practicable and preferably within one hour, and the results of such analysis reported to the department within forty-eight hours after the results are known to the supplier of water.

Compliance with the maximum contaminant levels for coliform bacteria shall be determined on the monthly mean or quarterly mean basis, including those samples taken as a result of failure to maintain the required chlorine residual level. The

department may withdraw its approval of the use of chlorine residual substitution at any time.

If the department determines that some higher residual chlorine level is more appropriate, that level shall be the level required under these regulations.

The measurements for chlorine shall be made by a method approved by the department.

5. **Sampling frequency for the replacement samples.** When the coliform bacterial colonies in a single sample, as determined by the membrane filter procedure, cannot be determined, the department at its discretion may require one or more replacement samples to be collected from the same sampling point for analysis. The sample or samples which were replaced shall not be used to determine compliance.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-12. Monitoring of consecutive public water systems. When a public water system supplies water to one or more other public water systems, the department may modify the monitoring requirements imposed to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the department.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-13. Reporting and public notification.

1. **Reporting requirements.** Except where a shorter reporting period is specified, the supplier of water system shall report to the department the result of any test, measurement, or analysis required within the first ten days following the month in which the results are received or the first ten days following the end of the required monitoring period as stipulated by the department, whichever of these is shorter.

The supplier of water system shall report to notify the department within forty-eight hours the failure to comply with any primary drinking water regulations including failure to comply with monitoring requirements.

The supplier of water system is not required to report analytical results to the department in cases where a the department laboratory performed the analysis and reports the results to the department office which would normally receive such notification from the supplier.

The water supply system shall, within ten days of completion of each public notification required, submit to the department a representative copy of each type of notice distributed, published, posted or made available to the persons served by the system or to the media.

The water supply system shall submit to the department, within the time stated in the request, copies of any records of any records required to be maintained by the department or copies of any documents then in existence which the department is entitled to inspect under the provisions of state law.

2. Public notification.

a. Community water systems. The supplier of water shall notify persons served by the system if it:

- (1) Fails to comply with an applicable maximum contaminant level.
- (2) Is granted a variance or an exemption from an applicable maximum contaminant level.
- (3) Fails to comply with the requirements of any schedule prescribed by the department.
- (4) Fails to perform any monitoring required.

Notification shall be made by inclusion of a notice in the first set of water bills of the system issued after the failure or grant, and in any event by written notice within three months. Such notice shall be repeated at least once every three months so long as the system's failure continues or the variance or exemption remains in effect. If the system issues water bills less frequently than quarterly, or does not issue water bills, the notice shall be made by or supplemented by another form of direct mail.

In addition, if a community water system has failed to comply with an applicable maximum contaminant level, the supplier of water shall notify the public of such failure as follows:

- (1) By publication on not less than three consecutive days in a newspaper or newspapers of general circulation in the area served by the system. Such

notice shall be completed within fourteen days after the supplier of water learns of the failure.

- (2) By furnishing a copy of the notice to radio and television stations serving the area served by the system. Such notice shall be furnished within seven days after the supplier of water learns of the failure.
- (3) The requirements for public notification by newspaper, radio, and television may be waived by the department if it determines that the violation has been corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health.

If the area served by a community water system is not served by a daily newspaper of general circulation, notification by newspaper shall be given by publication on three consecutive weeks in a weekly newspaper of general circulation serving the area. If no weekly or daily newspaper of general circulation serves the area, notice shall be given by posting the notice in post offices within the area served by the system. The form and manner of such notification shall be prescribed by the department and shall ensure that the public using the system is adequately informed of the failure or grant.

b. Noncommunity water systems. The supplier of water shall notify persons served by the system if it:

- (1) Fails to comply with an applicable maximum contaminant level.
- (2) Is granted a variance or an exemption from an applicable maximum contaminant level.
- (3) Fails to comply with the requirements of any schedule prescribed by the department.
- (4) Fails to perform any monitoring required.

The supplier of water shall give notices by continuous posting of such failure or granting of a variance or exemption to the persons served by the system as long as the failure or granting of a variance or exemption continues.

The form and manner of such notification shall be prescribed by the department and shall ensure that the public using the system is adequately informed of the failure or grant.

- c. Form of public notification. Notices shall be written in a manner reasonably designed to fully inform the users of the system. The notice shall be conspicuous and shall not use unduly technical language, unduly small print or other methods which would frustrate the purpose of the notice. The notice shall disclose all material facts regarding the subject including the nature of the problem and when appropriate, a clear statement that a primary drinking water regulation has been violated and any preventative measures that should be taken by the public. Notices may include a balanced explanation of the significance or seriousness to the public health of the subject of the notice, a fair explanation of steps taken by the system to correct any problem and the results of any additional sampling.

In any instance in which notification by mail is required, but notification by newspaper or to radio or television stations is not required, the department may order the supplier of water to provide notification by newspaper and to radio and television stations when circumstances make more immediate or broader notice appropriate to protect the public health.

Maximum contaminant level (MCL), treatment technique, and variance and exemption schedule violations. A public water system which fails to comply with an applicable maximum contaminant level or an established treatment technique or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption shall notify persons served by the system as follows:

- (1) By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than fourteen days after notification of the violation or failure. If the area served by the system is not served by a daily newspaper of general circulation, notice must instead be given by publication in a weekly newspaper of general circulation serving the area;
- (2) By mail delivery, or by hand delivery, not later than forty-five days after the violation or failure. The department may waive mail or hand delivery if it determines that the system has corrected the violation or failure within the forty-five-day period; and
- (3) For violations of the maximum contaminant levels of contaminants that may pose an acute risk to human health, by furnishing a copy of the notice to the radio and television stations serving the area served by the system as soon as possible, but in no case

later than seventy-two hours after receiving notification of the violation or failure.

A public water system must give notice at least once every three months by mail delivery or by hand delivery for as long as the violation or failure exists.

A community water system in an area that is not served by a daily or weekly newspaper of general circulation or a noncommunity water system must give notice within fourteen days after notification of the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation or failure exists.

b. Other violations, variances, and exemptions. A public water system which fails to perform required monitoring, fails to comply with an established testing procedure, is granted a variance, or is granted an exemption shall notify persons served by the system as follows:

(1) By publication in a daily newspaper of general circulation in the area served by the system within three months after notification of the violation or grant. If the area served by the system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(2) A public water system must give notice at least once every three months by mail delivery or by hand delivery for as long as the violation exists or the variance or exemption is in existence.

(3) A community water system in an area that is not served by a daily or weekly newspaper of general circulation or a noncommunity water system must give notice within three months after notification of the violation or grant by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists or the variance or exemption remains in effect.

c. Notice to new billing units. A community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

d. General notice content. Each notice must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice must be conspicuous and may not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice must include the telephone number of a designee of the public water system as a source of additional information concerning the notice.

e. Mandatory health effects language. When providing the information on potential adverse health effects required in notices of violations of maximum contaminant levels or treatment technique requirements, or notices of the granting or the continued existence of variances or exemptions, or notices of failure to comply with a variance or exemption schedule, the public water system shall include specific contaminant language available from the department for the following contaminants:

(1) Trichloroethylene.

(2) Carbon tetrachloride.

(3) 1,2-Dichloroethane.

(4) Vinyl chloride.

(5) Benzene.

(6) 1,1-Dichloroethylene.

(7) para-Dichlorobenzene.

(8) 1,1,1-Trichloroethane.

(9) Fluoride.

d. f. Notification by the department. Notice to the public required by this section may be given by the department on behalf of the supplier of water system.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, 61-28.1-05, ~~61-28.1-06~~,
~~61-28.1-07~~

33-17-01-14. Record maintenance. Any owner or operator of a public water system shall retain on its premises or at a convenient location near its premises, the following records:

1. **Bacteriological and chemical analysis analyses.** Records of bacteriological analysis analyses shall be kept for not less than five years. Records of chemical analysis analyses shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:
 - a. The date, place, and time of sampling and the name of the person who collected the sample-;
 - b. Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or other special purpose sample-;
 - c. Date of analysis-;
 - d. Laboratory and person responsible for performing analysis-;
 - e. The analytical technique/method used-; and
 - f. The ~~results~~ result of the analysis.
2. **Corrective actions taken.** Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period of not less than three years after the last action taken with respect to the particular violation involved.
3. **Reports and communications.** Copies of any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, state, or federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.
4. **Variances and exemptions.** Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

History: Amended effective July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, 61-28.1-05, ~~61-28.1-06~~,
~~61-28.1-07~~

33-17-01-15. Variance and exemption.

1. **Variance.** The department may authorize a variance from any maximum contaminant level ~~listed in section 33-17-01-04~~ to a public water system when:

- a. The raw water sources which are available to ~~this specific~~ a system cannot meet the maximum contaminant ~~levels specified in the above mentioned regulations~~ level despite application of the best technology, treatment techniques, or other means which the department finds are generally and reasonably available, taking cost into consideration. The department hereby identifies the following as the best technology, treatment techniques, or other means generally available for achieving compliance with the maximum contaminant level for volatile synthetic organic chemicals: central treatment using packed tower aeration; central treatment using granular activated carbon for all these chemicals except vinyl chloride;
- b. The concentration of the contaminant ~~or contaminants~~, for which the maximum contaminant level is exceeded by ~~granting such variance~~, will not result in unreasonable risk to health; and
- c. Within one year of the date of variance authorization, a schedule for compliance is issued and under which the owner of the supply system agrees to implement such compliance schedule.

2. **Exemption.** The department may exempt ~~any~~ a public water supply system from any maximum contaminant level or treatment technique requirement, or from both, upon finding that:

- a. Due to compelling factors, including economic, the ~~public water~~ system is unable to comply with such maximum contaminant level or treatment technique;
- b. The ~~public water~~ system was in operation on the effective date of such maximum contaminant level or treatment technique regulation;
- c. The granting of the exemption will not result in an unreasonable risk to health; and
- d. Within one year of the date of exemption authorization, a schedule for compliance ~~be~~ is issued and the ~~owner of the supply agree~~ system agrees to implement such schedule.
- e. ~~No exemption granted under this section shall extend beyond January 1, 1984, unless:~~

~~(1)~~ The exemption precedes a compliance schedule whereby a public water system has entered into an enforceable

agreement to become part of a regional public water system.

(2) If the conditions of paragraph 1 are met, the exemption may not extend beyond January 1, 1986.

3. Procedure.

- a. Action to consider a variance or exemption may be initiated by the department or by the owner of the supply system through a formal written request submitted to the department.
- b. Prior to authorization of a variance or a compliance schedule for a variance, the department shall provide notice and opportunity for a public hearing on that proposed variance or compliance schedule for a variance.
- c. Prior to authorization of a compliance schedule for an exemption, the department shall provide notice and opportunity for a public hearing on the proposed compliance schedule for an exemption.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, 61-28.1-05, ~~61-28.1-06~~, ~~61-28.1-07~~

33-17-01-16. **Siting.** All new, ~~altered~~ altered, or expanded public water supply systems including wells, treatment, and storage facilities necessary for the continuous operation of the water system shall be located so as to:

1. Minimize potential breakdown as a result of floods, fires, or other disasters-;
2. Except for intake structures, not be within the floodplain of a one hundred year flood-;
3. Prevent contamination of the water supply by existing sources of pollution-; and
4. Provide sufficient property for water supply facilities to allow proper operation, maintenance, replacement, and storage of system components.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, ~~61-28.1-03~~, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~ 61-28.1-04

33-17-01-17. Plans and specifications.

1. **Submission of plans.** Plans and specifications shall be prepared for all new public water ~~supply~~ systems and for alterations or extensions to existing systems. Such plans and specifications, together with other pertinent information, shall be submitted to the department for review and approval prior to awarding of contracts. Such plans and specifications shall:
 - a. Be submitted in triplicate and in sufficient time to permit at least a two-week period for review and comment and with additional time to incorporate changes, if required-;
 - b. Be presented in legible form and of sufficient scale to facilitate review-;
 - c. Include supplemental information pertaining to basis of design, description of existing facilities, appraisal of future needs and such other information normally included in an engineer's report, as may be requested by the department-; and
 - d. Be replaced by "as-built" plans when change orders result in major changes in the facilities.
2. **Submission of revised plans, change orders, and addendums.** Any ~~deviations~~ deviation from the approved plans and specifications, or use of alternate equipment, which would affect capacity, hydraulic conditions, operating units, the functioning of the water treatment process or distribution system or the quality of water to be delivered, will require ~~departmental~~ department approval prior to contract for alternate equipment or any construction which is affected by such ~~changes~~ change. Revised plans and specifications, ~~properly executed~~ change orders, or addendums, along with pertinent supplemental information, ~~is~~ are to be submitted to the department for review and approval.
3. **Approval of plans.** Plans and specifications reviewed by the department will be approved only when such plans and specifications fully meet and comply with existing statutes and such standards and guidelines as have been or may be established by the department.
4. **Compliance with plan approval.** ~~All public water systems~~ Systems shall be constructed in accordance with the plans, specifications, and applicable change orders approved by the department. The department reserves the right to remove from service all or any part of a ~~public water supply~~ system found not to be constructed in accordance with approved plans,

specifications, or change orders, or for which plans, specifications, or change orders were not approved.

5. **Operation and maintenance manual.** An operation and maintenance manual shall be prepared and supplied by the appropriate party to ~~any operator of~~ new or modified water supply facilities or systems. A copy of this manual shall be submitted to the department for review prior to initial operation of the new or modified facility or system.

History: Amended effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02,~~ 61-28.1-03, ~~61-28.1-05,~~ ~~61-28.1-06,~~ ~~61-28.1-07~~ 61-28.1-04

33-17-01-18. Operation and maintenance. ~~All public~~ Public water systems shall be supervised by competent personnel. Certified water system operators are required for ~~all public water~~ systems supplying water to five hundred or more users (North Dakota Century Code chapter 23-26). In addition, ~~all public water~~ systems shall be modified, operated, and maintained in accordance with such guidelines as may be developed or amended by the department.

History: Amended effective July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02,~~ 61-28.1-03, ~~61-28.1-05,~~ ~~61-28.1-06,~~ ~~61-28.1-07~~

33-17-01-19. Protection of public water ~~supply~~ systems.

1. **Cross-connection control.**

- a. Cross connections are prohibited except when and where, as approved by the authority having jurisdiction, suitable protective devices are installed, tested, and maintained to ensure proper operation on a continuing basis.
- b. A ~~public water supply~~ system shall be designed, installed, and maintained in such a manner as to prevent nonpotable liquids, solids, or gases from being introduced into the ~~public water supply~~ through cross connections or any other piping connections to the system.

2. **Interconnections of public water systems.**

- a. Interconnection between two or more ~~public water~~ systems shall be permitted only with the written approval of the department.

- b. Interconnection between an individual water supply a nonpublic and a public water system shall not be permitted unless specifically approved in writing by the department.
3. **Return of used water prohibited.** Water used for cooling, heating, or other purposes shall not be returned to the public water system. Such water may be discharged into an approved drainage system through an airgap or may be used for nonpotable purposes.
 4. **Introduction of chemicals and other substances.** No chemicals or other substances that could produce either toxic conditions, taste, odor, or discoloration in a public water system shall be introduced into or used in such systems.
 5. **Painting of water tanks.** The interior surface of a potable water tank, piping or equipment shall be lined, painted, or repaired with only approved materials which will not affect either the taste, odor, color, or potability of the water supply when the tank, piping, or equipment is placed in or returned to service.
 6. **Used materials.** Containers, piping, or materials which have been used for any other purpose other than conveying potable water shall not be used for conveying potable water in a public water system.

History: Effective December 1, 1982; July 1, 1988.

General Authority: NDCC 61-28.1-03

Law Implemented: NDCC ~~61-28.1-02~~, 61-28.1-03, ~~61-28.1-05~~, ~~61-28.1-06~~, ~~61-28.1-07~~

AUGUST 1988

STAFF COMMENT: Articles 33-31, 33-32, 33-33, and 33-34 contain all new material but are not underscored so as to improve readability.

TITLE 47

LABORATORIES COMMISSION

[Repealed effective August 1, 1988]

The State Laboratories Department and the State Department of Health were consolidated by the Legislative Assembly in 1987 (chapter 263 of the 1987 Session Laws). The State Department of Health and Consolidated Laboratories was given the rulemaking authority formerly possessed by the State Laboratories Commission (chapter 263 of the 1987 Session Laws). Rules adopted by the State Department of Health and Consolidated Laboratories pertaining to the Consolidated Laboratories Branch are located at North Dakota Administrative Code articles 33-31 through 33-34.

ARTICLE 33-31

FOODS, DRUGS, AND COSMETICS

Chapter	
33-31-01	Rules Pertaining to Foods, Drugs, Cosmetics
33-31-02	Definitions and Standards for Food Products

CHAPTER 33-31-01
RULES PERTAINING TO FOODS, DRUGS, COSMETICS

Section	
33-31-01-01	Food Additives
33-31-01-02	Byproducts or Waste Food Material
33-31-01-03	Method of Stating Composition or Proportion
33-31-01-04	Statement of Weight, Measure, or Count
33-31-01-05	Slack Filled and Deceptive Containers
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33-31-01-16	Vinegar
33-31-01-17	Sausage
33-31-01-18	Labeling of Canned Salmon
33-31-01-19	Standards for Foods
33-31-01-20	Labeling of Beef Mixtures

33-31-01-01. Food additives.

1. The preservatives, bleaching agents, and chemicals, designated in this section shall be deemed harmless and permitted to be used in such food products, and in such amounts, as specified in this section.
2. Benzoate of soda shall be permitted in a quantity not to exceed one-tenth of one percent in such goods as is necessary to retard spoilage while such products are in commerce. The use of benzoate of soda for this purpose will be permitted in natural fruit juices, fruit butters, and prepared fruit and vegetable products.
3. Sulfur dioxide shall be permitted in necessary products, in quantities not to exceed three hundred fifty milligrams per liter or kilogram with an allowance not over twenty percent of this amount in the free state; provided that in cherries or raisins used for decorative effects or in limited amounts in fancy cakes, sulfur dioxide shall be permitted in quantities not to exceed one thousand milligrams per kilogram.
4. No objection will be raised by this department to the use of any harmless agent for the purpose of bleaching flour.

5. The use of aluminum compounds will be permitted in baking powders.
6. The addition of any of the following substances to food products is prohibited: saccharin or other similar synthetic chemical sweetening agent, except as otherwise provided for in food products for special dietary use, formaldehyde, crude pyroligneous acid, copper salts, talc, shellac, and boron compounds.
7. A food product prepared with the use of a permissible preservative, bleaching agent, or other substance shall be plainly and conspicuously labeled to show the presence of any such added substance in a form substantially as follows:
 - a. Preserved with benzoate of soda.
 - b. Bleached.
 - c. Prepared with (or contains) alum, (or aluminum compound).
8. No substance permitted in this section shall be used in the preparation of any article of food in a manner whereby damage or inferiority is concealed or the product made to appear better than it really is.
9. Saccharin or other similar synthetic chemical sweetening agents may be used in food purported to be or represented for special dietary use as a means of regulating the intake of protein, fat carbohydrate, or calories for the purpose of controlling body weight, or for the purpose of dietary management with respect to disease, provided that:
 - a. The label shall show in a prominent manner that such food is intended for special dietary use.
 - b. The label shall bear the percent by weight of protein, fat, and available carbohydrates in such food.
 - c. The label shall bear the number of available calories supplied by a specified quantity of such food.
 - d. The label shall bear the statement "contains _____ percent by weight _____, a nonnutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets," the blanks to be filled in with the percent figure and the name of the artificial sweetener.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-02. Byproducts or waste food material. A food which consists in whole or in part of sound byproducts or waste food material, such as pieces, stems, trimmings, and the like; shall not be labeled with the unqualified name of the substance from which such material is derived, but must show the true nature of the product.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-03. Method of stating composition or proportion.

1. The quantity of alcohol in a food or drug shall be stated in terms of the average percentage by volume of absolute alcohol in the finished product. The term alcohol without qualification means ethyl alcohol. If any alcohol other than ethyl alcohol is present, the kind must be stated on the label.
2. An unqualified statement of percentage of a substance, derivative, or preparation other than alcohol shall express the percentage by weight; except that the percentage or proportion may be expressed in some other manner, but in such case must be so qualified as to show definitely the manner of expression, e.g., percentage by volume. The statement used must be in terms which are easily understood by the average purchaser.
3. When two or more pills, wafers, tablets, powders, capsules, or the like are put up for sale or distribution in the same container, there shall be stated on the container the quantity present in each pill, wafer, tablet, powder, capsule, or other unit of any substance required by law to be declared.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-04. Statement of weight, measure, or count. Declarations of net contents shall be made in conformity with the United States Fair Packaging and Labeling Act [Pub.L. 89-755] and the regulations promulgated thereunder.

1. The following tolerances and variations from the quantity of the contents marked on the package shall be allowed:
 - a. Discrepancies due exclusively to errors in weighing, measuring, or counting which occur in packing conducted in compliance with good commercial practice.

- b. Discrepancies due exclusively to difference in the capacity of bottles and similar containers, resulting solely from unavoidable difficulties in manufacturing such bottles or containers so as to be of uniform capacity. However, no greater tolerance shall be allowed in case of bottles of similar containers which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles or similar containers which can be manufactured so as to be of approximately uniform capacity.
- c. Discrepancies in weight or measure due exclusively to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of the packages to evaporation or to the absorption of water.

Discrepancies under subdivisions a and b shall be as often above as below the marked quantity. The reasonableness of discrepancies under subdivision c will be determined on the facts in each case.

- 2. A package containing one-half avoirdupois ounce [14.17 grams] of food or less is small and shall be exempt from marking in terms of weight.
- 3. A package containing one fluid ounce [29.57 milliliters] of food or less is small and shall be exempt from marking in terms of measure.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-05. Slack filled and deceptive containers.

- 1. All packages must be properly filled in accord with good commercial practice. A tolerance of not to exceed twenty percent will be permitted when necessary. The reasonableness of the fill will be determined on the facts regarding each class of product.
- 2. Bottles and similar containers of two to four ounces [59.15 to 118.29 milliliters] capacity whose ratio of apparent displacement volume to capacity is one and one-half or less are normal, while those ratios exceed one and eight-tenths are definitely deceptive to the purchaser and their use prohibited.
- 3. Collapsible tubes whose ratio of apparent displacement volume of tube to actual capacity of carton is two and four-tenths

are definitely deceptive to the purchaser and their use prohibited.

4. "Apparent displacement volume" as used in calculating ratio means volume or weight of water displaced when the filled bottle or tube is submerged in water plus the volume or weight of water necessary to fill any side or bottom panels. "Capacity" as used in calculating ratio means volume or weight of water the bottle holds when filled level with top. "Actual capacity of carton" as used in determining ratio means actual volume of carton as calculated from inside dimensions.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-06. Flavoring extracts.

1. As applied to food flavoring principles the term extract is applicable only to alcoholic or hydroalcoholic solutions of the flavoring substances. The term flavor may be applied to food flavoring principles in which a vehicle other than alcohol is used. A product labeled with the word flavor shall contain the same kinds and proportions of active flavoring ingredients as are required under the definitions and standards for extracts, and must further be labeled to show the vehicle used in lieu of alcohol.
2. Extracts or flavors recognized in an official compendium must be of the strength, quality, and purity indicated by the official compendium.
3. Extracts and flavors which contain harmless artificial or synthetic compounds made to resemble the flavor of natural fruit products shall be labeled with the word imitation.
4. Fanciful trade names or coined names applied to imitation extracts or flavors must not simulate the names of genuine products or convey to the purchaser a false indication of quality.
5. The terms double, triple, etc., when applied to extracts and flavors are held to mean respectively two and three times the minimum standards.
6. The term concentrated as applied to extracts and flavors is misleading unless accompanied by an explanatory statement as to the degree of concentration in terms of the standard product.
7. All flavoring extracts or flavors for which a definition and standard has been set, whether sold under its own name or

designated by a coined name and intended to be used in lieu of a defined extract or flavor, shall be of the strength and quality indicated in the definition.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-07. Beverages - Concentrates - Fountain syrups - Fruit juices.

1. **Soda water.** Soda water is the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of sixty degrees Fahrenheit [15.56 degrees Celsius]. It may contain buffering agents as provided in the federal Act. It either contains no alcohol or only such alcohol (not in excess of five-tenths percent by weight of the finished beverage) as is contributed by the flavoring ingredient used. Soda water designated by a name, including any proprietary name which includes the word "cola" or a designation as a "pepper" beverage that, for years, has become well known as being made with kola nut extract or other natural caffeine-containing extracts, and thus as a caffeine-containing drink, shall contain caffeine in a quantity not to exceed two-hundredths percent by weight.

Soda water may contain optional ingredients as provided in the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.].

2. **Concentrate, extracts, fountain syrups, beverage bases, etc.** Fruit syrups, fountain syrups, or beverage bases bearing the name of or a name suggestive of a specific kind of fruit shall be made wholly from the juice or unmanipulated edible portion of the natural product indicated by the name, with or without the addition of sugar or other sweetening ingredient. Fruit syrups, fountain syrups, beverage bases, etc., flavored with an essential oil or a synthetic fruit essence, with or without artificial coloring matter shall be labeled "(name of fruit) flavored beverage base" or "imitation (name of fruit) flavored beverage base" as the case may be, depending on whether or not the predominating characteristic qualities of the finished beverage are derived from the true fruit juice or the added imitation ingredient or ingredients. A list of the principal or essential ingredients must be plainly declared on the label in the order of their predominance.

Those liquid beverage bases and closely related products, such as powdered preparations, which are intended primarily to be made into beverages by the consumer by dilution with water, or

to be dissolved in water, with or without the addition of sugar or other sweetening agent, shall contain sufficient fruit acid so that the finished beverage shall contain fruit acid equivalent to not less than five-hundredths ounces [1.48 milliliters] citric acid per quart [0.95 liter] when prepared according to directions.

An article to which sugar or other sweetening agent is customarily added by the purchaser before a beverage is made shall bear the statement "use with sugar" or some similar statement immediately beneath the name of the article. The label shall bear a statement of the name of the principal or essential ingredients composing the product, plainly stated in the order of their predominance and printed in uniform size of type.

Concentrates, etc., which are intended for use in preparations of finished beverages, syrups, or other products to be offered for sale in the state shall be labeled with all the information which is necessary to enable the bottler or other manufacturer to label the finished products in compliance with the requirements of this section.

3. **True fruit juices.** A true fruit juice is the unfermented, undiluted juice of a fruit or fruits, with or without the addition of sugar or other sweetening ingredient. A fruit juice to which sugar or other sweetening ingredient has been added shall be plainly labeled, as for example "orange juice with added sugar", or "orange juice sweetened". Concentrated fruit juices shall be classified as true fruit juices.
4. **Imitation or compound fruit juices and beverages (noncarbonated).** Beverages made from certain products derived from fruit, even though such products occur naturally in fruits, shall be classified as imitation fruit juices. They shall not be confused with or interpreted as true fruit juice beverages. A product made from oil of lemon, citric acid, and color, with or without an emulsifying agent, shall not be deemed lemonade or a natural fruit juice base product even though its essential ingredients are derived from the lemon.

A beverage bearing a name indicative of a particular fruit juice or other natural fruit product and consisting of the natural fruit juice combined with a solution of fruit acid, harmless color, and flavor, with or without sugar or other sweetening ingredient, shall be considered a compound if the principal characteristic qualities of the finished products are derived from the added natural fruit juice. The names of the essential ingredients shall be plainly declared on the label.

Nonalcoholic fruit nectars, including pear, nectarine, peach, apricot, plum, and all other similar beverages shall be labeled with the list of ingredients plainly declared on the label in the order of predominance, including water, sugar or other sweetening ingredient, fruit acid, etc.

5. **Beverage dispensed at public gatherings.** All mixed drinks, whether carbonated or uncarbonated, which are sold, offered for sale, or displayed for sale at fairs, carnivals, circuses, and similar places of public gathering, and at all open refreshment booths or stands, shall be dispensed in or from the original containers as filled and sealed at the bottling plant, or from closed dispensers, or from containers fitted with suitable faucet, spigot, or pump. The use of open bowls is prohibited.

Dispensers and storage containers used for storing and dispensing carbonated or still beverages shall be either glass, stoneware, or other acid-resistant construction. They shall be thoroughly washed and then sterilized with a chlorine solution of not less than one hundred parts per million in contact for not less than five minutes or by some other method approved by the department at least once daily.

The addition of ice directly to beverages stored in dispensers or other closed containers is prohibited.

A conspicuous sign shall be attached to, or placed by, a dispenser or container and shall plainly declare the name of the beverage. If the beverage be an imitation or a compound, it must be licensed under the Beverage Inspection Act and the sign must state the list of ingredients, including artificial flavor and color if used.

6. **Nonalcoholic cordials, wines, etc.** Beverages which conform to cordials, wines, creme de menthe, etc., in all respects except as to alcohol content may be labeled "nonalcoholic cordial", "nonalcoholic wine", "nonalcoholic creme de menthe", etc., as the case may be.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-08. Jellies - Jams - Preserves - Marmalades - Fruit butters.

1. Only such products as conform to the official definitions and standards of the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.], for preserves, jellies, fruit butters, jams, and marmalades, shall be entitled, without further qualifications, to be designated as such.

2. Jellies, jams, preserves, marmalades, and fruit butters prepared from more than one fruit shall not be designated by the name of any one fruit but shall bear on the label the name of all of the fruits in the preparation in the order of their predominance, if any, of the weights of such fruits in the combination.
3. Products prepared as substitutes for, or in imitation of, pure fruit preserves, jellies, jams, marmalades, and fruit butters shall be labeled with the word imitation equally conspicuous with and immediately adjoining the name of the imitated product, followed without any intervening descriptive matter by a list of the ingredients contained therein.
4. Where dried or evaporated fruit or trimming stock is substituted in whole or in part for the whole, clean, sound, properly matured fresh fruit or the pulpy or fleshy portions thereof in the preparation of any preserves, jelly, jam, etc., the name or names of the ingredients used shall be stated on the label.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-09. Syrups and mixed syrups.

1. The term syrup, as applied to table syrup, pancake syrup, or any food syrup consisting of one syrup ingredient, shall be plainly qualified by the common name of syrup. The qualifying name shall be printed on the label with equal prominence to that of the term syrup.
2. A syrup consisting of a mixture of two or more edible syrups shall be labeled with the names of all the ingredients; and if any ingredient be present in such small quantity that the naming of the ingredient without further qualifying the statement be misleading, the proportion must also be indicated. For example, a mixture of cane sugar and maple syrup containing more than about twenty-five percent maple syrup could be labeled with the unqualified statement "cane sugar and maple syrup"; a mixture containing from ten percent to twenty-five percent maple syrup should be labeled "cane sugar and maple syrup" qualified by the prominent statement "contains _____ percent maple syrup"; if the percentage of maple syrup is less than about ten percent the product should be labeled with some such legend as "sugar syrup with a trace of maple syrup added".
3. A syrup consisting of a defined product or products together with added flavoring or coloring ingredients shall be labeled

to indicate that it is a compound or imitation as the case may be.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-10. Powdered sugar. Powdered sugar may be mixed with starch not to exceed three percent by weight, and also provided the package in which it is sold shall be plainly labeled stating the percentage of starch contained therein.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-11. Mixed flours.

1. A product consisting of a mixture of flours obtained from different cereals as wheat, buckwheat, etc., shall not be named after a single constituent but shall be labeled to show the percentage of each ingredient used in the mixture.
2. The term self-rising, as applied to flour or to mixtures of flours, implies the presence of leavening ingredients, and products sold as self-rising flour shall bear upon the label the names of the flour ingredients and leavening agents contained in the mixture, and the percentage of each.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-12. Baking powder. Baking powder shall be labeled to indicate its type by designating the acid-reacting contents.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-13. Salad oil. A salad oil consisting of a compound or mixture of two or more edible oils or fats shall be labeled to show the name of the ingredients.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-14. Lard compounds - Lard substitutes.

1. A mixture or compound consisting of lard blended with other animal fat, oleo stearin, or vegetable fats or oils, or products prepared from any of these, shall be labeled to show the composition with the name of the ingredients and the percentage of each.
2. A product prepared from or consisting of animal or vegetable oil or fat manufactured and sold for use in the preparation of food or in cooking or baking shall be plainly labeled with the common name of the oil or fat. A product consisting of a mixture of two or more edible oils or fats shall be labeled with the name of each ingredient together with the percentage of each.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-15. Milk - Cream - Skimmed milk - Buttermilk. Milk and all products derived therefrom, when sold at a restaurant, hotel, lunch counter, or any public eating place, whether served separately or in connection with other food or when served with a meal without additional charge, are sold as a part of the meal and shall be amendable to the provisions of the North Dakota Food, Drug, and Cosmetic Act or to any rule or regulation or standard of quality, purity, or strength issued thereunder.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-20

33-31-01-16. Vinegar.

1. Packages containing vinegar shall bear a label stating the kind of vinegar contained therein.
2. A vinegar made by alcoholic and subsequent acetous fermentations of the aqueous solutions prepared from apple byproducts, skins, cores, and chops shall be plainly labeled "apple byproduct vinegar", "apple waste vinegar", or by another term correctly describing the material from which it is produced. The apple stock from which the vinegar is prepared must be clean and sound.
3. Any bottle, jug, or other container in which vinegar is sold or delivered in bulk to the customer shall bear a label plainly stating the kind of vinegar contained therein.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)
Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-17. Sausage.

1. Cereal, vegetable starch, or flour may be added to sausage in amounts not exceeding three and one-half percent in all, individually or collectively, providing the product be so labeled as to clearly show the percentage of such added material.
2. Water may be added to sausage in the course of preparation in the amount not exceeding three percent, except that sausage of the class which is smoked or cooked such as frankfort style, vienna style, and bologna style, may contain added water in excess of three percent, but not in excess of ten percent to make the product palatable.
3. Sausage belonging to that class the various members of which are smoked or cooked before being placed on sale, such as frankfort style, vienna style, and bologna style, may contain, in addition to water in excess of three percent, added cereal, starch, or vegetable flour, providing that the product is so labeled as to show the presence of such added material.
4. No artificial coloring matter shall be used in the preparation of sausage. Harmless colors may be used for coloring sausage casings by dipping or application, provided the character of the casing and the mode of treatment be such that the coloring does not penetrate into the meat food product contained in the casing, and the presence of such coloring matter be plainly declared upon the casing itself or upon the container. Coloring matter shall not be added to sausage casings for the purpose of simulating, or in lieu of, the treatment by smoke from burning wood.
5. When sausage is sold in bulk, the required information to be given on the label shall be given by means of a placard displayed in such manner as to clearly advise the customer of the nature of the product.
6. The addition of sulfurous acid or sulfite to meat or meat products imparts a fictitious color to the product and may conceal damage and inferiority. Therefore, the use of sulfurous acid or any of its compounds in the preparation of meat products is prohibited.
7. The sale of food products prepared with crude pyroligneous acid or liquid smoke, in lieu of natural wood smoke, is prohibited.

8. The sale of meats by any establishment without proper and adequate refrigeration is prohibited.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-09, 19-02.1-10

33-31-01-18. Labeling of canned salmon. Canned salmon shall be labeled to designate the species of salmon in the can with one of the common names listed below belonging to the species of fish canned:

1. *Oncorhynchus nerka*. Red or red (blueback or sockeye).
2. *Oncorhynchus tshawytscha*. Chinook or chinook (king or spring).
3. *Oncorhynchus kitsutch*. Coho or coho (medium red or silver).
4. *Oncorhynchus gorbuscha*. Pink or humpback.
5. *Oncorhynchus keta*. Chum, keta, or dog.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-10

33-31-01-19. Standards for foods. For those products for which there are no definitions of identity or standards of purity issued by the state department of health and consolidated laboratories, the department will use such definitions and standards as issued under the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.], when such definitions and standards do not conflict with any North Dakota law.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-20

33-31-01-20. Labeling of beef mixtures. Grocery stores, meat markets, cafes, restaurants, and drive-ins selling or serving ground beef, with or without beef fat added, mixed with texturized vegetable protein or other ingredients intended to extend the quantity of the product, shall use an appropriate descriptive term, other than ground beef or hamburger, to identify such product. Such beef mixtures shall be clearly labeled on the package or menu with conspicuous notice to the consumer of the ingredients contained in the product.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(2)

Law Implemented: NDCC 19-02.1-20

CHAPTER 33-31-02
DEFINITIONS AND STANDARDS FOR FOOD PRODUCTS

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33-31-02-01. Meats.

1. Beef is meat derived from cattle nearly one year of age or older.
2. Flesh is any edible part of the striated muscle of an animal. The term animal as herein used indicates a mammal, a fowl, a fish, a crustacean, a mollusk, or any other animal used as a source of food.
3. Fresh meat is meat which has undergone no substantial change in character since the time of slaughter.

4. Lamb is meat derived from young sheep one year or less of age.
5. Meat is the properly dressed flesh derived from cattle, from swine, from sheep, or from goats sufficiently mature and in good health at the time of slaughter, but is restricted to that part of the striated muscle which is skeletal or that which is found in tongue, in the diaphragm, in the heart, or in the esophagus, and does not include that found in the lips, snout, or in the ears, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the flesh and which may not have been separated from it in the process of dressing it for sale. The term meat when used in a qualified form, as, for example, "horse meat", "reindeer meat", "crab meat", etc., is then, and then only, properly applied to corresponding portions of animals other than cattle, swine, sheep, and goats.
6. Mutton is meat derived from sheep nearly one year of age or older.
7. Pork is meat derived from swine.
8. Veal is meat derived from young cattle one year or less of age.
9. Venison is flesh derived from deer.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(2)

Law Implemented: NDCC 19-02.1-08

33-31-02-02. Meat byproducts. Meat byproducts are any properly dressed edible parts, other than meat, which have been derived from one or more carcasses of cattle, of swine, of sheep, or of goats sufficiently mature and in good health at the time of slaughter.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-03. Prepared meats.

1. Canned meat is fresh meat or prepared meat, packed in hermetically sealed containers, with or without subsequent heating for the purpose of sterilization.
2. Corned meat is the prepared meat, which has been cured by soaking in, with or without injecting into it, a solution of common salt, with or without one or more of the following, each in its proper proportion: sodium nitrite, sodium

- nitrate, potassium nitrate, sugar, dextrose, a syrup, honey, and with or without the use of spice.
3. Cured meat is the product obtained by subjecting meat to a process of salting, by the employment of dry common salt or of brine, with or without the use of one or more of the following: sodium nitrite, sodium nitrate, potassium nitrate, sugar, dextrose, a syrup, honey, spice.
 4. Dried meat is the product obtained by subjecting fresh meat or cured meat to a process of drying, with or without the aid of artificial heat, until a substantial portion of the water has been removed.
 5. Dry salt meat is the prepared meat, which has been cured by the application of dry common salt, with or without the use of one or more of the following: sodium nitrite, sodium nitrate, potassium nitrate, sugar, dextrose, a syrup, honey, spice; with or without the injection into it of a solution of common salt to which may have been added one or more of the following: sodium nitrite, sodium nitrate, potassium nitrate, sugar, dextrose, a syrup, honey.
 6. Hamburger shall consist of chopped, fresh beef, with or without the addition of beef fat as such, and or of seasoning, and shall not contain more than thirty percent fat.
 7. Potted meat or deviled meat is the product obtained by comminuting and cooking fresh meat or prepared meat, with or without spice, and is usually packed in hermetically sealed containers.
 8. Prepared meat is the product obtained by subjecting meat to process of comminuting, of drying, of curing, of smoking, of cooking, of seasoning, or of flavoring, or to any combination of such processes.
 9. Sausage meat is fresh meat or prepared meat, or a mixture of fresh meat and prepared meat, and is sometimes comminuted. The term sausage meat is sometimes applied to bulk sausage containing no meat byproducts.
 10. Smoked meat is the product obtained by subjecting fresh meat, dried meat, or cured meat to the direct action of the smoke either of burning wood or of similar burning material.
 11. Sweet pickled meat is the prepared meat which has been cured by soaking in, with or without injecting into it, a solution of common salt, with sugar or dextrose, a syrup, or honey, together with one or more of the following, each in its proper

proportion: sodium nitrite, sodium nitrate, potassium nitrate, and with or without the use of spice.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-04. Meat food products.

1. Brawn is the product made from chopped or ground and cooked edible parts of swine, chiefly from the head, feet, or legs, with or without the chopped or ground tongue.
2. Headcheese, mock brawn, differs from brawn in that other meat or meat byproducts are substituted, in whole or in part, for corresponding parts derived from swine.
3. Meat food products are any articles of food or any articles that enter into the composition of food which are not prepared meats but which are derived or prepared, in whole or in part, by a process of manufacture from any portion of the carcasses of cattle, swine, sheep, or goats, if such manufactured portion be all, or a considerable and definite portion, of the article, except such preparations as are for medicinal purposes only.
4. Meat loaf is the product consisting of a mixture of comminuted meat with spice or with cereals, with or without milk or eggs, pressed into the form of a loaf and cooked.
5. Pork sausage is chopped or ground fresh pork, with or without one or more of the following: herbs, spice, common salt, sugar, dextrose, a syrup, water.
6. Scrapple is the product consisting of meat or meat byproducts mixed with meal or the flour of grain, and cooked with seasoning materials, after which it is poured into a mold.
7. Souse is the product consisting of meat or meat byproducts; after cooking, the mixture is commonly packed into containers and covered with vinegar.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-05. Lard.

1. Lard is the rendered fresh fat from hogs in good health at the time of slaughter, is free from rancidity, and contains,

necessarily incorporated in the process of rendering, not more than one percent of substances other than fatty acids and fat.

2. Leaf lard is lard rendered at moderately high temperatures from the internal fat of the abdomen of the hog, excluding that adherent to the intestines, and has an iodine number not greater than sixty.
3. Neutral lard is lard rendered at low temperatures.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-06. Milk.

1. Dried milk is the product resulting from the removal of water from milk, and contains not less than twenty-six percent of milk fat and not more than five percent of moisture.
2. Evaporated milk is the liquid food made by evaporating sweet milk to such point that it contains not less than seven and nine-tenths percent of milk fat and not less than twenty-five and nine-tenths percent of total milk solids.
3. Goat's milk and ewe's milk are the whole, fresh lacteal secretions free from colostrum obtained by the complete milking of the healthy animals, and conform in name to the species of animal from which they are obtained.
4. Malted milk is the product made by combining whole milk with the liquid separated from a mash of ground barley malt and wheat flour, with or without the addition of sodium chloride, sodium bicarbonate, and potassium bicarbonate, in such a manner as to secure the full enzymic action of the malt extract, and by removing water. The resulting product contains not less than seven and one-half percent of butterfat and not more than three and one-half percent of moisture. Lecithin in an amount not to exceed one percent by weight of the finished product can be added as an optional ingredient.
5. Sweetened condensed milk is the liquid or semiliquid food made by evaporating a mixture of sweet milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose) to such point that the finished sweetened condensed milk contains not less than twenty percent of total milk solids and not less than eight and one-half percent of milk fat. The quantity of refined sugar (sucrose)

or combination of such sugar and refined corn sugar (dextrose) used is sufficient to prevent spoilage.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-07. Skim milk.

1. Buttermilk is the product that remains when fat is removed from milk or cream, sweet or sour, in the process of churning. It contains not less than eight and one-half percent of milk solids not fat.
2. Cultured buttermilk is the product obtained by souring pasteurized skimmed or partially skimmed milk by means of a suitable culture of lactic bacteria. It contains not less than eight and one-half percent of milk solids not fat.
3. Dried skimmed milk is the product resulting from the removal of water from skimmed milk, and contains not more than five percent of moisture.
4. Evaporated skimmed milk is the product resulting from the evaporation of a considerable portion of the water from skimmed milk, and contains not less than twenty percent of milk solids.
5. Skim milk or skimmed milk is that portion of milk which remains after removal of the cream in whole or in part.
6. Sweetened condensed skimmed milk is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar or dextrose, or both, has been added. It contains not less than twenty-four percent of milk solids.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-08. Milk fat - Butterfat. Milk fat or butterfat is the fat of milk, and has a Reichert-Meissl number not less than twenty-four and a specific gravity not less than:

$$0.905 \frac{(40 \text{ degrees Celsius})}{(40 \text{ degrees Celsius})}$$

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-08, 23-01-03(3)
Law Implemented: NDCC 19-02.1-08

33-31-02-09. Butter. -Butter is the clean, sound product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also includes a small portion of the other natural milk constituents, with or without salt, and contains, all tolerances provided for, not less than eighty percent of milk fat. Butter may also contain added coloring matter.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-08, 23-01-03(3)
Law Implemented: NDCC 19-02.1-08

33-31-02-10. Cheese.

1. Brick cheese is the quick-ripened cheese made by the brick-cheese process from pressed curd obtained by the action of rennet on whole milk. It contains, in the solids, not less than fifty percent of milk fat.
2. Cheddar cheese or American cheddar cheese is the cheese made by the cheddar process from heated and pressed curd obtained by the action of rennet on whole milk. It contains not more than thirty-nine percent of water, and, its solids contain not less than fifty percent of milk fat.
3. Cheese is the product made from curd obtained from the whole, partly skimmed, or skimmed milk of cows, or from the milk of other animals, with or without added cream, by coagulating the casein with rennet, lactic acid, or other suitable enzyme or acid, and with or without further treatment of the separated curd by heat or pressure, or by means of ripening ferments, special molds, or seasoning.

In the United States the name "cheese", unqualified, is understood to mean cheddar cheese, American cheese, American cheddar cheese.

4. Colby cheese or American colby cheese is the cheese prepared from whole milk by the usual process for this type of cheese. It contains not more than forty percent of water, and, its solids contain not less than fifty percent milk fat.
5. Cottage cheese is the soft uncured cheese made from unheated (or scalded) curd obtained by the action of lactic

fermentation or lactic acid or rennet, or by any of these agents, on sweet milk, concentrated skim milk, and nonfat dry milk. The drained curd is, sometimes mixed with cream, salt, and sometimes otherwise seasoned. The finished cottage cheese contains not more than eighty percent moisture.

6. Cream cheese is the unripened cheese made by the neufchatel process from whole milk enriched with cream.
7. Edam cheese is the cheese made by the edam process from heated and pressed curd obtained by the action of rennet on whole milk or on partly skimmed milk. It is commonly made in spherical form and coated with a suitable oil and a harmless red coloring matter.

It contains not more than forty-five percent moisture and its solids contain not less than forty percent milk fat.

8. Emmenthaler cheese or swiss cheese is the cheese made by the emmenthaler process from heated and pressed curd obtained by the action of rennet on whole milk or on partly skimmed milk, and is ripened by special gas-producing bacteria, causing characteristic eyes or holes. The cheese is also known in the United States as "schweizer". It contains, in the water-free substance, not less than forty-three percent of milk fat.
9. Gorgonzola cheese is the cheese made by the gorgonzola process from curd obtained by the action of rennet on whole milk. The cheese ripens in a cool, moist atmosphere with the development of a blue-green mold and thus acquires a mottled or marbled appearance in section.

It contains not more than forty-two percent moisture and in its solids not less than fifty percent milk fat.

10. Gouda cheese is the cheese made by the gouda process from heated and pressed curd obtained by the action of rennet on whole milk. The rind is colored with saffron. It contains, in the solids, not less than forty-six percent of milk fat.
11. Limburger cheese is the cheese made by the limburger process from unpressed curd obtained by the action of rennet on whole milk. The curd is ripened in a damp atmosphere by special fermentation. It contains, in the solids, not less than fifty percent of milk fat.
12. Neufchatel cheese is the cheese made by the neufchatel process from unheated curd obtained by the action of lactic fermentation or rennet on whole milk. The curd is drained and is kneaded or worked into a butterlike consistence and pressed into forms for immediate consumption or for ripening.

13. Parmesan cheese is the cheese made by the parmesan process from heated and hard-pressed curd obtained by the action of rennet on partly skimmed milk. The cheese, during the long ripening process, is coated with a suitable oil.

It contains not more than thirty-two percent moisture and in its solids not less than thirty-two percent milk fat.

14. Partly skimmed milk cheese is cheese made from partly skimmed milk.

15. Pineapple cheese is the cheese made by the pineapple cheddar cheese process from pressed curd obtained by the action of rennet on whole milk. The curd is formed into a shape resembling a pineapple, with characteristic surface corrugations, and during the ripening period the cheese is thoroughly coated and rubbed with a suitable oil, with or without shellac. It contains, in the solids, not less than fifty percent of milk fat.

16. Roquefort cheese is the cheese made by the roquefort process from unheated, unpressed curd obtained by the action of rennet on the whole milk of sheep, with or without the addition of a small proportion of the milk of goats. The curd is inoculated with a special mold (*penicillium roqueforti*) and ripens with the growth of the mold. The fully ripened cheese is friable and has mottled or marbled appearance in section.

It contains not more than forty-five percent moisture and in its solids not less than fifty percent of milk fat.

17. Skimmed milk cheese is cheese made from skimmed milk.

18. Stilton cheese is the cheese made by the stilton process from unpressed curd obtained by the action of rennet on whole milk, with or without added cream. During the ripening process a special blue-green mold develops, and the cheese thus acquires a marbled or mottled appearance in section.

19. Washed curd cheese or soaked curd cheese or American washed (or soaked) curd cheese is cheese made from whole milk by the usual process for this type of cheese. It contains not more than forty-two percent of water, and its solids contain not less than fifty percent milk fat.

20. Whole milk cheese is cheese made from whole milk.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-11. Ice creams and other frozen desserts.

1. Container labels. All cans or containers used in the sale or distribution of the ice cream mix or ice cream mix base shall bear a label attached to same giving the following information: name of product, percentage of milk fat contained in product, percentage of total solids contained in product, statement of net contents, and name and address of manufacturer or distributor.
2. Frosted malted milk, frozen malted milk, or any frozen or semifrozen product prepared in advance of the consumer's order, to be sold or served as malted milk, chocolate malted milk, or under any term simulating these, shall consist of ice cream or ice milk, malted milk powder, milk, and flavor.
3. Frozen custard means French ice cream, French custard ice cream, ice custard, parfaits, and similar frozen products. Frozen custard is a pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: egg yolk, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent of edible gelatin or vegetable stabilizer, not less than ten percent by weight of milk fat, not less than twenty percent by weight of total milk solids, the total weights of egg yolk solids therein is not less than one and four-tenths percent of the weight of the finished frozen custard. In no case shall any frozen custard contain less than one and six-tenths pounds [72.57 centigrams] of total solids per gallon [3.79 liters] or weigh less than four and one-half pounds [2.04 kilograms] per gallon [3.79 liters].
4. Frozen desserts must not show bacterial count in excess of one hundred thousand bacteria per gram.
5. Fruit ice or ice sherbet is a pure, clean, frozen product made from water, sugar, dextrose, corn syrup in liquid or dry form, and honey, with fruit or fruit juice flavoring and coloring with not less than thirty-five hundredths of one percent of acid expressed as lactic acid, and with or without added edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains no milk solids and weighs not less than six pounds [2.72 kilograms] per gallon [3.79 liters].
6. Ice cream is the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring,

and with or without edible gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent by weight of edible gelatin or vegetable stabilizer, not less than ten percent by weight of milk fat, and not less than twenty percent by weight of total milk solids; except when bulky ingredients such as fruits, nuts, cocoa, or chocolate, maple syrup, cakes, or confections (candy, cakes, cookies, and glaceed fruits) are used for the purpose of flavoring, then it shall contain not less than ten percent by weight of milk fat and not less than twenty percent by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of such flavoring, but in no case shall it contain less than eight percent by weight of milk fat or less than sixteen percent by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds [72.57 centigrams] of total food solids per gallon [3.79 liters] or weigh less than four and one-half pounds [2.04 kilograms] per gallon [3.79 liters].

7. Ice cream mix means the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer, not less than ten percent by weight of milk fat, and not less than twenty percent by weight of total milk solids. Ice cream mix in concentrated or condensed form shall contain such relative amounts of ingredients that, when diluted according to directions it shall comply with the above definitions of ice cream mix.
8. Ice cream mix base means ice cream powder or dry ice cream mix and is the product resulting from the removal of water from ice cream mix and contains, all tolerances allowed for, not less than twenty-six and one-half percent milk fat and not less than sixty-eight and one-half percent of nonfat solids, and not more than five percent of moisture.
9. Malted milk beverage or malted milk etc., when applied to a beverage, are terms designating a viscous food beverage prepared by mixing together by means of a suitable machine whole milk, malted milk powder, ice cream or ice milk, a syrup, and flavor. The flavor is commonly added in the form of a flavored syrup. This product is served at once after mixing.
10. Milk sherbet is a pure, clean frozen product made from milk products, water, and one or more of the following ingredients: sugar, dextrose or corn syrup in liquid or dry form, and honey, fruit or fruit juice flavoring and coloring, with not less than thirty-five hundredths of one percent of acid,

expressed as lactic acid, with or without color, and with or without added gelatin or vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not less than one percent by weight of milk fat and not less than two percent by weight of milk solids and weighs not less than six pounds [2.72 kilograms] per gallon [3.79 liters].

11. Packaged frozen products must bear a label stating the name or class of product, the name and address of the manufacturer, jobber, or other person responsible for its being placed in commerce, and the net contents contained in the package.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-12. Grain and flours.

1. Buckwheat flour is bolted buckwheat meal, and contains not more than twelve percent of moisture, not less than one and twenty-eight hundredths percent of nitrogen, and not more than one and seventy-five hundredths percent of ash.
2. Durum flour is the food prepared by grinding and bolting clean durum wheat. One of the cloths through which such flour is bolted has openings not larger than those of woven-wire cloth designated "149 micron (No. 100)" in table 1 of standard specifications for sieves, published March 1, 1940, in L.C. 584 of the United States department of commerce, national bureau of standards. It is freed from bran coat, or bran coat and germ, to such extent that the percent of ash therein, calculated to a moisture-free basis, is not more than one and one-half percent. Its moisture content is not more than fifteen percent.
3. Farina is the food prepared by grinding and bolting cleaned wheat, other than durum wheat and red durum wheat, to such fineness that, it passes through a No. 20 sieve, but not more than three percent passes through a No. 100 sieve. It is freed from bran coat, or bran coat and germ, to such extent that the percent of ash therein, calculated to a moisture-free basis, is not more than six-tenths percent. Its moisture content is not more than fifteen percent.
4. Flour, white flour, wheat flour, or plain flour is the food prepared by grinding and bolting cleaned wheat other than durum wheat and red durum wheat; to compensate for any natural deficiency of enzymes, malted wheat, malted wheat flour, malted barley flour, or any combination of two or more of these, may be used; but the quantity of malted barley flour so used is not more than seventy-five hundredths percent. One of

the cloths through which the flour is bolted has openings not larger than those of woven wire cloth designated "149 micron (No. 100)" in table 1 of standard specifications for sieves, published March 1, 1940, in L.C. 584 of the United States department of commerce, national bureau of standards. The flour is freed from bran coat, or bran coat and germ, to such extent that the percent of ash herein, calculated to a moisture-free basis is not more than the sum of one-twentieth of the percent of protein therein, calculated to a moisture-free basis, and thirty-five hundredths. Its moisture content is not more than fifteen percent. Unless such addition conceals damage or inferiority of the flour or makes it appear better or of greater value than it is, one or any combination of two or more of the following optional bleaching ingredients may be added in a quantity not more than sufficient for bleaching or, in case such ingredient has an artificial aging effect, in a quantity not more than sufficient for bleaching and such artificial aging effect:

- a. Oxides of nitrogen.
- b. Chlorine.
- c. Nitrosyl chloride.
- d. Chlorine dioxide.
- e. One part by weight of benzoyl peroxide mixed with not more than six parts by weight of one or any mixture of two or more of the following: potassium alum, calcium sulfate, magnesium carbonate, sodium aluminum sulfate, dicalcium phosphate, tricalcium phosphate, starch, calcium carbonate.
- f. Acetone peroxides.
- g. Azodicarbonamide (not more than forty-five parts per million).

When an optional bleaching ingredient is used, the label shall bear the word "bleached". Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the word bleached shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter; except that where such name is a part of a trademark or brand, other written, printed, or graphic matter, which is also a part of such trademark or brand, may so intervene if the word bleached is in such juxtaposition with such trademark or brand as to be conspicuously related to such name.

5. Gluten flour is the product made from wheat flour, by the removal of a large part of the starch, and contains not more

than ten percent of moisture and, calculated on the water-free basis, not less than seven and one-tenth percent of nitrogen, not more than fifty-six percent of nitrogen-free extract (using the protein factor five and seven-tenths), and not more than forty-four percent of starch.

6. Grain is the fully matured, air-dry seed of wheat, maize, rice, oats, rye, buckwheat, barley, sorghum, millet, or spelt.
7. Ground gluten is the product made from wheat flour by the almost complete removal of starch, and contains not more than ten percent of moisture and, calculated on the water-free basis, not less than fourteen and two-tenths percent of nitrogen, not more than fifteen percent of nitrogen-free extract (using the protein factor five and seven-tenths), and not more than five and one-half percent of starch.
8. Meal is the product made by coarsely grinding grain.
9. Oatmeal is meal made from hulled oats, and contains not more than twelve percent of moisture, not more than one and one-half percent of crude fiber, not less than two and twenty-four hundredths percent of nitrogen, and not more than two and two-tenths percent of ash.
10. Purified middlings is the granular product obtained in the commercial process of milling wheat, and is that portion of the endosperm retained on ten XX silk bolting cloth. It contains no more flour than is consistent with good commercial practice, nor more than fifteen percent of moisture.
11. Rice is the hulled, or hulled and polished, grain of *oryza sativa* L.
 - a. Brown rice is the hulled, unpolished grain.
 - b. Polished rice or rice, is the hulled grain from which the bran or pericarp has been removed by scouring and rubbing.
12. Rye flour is the fine-ground product made by bolting rye meal, and contains not more than thirteen and one-half percent of moisture, not less than one and thirty-six hundredths percent of nitrogen, and not more than one and twenty-five hundredths percent of ash.
13. Semolina is the food prepared by grinding and bolting cleaned durum wheat to such fineness that, it passes through a No. 20 sieve, but not more than three percent passes through a No. 100 sieve. It is freed from bran coat, or bran coat and germ, to such extent that the percent of ash therein, calculated to a moisture-free basis, is not more than ninety-two hundredths percent. Its moisture content is not more than fifteen percent.

14. White cornmeal is the food prepared by so grinding cleaned white corn that, not less than ninety-five percent passes through a No. 12 sieve, not less than forty-five percent through a No. 25 sieve, but not more than thirty-five percent through a No. 72 grits gauze. Its moisture content is not more than fifteen percent. In its preparation coarse particles of the ground corn may be separated and discarded, or reground and recombined with all or part of the material from which they were separated, but in any such case the crude fiber content of the finished cornmeal is not less than one and two-tenths percent and not more than that of the cleaned corn from which it was ground, and its fat content does not differ more than three-tenths percent from that of such corn. The contents of crude fiber and fat are on a moisture-free basis.

15. Whole wheat flour, graham flour, or entire wheat flour is the food prepared by so grinding cleaned wheat other than durum wheat and red durum wheat that, not less than ninety percent passes through a No. 8 sieve and not less than fifty percent passes through a No. 20 sieve. The proportions of the natural constituents of such wheat, other than moisture, remain unaltered. To compensate for any natural deficiency of enzymes, malted wheat, malted wheat flour, malted barley flour, or any combination of two or more of these, may be used; but the quantity of malted wheat flour so used is not more than one-half percent, and the quantity of malted barley flour so used is not more than seventy-five hundredths percent. The moisture content of whole wheat flour is not more than fifteen percent. Unless such addition conceals damage or inferiority of the whole wheat flour or makes it appear better or of greater value than it is, the optional bleaching ingredient chlorine dioxide, chlorine, or a mixture of nitrosyl chloride and chlorine, may be added in a quantity not more than sufficient for bleaching and artificial aging effects.

When an optional bleaching ingredient is used, the label shall bear the word "bleached". Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the word bleached shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter; except that where such name is a part of a trademark or brand, other written, printed, or graphic matter, which is also a part of such trademark or brand, may so intervene if the word bleached is in such juxtaposition with such trademark or brand as to be conspicuously related to such name.

16. Yellow cornmeal conforms to the definition and standards prescribed for white cornmeal except that cleaned yellow corn is used instead of cleaned white corn.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-13. Breads.

1. Boston brown bread is the product, commonly in the form of cylindrical loaves, obtained by steaming or baking a leavened mixture of rye flour or meal, cornmeal, a wheat flour, molasses, salt, water, or a milk product, with or without raisins. Leavening is commonly effected through the use of baking powder or sodium bicarbonate and sour milk.
2. Bread is the product made by baking a dough consisting of a leavened or unleavened mixture of ground grain or other edible farinaceous substance, with potable water, and with or without the addition of other edible substances.
3. Milk bread is the product, in the form of loaves or smaller units, obtained by baking a leavened and kneaded mixture of flour, salt, yeast, and milk or its equivalent (milk solids and water in the proportions normal to milk); with or without edible fat or oil, sugar or other fermentable carbohydrate substance. It may also contain diastatic or proteolytic ferments, and such minute amounts of unobjectionable salts as serve solely as yeast nutrients. The flour ingredient may include not more than three percent of other edible farinaceous substance. Milk bread contains, one hour or more after baking, not more than thirty-eight percent of moisture.
4. Raisin bread is the product, in the form of loaves or smaller units, obtained by baking a leavened and kneaded mixture of flour, water, salt, yeast, and raisins, with or without edible fat or oil, milk or milk product, sugar or other fermentable carbohydrate substance. It may contain diastatic or proteolytic ferments, and such minute amounts of unobjectionable salts as serve solely as yeast nutrients. The flour ingredient may include not more than three percent of other edible farinaceous substance. The finished product contains not less than three ounces [85.05 grams] of raisins to the pound [.45 kilogram].
5. Rye bread is the bread obtained by baking a dough which differs from wheat bread dough in that not less than one-third of the flour ingredient has been replaced by rye flour. It conforms to the moisture limitation for wheat bread.

6. White bread is the product, in the form of loaves or smaller units, obtained by baking a leavened and kneaded mixture of flour, water, salt, and yeast, with or without edible fat or oil, milk or a milk product, sugar or other fermentable carbohydrate substance. It may also contain diastatic or proteolytic ferments and such minute amounts of unobjectionable salts as serve solely as yeast nutrients. The flour ingredients may include not more than three percent of other edible farinaceous substance. White bread contains, one hour or more after baking, not more than thirty-eight percent of moisture. The name bread unqualified is commonly understood to mean white bread.
7. Whole-wheat bread, entire wheat bread, or graham bread is the product, in the form of loaves or smaller units, obtained by baking a leavened and kneaded mixture of whole-wheat flour, water, salt, and yeast, with or without edible fat or oil, milk or a milk product, sugar or other fermentable carbohydrate substance. It may also contain diastatic or proteolytic ferments, and such minute amounts of unobjectionable salts as serve solely as yeast nutrients. It contains, one hour or more after baking, not more than thirty-eight percent of moisture.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-14. Fruit and fruit products.

1. Canned fruit is the sound product made by sterilizing clean, sound properly matured and prepared fresh fruit, by heating, with or without either sugar, dextrose, or corn syrup in liquid or dry form and keeping in a suitable, clean, hermetically sealed container, and conforms in name to the fruit used in its preparation. When labeled with the grade, the product in the can shall comply with the standards prescribed for said grade by the agricultural marketing service of the United States department of agriculture. Substandard canned fruits shall be labeled as required under the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.].
2. Citrus fruits:
 - a. Grapefruit or pomelo is the mature fruit of citrus grandis osbeck. The juice of the mature fruit contains not less than seven parts of soluble solids to each part of acid calculated as citric acid without water of crystallization.

- b. Orange (common, sweet, or round) is the mature fruit of *C. sinensis* Osbeck. The juice of the mature fruit contains not less than eight parts of soluble solids to each part of acid calculated as citric acid without water of crystallization.
3. Coldpack fruit is the product obtained by packing, in a suitable container, properly prepared fresh fruit, with or without the addition of either sugar, dextrose, or corn syrup in liquid or dry form and maintaining it at a temperature sufficiently low to ensure its preservation.
4. Dried apricots are halved and pitted ripe apricots from which the greater portion of the moisture has been evaporated. Before packing, the dried fruit is commonly processed by washing. The finished product contains not more than twenty-six percent of moisture.
5. Dried peaches are halved and pitted ripe peaches from which the greater portion of the moisture has been evaporated. Before packing, the dried fruit is commonly processed by washing. The finished product contains not more than twenty-six percent of moisture.
6. Dried prunes are whole ripe prune plums from which the greater portion of the moisture has been evaporated. Before packing, the dried fruit is commonly processed by treatment with boiling water or steam. The finished product contains, in the fleshy portion, not more than twenty-five percent of moisture.
7. Evaporated apples are peeled, cored, and sliced apples from which the greater portion of the moisture has been evaporated. The finished product contains not more than twenty-four percent of moisture.
8. Fresh fruit is fruit which has undergone no material change other than ripening since the time of gathering.
9. Fruit is the edible, fleshy fructification of a plant, and is characterized by its sweet, acid, or ethereal flavor.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-15. Nut and fruit kernel products.

1. Almond paste is the plastic product obtained by cooking blanched and ground sweet almonds with blanched and ground bitter almonds, water, and sugar. It contains not more than fourteen percent of water nor more than forty percent of total sugars expressed as invert sugar.

2. Kernel pastes are the plastic products obtained by cooking with water and sugar the blanched and ground kernels of one or more of the following: apricots, peaches, plums (prunes). They are free from hydrocyanic acid and contain not more than fourteen percent of water nor more than forty percent of total sugars expressed as invert sugar. A kernel paste conforms in name to the kind or kinds of kernels employed in its production.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-16. Vegetables and vegetable products.

1. Canned vegetables are properly matured and prepared fresh vegetables, with or without the addition of potable water, salt, and either sugar, dextrose, or corn syrup in liquid or dry form, as specified in the separate definitions for the several kinds of canned vegetables, sterilized by heat, with or without previous cooking, in vessels from which they take up no injurious substance, and kept in suitable, clean, hermetically sealed containers. When labeled with the grade, the product in the can shall comply with the standards prescribed for said grade by the agricultural marketing service of the United States department of agriculture. Substandard canned vegetables shall be labeled as required under the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.].
2. Dried vegetables are the clean, sound products made by drying properly matured and prepared vegetables in such a way as to take up no harmful substance, and conform in name to the vegetables used in their preparation; sun-dried vegetables are dried vegetables made by drying without the use of artificial means; evaporated vegetables are dried vegetables made by drying with the use of artificial means.
3. Vegetables are the succulent, clean, sound, edible parts of herbaceous plants used for culinary purposes.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-17. Pickles.

1. Pickles are immature cucumbers, properly prepared, without taking up any metallic compounds other than salt, and preserved in any kind of vinegar, with or without spices; pickled onions, pickled beets, pickled beans, and other

pickled vegetables are vegetables prepared as described above, and conform in name to the vegetable used.

2. Salt pickles are immature cucumbers, preserved in a solution of common salt, with or without spices.
3. Sweet pickles are pickled cucumbers or other vegetables sweetened with either sugar, dextrose, or corn syrup in liquid or dry form.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-18. Sauerkraut. Sauerkraut is the product, of characteristic acid flavor, obtained by the full fermentation, chiefly lactic, of properly prepared and shredded cabbage in the presence of not less than one and three-tenths percent nor more than two and one-half percent of salt. It contains, upon completion of the fermentation, not less than one percent of acid, expressed as lactic acid. Sauerkraut which has been rebrined in the process of canning or repacking, contains not less than one percent of acid, expressed as lactic acid.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-19. Sugar and sugar products.

1. Granulated, loaf, cut, milled, and powdered sugars are different forms of sugar, and contain at least ninety-nine and one-half percent of sucrose.
2. Maple syrup is syrup made by the evaporation of maple sap or by the solution of maple concrete, and contains not more than thirty-five percent of water, and weighs not less than eleven pounds [4.99 kilograms] to the gallon [two hundred thirty-one cubic inches] [3.79 liters].
3. Maple sugar or maple concrete is the solid product resulting from the evaporation of maple sap or maple syrup.
4. Massecuite, melada, mush sugar, and concrete are products made by evaporating the purified juice of a sugar-producing plant, or a solution of sugar, to a solid or semisolid consistence, and in which the sugar chiefly exists in a crystalline state.
5. Molasses is the product left after separating the sugar from massecuite, melada, mush sugar, or concrete, and contains not more than twenty-five percent of water and not more than five percent of ash.

6. Refiners syrup is the residual liquid product obtained in the process of refining raw cane sugars, and contains not more than twenty-five percent of water and not more than eight percent of ash.
7. Sorghum syrup is the syrup obtained by the clarification and concentration of the juice of the sugar sorghum and contains not more than thirty percent of water, nor more than six and twenty-five hundredths percent of ash calculated on a dry basis.
8. Sugar is the product chemically known as sucrose (saccharose), chiefly obtained from sugarcane, sugar beets, sorghum, maple, and palm.
9. Sugar cane syrup is syrup made by the evaporation of the juice of the sugar cane or by the solution of sugar cane concrete, and contains not more than thirty percent of water and not more than two and one-half percent of ash.
10. Sugar syrup is the product made by dissolving sugar to the consistence of a syrup and contains not more than thirty-five percent of water.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-20. Dextrose and related products.

1. Dextrose is the product chiefly made by the hydrolysis of starch or a starch-containing substance, followed by process of refining and crystallization. When derived from corn starch, dextrose is known commercially as refined corn sugar.
 - a. Anhydrous dextrose contains not less than ninety-nine and one-half percent of dextrose and not more than one-half percent of moisture.
 - b. Hydrated dextrose contains not less than ninety percent of dextrose and not more than ten percent of moisture, including water of crystallization.
2. Glucose, mixing glucose, or confectioner's glucose is a thick, syrupy, colorless product made by incompletely hydrolyzing starch, or a starch-containing substance, and decolorizing and

evaporating the product. It contains on a basis of forty-one degrees Baume not more than one percent of ash, consisting chiefly of chlorides and sulfates.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-21. Candy. Candy is a product made from a saccharine substance or substances, with or without the addition of harmless coloring, flavoring, or filling materials, and contains no terra alba, barytes, talc, chrome yellow, or other mineral substances, or poisonous colors or flavors, or other ingredients deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound, or narcotic drug.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-22. Honey.

1. Comb honey is honey contained in the cells of comb.
2. Extracted honey is honey which has been separated from the uncrushed comb by centrifugal force or gravity.
3. Honey is the nectar and saccharine exudations of plants gathered, modified, and stored in the comb of honeybees (*apis mellifera* and *a. dorsata*), is levorotatory, and contains not more than twenty-five percent of water, not more than twenty-five hundredths percent of ash, and not more than eight percent of sucrose.
4. Strained honey is honey removed from the crushed comb by straining or other means.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-23. Spices. The term dried as used in this section refers to the air-dried product. The term starch as used in this section refers to starch as determined by the official method. In the examination of the products listed in this section the methods of analysis of the association of official analytical chemists should be followed. Products official in the United States pharmacopoeia, national formulary, or homeopathic pharmacopoeia of the United States shall comply with the definitions and standards given in the official compendium.

1. Cumin seed is the dried fruit of *cuminum cyminum* L. It contains not more than seven percent total ash, not more than one and one-half percent of ash insoluble in hydrochloric acid, nor more than five percent of harmless foreign matter.
2. Curcuma or turmeric is the dried rhizome or bulbous root of *curcuma longa* L.
3. Dill seed is the dried fruit of *anethum graveolens* L. It contains not more than ten percent of total ash, nor more than three percent of ash insoluble in hydrochloric acid.
4. Ground mustard seed or mustard meal is the unbolted, ground mustard seed and conforms to the standards for mustard seed.
5. Horseradish is the root of *radicula armoracia* (L.) Robinson.
6. Hungarian paprika is paprika having the pungency and flavor characteristic of that grown in Hungary.
 - a. Koenigspaprika or king's paprika is Hungarian paprika prepared by grinding whole pods of paprika without selection, and includes the seeds and stems naturally occurring with the pods. It contains not more than eighteen percent of nonvolatile ether extract, not more than twenty-three percent of crude fiber, not more than six and one-half percent of total ash, nor more than one-half percent of ash insoluble in hydrochloric acid.
 - b. Rosenpaprika, rosapaprika, or rose paprika is Hungarian paprika prepared by grinding specially selected pods of paprika, from which the placentae, stalks, and stems have been removed. It contains no more seeds than the normal pods, not more than eighteen percent of nonvolatile ether extract, not more than twenty-three percent of crude fiber, not more than six percent of total ash, nor more than four-tenths percent of ash insoluble in hydrochloric acid.
7. Mustard cake is ground mustard seed or mustard meal from which a portion of fixed oil has been removed.
8. Mustard flour, ground mustard, or "mustard" is the powder made from mustard seed with the hulls largely removed and with or without the removal of a portion of the fixed oil. It contains not more than one and one-half percent of starch, nor more than six percent of total ash.
9. Paprika is the dried, ripe fruit of *capsicum annum* L. It contains not more than eight and one-half percent of total ash, nor more than one percent of ash insoluble in hydrochloric acid. The iodine number of its extracted oil is

not less than one hundred twenty-five, nor more than one hundred thirty-six.

10. Pimenton, pimento, or Spanish paprika is paprika having the characteristics of that grown in Spain. It contains not more than eighteen percent of nonvolatile ether extract, not more than twenty-one percent of crude fiber, not more than eight and one-half percent of total ash, nor more than one percent of ash insoluble in hydrochloric acid.
11. Prepared horseradish is comminuted horseradish, with or without vinegar.
12. Prepared mustard is a paste composed of a mixture of ground mustard seed or mustard flour or mustard cake, with salt, a vinegar, and with or without sugar, spices or other condiments. In the fat, salt, and sugar-free solids it contains not more than twenty-four percent of carbohydrates, not more than twelve percent of crude fiber, nor less than five and six-tenths percent of nitrogen, the carbohydrates being calculated as starch.
13. Savory or summer savory is the dried leaves and flowering tops of *satureja hortensis* L.
14. Spices are aromatic vegetable substances used for the seasoning of food. They are true to name, and from them no portion of any volatile oil or other flavoring principle has been removed.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-24. Flavoring extracts.

1. A flavoring extract is a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation. The flavoring extracts described in this section are intended solely for food purposes and are not to be confounded with similar preparations described in the pharmacopoeia for medicinal purposes.
2. Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one percent by volume of oil of bitter almonds.
3. Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three percent by volume of oil of anise.

4. Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three-tenths percent by volume of oil of celery seed.
5. Ceylon cinnamon extract is the flavoring extract prepared from oil of Ceylon cinnamon, and contains not less than two percent by volume of oil of Ceylon cinnamon.
6. Cinnamon extract, cassia extract, or cassia cinnamon extract is the flavoring product prepared from oil of cinnamon, and contains not less than two percent by volume of oil of cinnamon.
7. Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two percent by volume of oil of cloves.
8. Ginger extract is the flavoring extract prepared from ginger, and contains in each one hundred cubic centimeters the alcohol-soluble matters from not less than twenty grams of ginger.
9. Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five percent by volume of oil of lemon.
10. Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two percent by volume of oil of nutmeg.
11. Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five percent by volume of oil of orange.
12. Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three percent by volume of oil of peppermint.
13. Rose extract is the flavoring extract prepared from attar of roses, with or without red rose petals, and contains not less than four-tenths percent by volume of attar of roses.
14. Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths percent by volume of oil of savory.
15. Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three percent by volume of oil of spearmint.

16. Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three percent by volume of oil of star anise.
17. Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth percent by volume of oil of sweet basil.
18. Sweet marjoram extract or marjoram extract is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one percent by volume of oil of marjoram.
19. Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpeneless oil of lemon in dilute alcohol, and contains not less than two-tenths by weight of citral derived from oil of lemon.
20. Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or by dissolving terpeneless oil of orange in dilute alcohol, and corresponds in flavoring strength to orange extract.
21. Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths percent by volume of oil of thyme.
22. Vanilla extract is the solution in aqueous ethyl alcohol of the sapid and odorous principles extractable from vanilla beans. In vanilla extract the content of ethyl alcohol is not less than thirty-five percent by volume and the content of vanilla constituent is not less than one unit per gallon [3.79 liters]. The vanilla constituent may be extracted directly from vanilla beans or it may be added in the form of concentrated vanilla extract or concentrated vanilla flavoring or vanilla flavoring concentrated to the semisolid form called vanilla oleoresin. Vanilla extract may contain one or more of the optional ingredients provided in the Federal Food, Drug, and Cosmetic Act, as amended, [21 U.S.C. 301 et seq.].
23. Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three percent by volume of oil of wintergreen.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-25. **Mayonnaise dressing.** Mayonnaise, mayonnaise dressing, or mayonnaise salad dressing is the semisolid emulsion of edible vegetable oil, egg yolk, or whole egg, a vinegar, or lemon juice,

with one or more of the following: salt, other seasoning commonly used in its preparation and either sugar, dextrose or corn syrup in liquid or dry form. The finished product contains not less than sixty-five percent of edible vegetable oil.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-26. Tea. Tea is the tender leaves, leaf buds, and tender internodes of different varieties of *thea sinensis* l., prepared and cured by recognized methods of manufacture. It conforms in variety and place of production to the name it bears; contains not less than four percent nor more than seven percent of ash; and meets the provisions of the Act of Congress approved March 2, 1897, as amended, regulating the importation and inspection of tea.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-27. Coffee. Coffee is the seed of cultivated varieties of coffee arabica, c. liberica, and c. robusta.

1. Green coffee, raw coffee, or unroasted coffee is coffee freed from all but a small portion of its spermoderm, and conforms in variety and in place of production to the name it bears.
2. Roasted coffee or coffee is properly cleaned green coffee which by the action of heat (roasting) has become brown and has developed its characteristic aroma.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-28. Cacao products.

1. Breakfast cocoa is cocoa which contains not less than twenty-two percent of cacao fat.
2. Cacao beans or cocoa beans are the seeds of trees belonging to the genus *theobroma*, especially those of the *theobroma cacao* l. and closely related species.
3. Cacao nibs, cocoa nibs, or cracked cocoa, are roasted or dried cacao beans, broken and freed from germ and from shell or husk.

4. Chocolate, plain chocolate, bitter chocolate, or chocolate liquor is the solid or semiplastic food obtained by grinding cacao nibs, and contains not less than fifty percent and not more than fifty-eight percent by weight of cacao fat.
5. Cocoa or powdered cocoa is chocolate deprived of a portion of its fat and pulverized, and contains, on the moisture and fat-free basis, no greater percentage of total ash, ash insoluble in hydrochloric acid, or crude fiber, respectively, than is found in moisture and fat-free chocolate.
6. Milk chocolate or sweet milk chocolate is the product obtained by grinding chocolate with either sugar, dextrose, or corn syrup in liquid or dry form, with the solids of whole milk, or the constituents of milk solids in proportions normal for whole milk, and with or without cacao butter, or flavoring material. It contains not less than twelve percent of milk solids and not less than three and sixty-six hundredths percent by weight of milk fat.
7. Sweet chocolate or sweet chocolate coating is chocolate mixed with either sugar, dextrose, or corn syrup in liquid or dry form, with or without the addition of cacao butter, spices, or other flavoring materials.
8. Sweet cocoa or sweetened cocoa is cocoa mixed with either sugar, dextrose, or corn syrup in liquid or dry form and contains not more than sixty-five percent of total sugars in the finished product, and, on the moisture, sugar, and fat-free basis, no greater percentage of total ash, ash insoluble in hydrochloric acid, or crude fiber, respectively, than is found in moisture and fat-free chocolate.
9. Sweet milk cocoa is the product obtained by grinding cocoa with either sugar, dextrose, or corn syrup in liquid or dry form, with the solids of whole milk, or the constituents of milk solids in proportions normal for whole milk, and with or without flavoring material. It contains not less than twelve percent of milk solids.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-29. Vinegar.

1. Glucose vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of starch, sugar, or glucose, is dextrorotatory, and contains, in one hundred cubic centimeters [twenty degrees Celsius], not less than four grams of acetic acid.

2. Malt vinegar is the product made by alcoholic and subsequent acetous fermentations, without distillation, of an infusion of barley malt or cereals whose starch has been converted by malt, is dextrorotatory, and contains in one hundred cubic centimeters [twenty degrees Celsius], not less than four grams of acid.
3. Spirit vinegar, distilled vinegar, or grain vinegar is the product made by the acetous fermentation of dilute distilled alcohol, and contains, in one hundred cubic centimeters [twenty degrees Celsius], not less than four grams of acetic acid.
4. Sugar vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, syrup, molasses, or refiners' syrup and contains in one hundred cubic centimeters [twenty degrees Celsius], not less than four grams of acetic acid.
5. Vinegar, cider or apple vinegar is the product made by the alcoholic and subsequent acetous fermentations of the juice of apples, is levorotatory, and contains not less than four grams of acetic acid, and not less than twenty-five hundredths gram of apple ash in one hundred cubic centimeters [twenty degrees Celsius].
6. Wine vinegar or grape vinegar is the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes, and contains, in one hundred cubic centimeters [twenty degrees Celsius], not less than four grams of acetic acid.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

33-31-02-30. Baking powder. Baking powder is the leavening agent produced by the mixing of an acid-reacting material and sodium bicarbonate, with or without starch or flour. It yields not less than twelve percent of available carbon dioxide. The acid-reacting materials in baking powder are: (1) tartaric acid or its acid salts, (2) acid salts of phosphoric acid, (3) compounds of aluminum, or (4) any combination in substantial proportions of the foregoing.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-08, 23-01-03(3)

Law Implemented: NDCC 19-02.1-08

ARTICLE 33-32

RULES INITIATED BY THE REGISTRATION DIVISION

Chapter
33-32-01 Fertilizer
33-32-02 Commercial Feed

CHAPTER 33-32-01
FERTILIZER

Section
33-32-01-01 Guarantees for Micronutrients

33-32-01-01. Guarantees for micronutrients. Additional plant nutrients, besides nitrogen, phosphorus, and potassium, when mentioned or claimed on the label or container shall be registered and shall be guaranteed. Guarantees shall be made on the elemental basis. Sources of the elements guaranteed shall be shown on the application for registration. When claims for such nutrients are made on the label, container, or application for registration, the minimum percentages which will be accepted for registration are as follows:

Element	Percent
Calcium (Ca)	1.00
Magnesium (Mg)	0.50
Sulfur (S)	1.00
Boron (B)	0.02
Chlorine (Cl)	0.10
Cobalt (Co)	0.0005
Copper (Cu)	0.05
Iron (Fe)	0.10
Manganese (Mn)	0.05
Molybdenum (Mo)	0.0005
Sodium (Na)	0.10
Zinc (Zn)	0.05

Guarantees or claims for the above-mentioned additional plant nutrients are the only ones which will be accepted. Proposed labels and directions for use of the fertilizer shall be furnished with the application for registration upon request. Warning or caution statements are required on the label for any product which contains three-hundredths percent or more of boron in a water-soluble form or one-thousandth percent or more of molybdenum. Any of the above-listed elements which are guaranteed shall appear in the order listed, immediately following guarantees for the primary nutrients, nitrogen, phosphorus, and potassium.

History: Effective August 1, 1988.
General Authority: NDCC 19-20.1-12, 23-01-03(3)

Law Implemented: NDCC 19-20.1-12

CHAPTER 33-32-02
COMMERCIAL FEED.

Section	
33-32-02-01	Definition and Terms
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33-32-02-01. Definition and terms.

1. The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.
2. The terms used in reference to commercial feeds shall be the official feed terms adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.
3. The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of subsection 2 of North Dakota Century Code section 19-13.1-02: raw meat; hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials; provided that these commodities are not adulterated within the meaning of North Dakota Century Code section 19-13.1-07.
4. Individual chemical compounds and substances are hereby declared exempt from the definition of commercial feed under the provisions of subsection 2 of North Dakota Century Code section 19-13.1-02. It has been determined that these products meet the following criteria:
 - a. There is an adopted association of American feed control officials' definition for the product.

- b. The product is either generally recognized as safe or is not covered by a specific food and drug administration regulation.
- c. The product is either a natural occurring product of relatively uniform chemical composition or is manufactured to meet the association of American feed control officials' definition of the product.
- d. The use of the product in the feed industry constitutes a minor portion of its total industrial use.
- e. Small quantities of additives, which are intended to impart special desirable characteristics shall be permitted.
- f. There is no need or problem of control of this product.

LIST OF EXEMPTED SUBSTANCES
Loose Salt

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-02

33-32-02-02. Label format.

- 1. Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation on the principal display panel of the product and in the following general format:
 - a. Net weight may be stated in metric units in addition to the required avoirdupois units.
 - b. Product name and brand name if any.
 - c. If a drug is used:
 - (1) The word "medicated" shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.
 - (2) The purpose of medication (claim statement).
 - (3) An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with subsection 4 of section 33-32-02-04.
 - (4) The required directions for use and precautionary statements or reference to their location if the

detailed feeding directions and precautionary statements required by sections 33-32-02-06 and 33-32-02-07 appear elsewhere on the label.

d. The guaranteed analysis of the feed as required under the provisions of subsection 3 of North Dakota Century Code section 19-13.1-04 include the following items, unless exempted in paragraph 9, and in the order listed:

- (1) Minimum percentage of crude protein.
- (2) Maximum or minimum percentage of equivalent protein from nonprotein nitrogen as required in subsection 5 of section 33-32-02-04.
- (3) Minimum percentage of crude fat.
- (4) Maximum percentage of crude fiber.
- (5) Minerals, to include, in the following order: (a) minimum and maximum percentages of calcium (Ca), (b) minimum percentages of phosphorus (P), (c) minimum and maximum percentages of salt (NaCl), and (d) other minerals.
- (6) Vitamins in such terms as specified in subsection 3 of section 33-32-02-04.
- (7) Total sugars as invert on dried molasses products or products being sold primarily for their sugar content.
- (8) Viable lactic acid producing microorganisms for use in silages in terms specified in subsection 7 of section 33-32-02-04.
- (9) Exemptions.
 - (a) Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent of calcium, phosphorus, sodium, and chloride.
 - (b) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.
 - (c) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor

significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

- (d) Guarantees for micro-organisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance resisting to the primary purpose of the product, and no specific label claims are made.
- e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of subsection 4 of North Dakota Century Code section 19-13.1-04.
- (1) The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the department.
 - (2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the association of American feed control officials in lieu of the individual ingredients; provided that:
 - (a) When a collective term for a group of ingredients is used on the label, individual ingredients within that group may not be listed on the label.
 - (b) The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.
 - (3) The registrant may affix the statement, "Ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the department. This list must be made available to the feed purchaser upon request.
- f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address must include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.

- g. The information required in subsections 1 through 5 of North Dakota Century Code section 19-13.1-04 must appear in its entirety on one side of the label or on one side of the container.
2. Customer-formula feed must be accompanied with the information prescribed in this section using labels, invoice, delivery ticket, or other shipping document bearing the following information:
- a. The name and address of the manufacturer.
 - b. The name and address of the purchaser.
 - c. The date of sale or delivery.
 - d. The customer-formula feed name and brand name if any.
 - e. The product name and net weight (may be stated in metric units in addition to the required avoirdupois) of each registered commercial feed and each other ingredient used in the mixture.
 - f. The direction for use and precautionary statements as required by sections 33-32-02-06 and 33-32-02-07.
 - g. If a drug-containing product is used:
 - (1) The purpose of the medication (claim statement).
 - (2) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with subsection 4 of section 33-32-02-04.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-04

33-32-02-03. Brand and product names.

- 1. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed", for example, must be suitable for that purpose.
- 2. Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name.

3. The name of a commercial feed may not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and may not be one representing any components of a mixture unless all components are included in the name; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.
4. The word "protein" is not permitted in the product name of a feed that contains added nonprotein nitrogen.
5. When the name carries a percentage value, it shall be understood to signify protein or equivalent protein, or both, content only, even though it may not explicitly modify the percentage with the word "protein"; provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers may not be used in such a manner as to be misleading or confusing to the customer.
6. Single ingredient feeds must have a product name in accordance with the designated definition of feed ingredients as recognized by the association of American feed control officials unless the department designates otherwise.
7. The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in subsection 3 of section 33-32-02-04.
8. The term "mineralized" may not be used in the name of a feed except for "TRACE MINERALIZED SALT". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.
9. The term "meat" and "meat byproducts" shall be qualified to designate the animal from which the meat and meat byproducts is derived unless the meat and meat byproducts are made from cattle, swine, sheep, and goats.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-08

33-32-02-04. Expression of guarantees.

1. The guarantees for crude protein, equivalent protein from nonprotein nitrogen, crude fat, crude fiber, and mineral guarantees (when required) will be in terms of percentage.
2. Commercial feeds containing six and one-half percent or more calcium, phosphorus, sodium, and chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium or salt, or both, guarantees are given in the guaranteed analysis such must be stated and conform to the following:
 - a. When the minimum is five percent or less, the maximum may not exceed the minimum by more than one percentage point.
 - b. When the minimum is above five percent, the maximum shall not exceed the minimum by more than twenty percent and in no case may the maximum exceed the minimum by more than five percentage points.
3. Guarantees for minimum vitamin content of commercial feeds must be listed in the order specified and are stated in milligrams per pound unless otherwise specified:
 - a. Vitamin A, other than precursors of vitamin A, in international units per pound.
 - b. Vitamin D-3 in products offered for poultry feeding, in international chick units per pound.
 - c. Vitamin D for other uses, international units per pound.
 - d. Vitamin E, in international units per pound.
 - e. Concentrated oils and feed additive premixes containing vitamins A, D, or E, or a combination thereof, may, at the option of the distributor be stated in units per gram instead of units per pound.
 - f. Vitamin B-12, in milligrams or micrograms per pound.
 - g. All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: menadione; riboflavine; d-pantothenic acid; thiamine; niacine; vitamin B-6; folic acid, choline, biotin, inositol; p-amino benzoic acid; ascorbic acid; and carotene.

4. Guarantees for drugs must be stated in terms of percent by weight, except:
 - a. Antibiotics, present at less than two thousand grams per ton (total) of commercial feed must be stated in grams per ton of commercial feed.
 - b. Antibiotics present at two thousand or more grams per ton (total) of commercial feed, must be stated in grams per pound of commercial feed.
 - c. Labels for commercial feeds containing growth promotion or feed efficiency, or both, levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the federal food additive regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.
 - d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.
5. Commercial feeds containing any added nonprotein nitrogen must be labeled as follows:
 - a. For ruminants:
 - (1) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than five percent protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, -----%

(This includes not more than -----% equivalent protein from nonprotein nitrogen).
 - (2) Mixed feed concentrates and supplements containing less than five percent protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Nonprotein Nitrogen, minimum, -----%
 - (3) Ingredient sources of nonprotein nitrogen such as urea, di-ammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the association of American feed control officials shall be guaranteed as follows:

Nitrogen, minimum, -----%

Equivalent Crude Protein from Nonprotein
Nitrogen, minimum, -----%

b. For nonruminants:

- (1) Complete feeds, supplements, and concentrates containing crude protein from all forms of nonprotein nitrogen, added as such, must be labeled as follows:

Crude protein, minimum, -----%

(This includes not more than -----% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

- (2) Premixes, concentrates, or supplements intended for nonruminants containing more than one and one-quarter percent equivalent crude protein from all forms of nonprotein nitrogen, added as such, must contain adequate directions for use and prominently state: **WARNING:** This feed must be used only in accordance with directions furnished on the label.

6. Mineral phosphatic materials for feeding purposes must be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.
7. Guarantees for micro-organisms must be stated in colony forming units per gram (CFU/g), when directions are for using the product in grams, or in colony forming units per pound (CFU/lb) when directions are for using the product in pounds. A parenthetical statement following the guarantee must list each species in order of predominance.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-04

33-32-02-05. Ingredients.

1. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the official publication of American feed control officials, the common or usual name, or one approved by the department.

2. The name of each ingredient must be shown in letters or type of the same size.
3. No reference to quality or grade of an ingredient may appear in the ingredient statement of a feed.
4. The term "dehydrated" may precede the name of any product that has been artificially dried.
5. A single ingredient product defined by the association of American feed control officials is not required to have an ingredient statement.
6. Tentative definitions or ingredients may not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e., sugar).
7. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient may contain not less than seven-thousandths percent iodine, uniformly distributed.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-03, 19-13.1-08

33-32-02-06. Directions for use and precautionary statements.

1. Directions of use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) must:
 - a. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and
 - b. Include, but not be limited to, all information described by all applicable regulations under the Federal Food, Drug, and Cosmetic Act.
2. Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in section 33-32-02-07.
3. Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or

ration with any vitamin, mineral, or other dietary nutrient or compound.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-05

33-32-02-07. Nonprotein nitrogen.

1. Urea and other nonprotein products defined in the official publication of the association of American feed control officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than eight and seventy-five-hundredths percent of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third of the total crude protein, the label must bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED". The directions for use and the caution statement must be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.
2. Nonprotein nitrogen defined in the official publication of the association of American feed control officials, when so indicated, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein sources when used in nonruminant rations may not exceed one and twenty-five-hundredths percent of the total daily ration.
3. On labels such as those for medicated feeds which bear adequate feeding directions or warning statements, or both, the presence of added nonprotein nitrogen shall not require a duplication of the feeding direction or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-04

33-32-02-08. Drug and feed additives.

1. Prior to approval of a registration application or approval of a label, or both, for commercial feed which contain additives (including drugs, other special purpose additives, or

nonnutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

2. Satisfactory evidence of safety and efficacy of a commercial feed may be:
 - a. When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in title 21 of the Code of Federal Regulations or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use;
 - b. When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the food and drug administration under 21 U.S.C. 360(b); or
 - c. When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, administered by the animal and plant health inspection service, United States department of agriculture. The reason for the amendment is because of a problem encountered by feed control officials in developing the basis for evaluation of such products that have a primary purpose to impart immunity. States, in many cases, are unable to make correct judgments on the effectiveness on such products. The committee feels that this will definitely have more uniformity and effectiveness in handling product registrations.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-05

33-32-02-09. Adulterants. For the purpose of subsection 1 of North Dakota Century Code section 19-13.1-07, the terms "poisonous or deleterious substances" include, but are not limited to, the following:

1. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds twenty-hundredths percent for breeding and dairy cattle; thirty-hundredths percent for slaughter cattle; thirty-hundredths percent for sheep; thirty-five-hundredths percent for lambs; forty-five-hundredths percent for swine; and sixty-hundredths percent for poultry.

2. Fluorine-bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: four-thousandths percent for breeding and dairy cattle; nine-thousandths percent for slaughter cattle; six-thousandths percent for sheep; one-hundredths percent for lambs; fifteen-thousandths percent for swine; and three-hundredths percent for poultry.
3. Fluorine-bearing ingredients incorporated in any feed that is fed directly to cattle, sheep, or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of fifty milligrams of fluorine per one hundred pounds [45.36 kilograms] of body weight.
4. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichloroethylene or other chlorinated solvents.
5. Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B-1 (thiamine).

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-07

33-32-02-10. Good manufacturing practices. The department adopts the following as current good manufacturing practices:

1. The regulations prescribing good manufacturing practices for type B and type C medicated feeds as published in title 21, Code of Federal Regulations, part 225, sections 225.1-225.115.
2. The regulations prescribing good manufacturing practices for type A medicated articles as published in title 21, Code of Federal Regulations, part 226, sections 226.1-226.115.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-09

33-32-02-11. Permitted analytical variations. For the purpose of enforcing North Dakota Century Code section 19-13.1-07, a feed must be considered adulterated if analysis indicates the feed does not meet the tolerances shown in the table attached to this chapter as an appendix.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-13.1-10, 23-01-03

Law Implemented: NDCC 19-13.1-07

ANALYTICAL VARIATIONS (AV) BASED
ON AFFCO CHECK SAMPLE PROGRAM

I. Proximate Analysis			
Determination	Method*	AV% ^{b, c}	Concentration Range
Moisture	7.003, 7.007 10.136	12	3 - 40%
Protein	7.015, 7.021 7.025, 7.033	(20/x+2)	10 - 85%
Fat	7.060, 7.063 7.064	10	3 - 20%
Fiber	7.066, 7.071	(30/x+6)	2 - 30%
Ash	7.009	(45/x+3)	2 - 88%
Pepsin Digest, Protein	7.053	13	
Total Sugar as Invert	7.084	12	24 - 37%
NPN Protein	7.038, 7.040	(80/x+3)	7 - 60%
II. Minerals			
Determination	Method	AV%	Concentration Range
Calcium	7.101 7.096	(14/x+6) 10 12	.5 - 25% 10 - 25% 10%
Phosphorus	7.123, 7.125 Auto Anal.	(3/x+8)	.5 - 20%
Salt	7.106 7.104	(7/x+5) (15/x+9)	.5 - 14% .5 - 14%
Fluorine	7.114, 7.115	40	
Cobalt	7.096	25	0.01 - .16%
Iodine	7.119, 7.120 33.147	40	
Copper	7.096	20 30	.03 - 1% .03%
Magnesium	7.096	20	.01 - 15%
Iron	7.096	25	.01 - 5%
Manganese	7.096	30	.01 - 17%
Potassium	3.013, 3.044	15	.04 - 8%
Zinc	7.096	20	.002 - 6%
Selenium	3.102	25	ppm

* Method References are from 14th Edition, AOAC Official Methods of Analysis

^b X = % Guarantee Example: For a 10% Protein Guarantee AV%=(20/10+2)=4% of Guarantee or 4.0%. This means the low AV is 4% of 10. Therefore, a sample below 9.6% is not acceptable.

^c The ± signs have been removed from the AV table. The table denotes a true analytical variation and not a tolerance. They apply both above and below the guarantee and are equally correct.

III. Vitamins			
Determination	Method	AV%	Concentration Range
Vitamin A	43.008	30	1200 - 218,000 IU/lb
Vitamin B ₁₂	43.175	45	
Riboflavin	43.039,43.209	30	1 - 1500 mg/lb
Niacin	43.048,43.191	25	3 - 500 mg/lb
Pantothenic Acid	43.200,33.205	25	4 - 190 mg/lb

IV. Drugs			
Determination	Method	AV%	Concentration Range
Amprolium	42.011	20	.01 - .014%
Arsanilic Acid	42.033	20	.01 - .05%
Carbodox	42.047	20	.005 - .5%
Ethopabate	42.069	25	.004 - .04%
Furazolidone	42.075	25	.005 - .022%
Melengestrol Acetate	42.088	30	up to .07%
Nicarbazin	42.098	25	.01 - .02%
Nitarsons	42.035	30	.01 - .02%
Phenothiazine	42.135	20	.1 - .5%
Piperazine	42.137	25	.1 - .4%
Pyrantel Tartrate	42.142	25	.01%
Roxarsone	42.035,42.160	25	.005 - .5%
Sulfamethazine	42.172	20	.01 - .033%
Sulfaquinoxaline	42.179	25	.01 - .025%
Sulfathiazole	Colorimetric	20	.008 - .034%
Thiabendazole	42.192	30	up to 1.5%
Zoalene	42.197	25	.004 - .0125%
Bacitracin	42.223	40	10 - 200g/T
Chlortetracycline	42.236,42.232	30	10 - 260g/T
Lincomycin	42.258	25	10 - 200g/T
Monensin	42.266,42.271	30	10 - 200g/T
Neomycin	42.277	45	20 - 250g/T
Oxytetracycline	42.293	30	10 - 300g/T
Penicillin	42.299	35	10 - 200g/T
Streptomycin	42.308	45	10 - 75g/T
Tylosin	42.316	30	10 - 150g/T
Virginiamycin	Plate	40	80g/T

ARTICLE 33-33

RULES INITIATED BY THE INSPECTION DIVISION

Chapter

33-33-01	Mobile Home Park Rules
33-33-02	Trailer Park and Campground Rules
33-33-03	Food Vending Rules
33-33-04	Sanitary Requirements for Food Establishments
33-33-05	Smoke Detector Rules
33-33-06	Bed and Breakfast Facilities

CHAPTER 33-33-01
MOBILE HOME PARK RULES

Section

33-33-01-01	Definitions
33-33-01-02	Application for License
33-33-01-03	Lot Sizing and Spacing Requirements
33-33-01-04	Facilities Provided
33-33-01-05	Noxious Plant and Animal Control
33-33-01-06	Maintenance of Service Buildings

33-33-01-01. Definitions. As used in this chapter:

1. "Occupied area" means the total of all of the lot area covered by a mobile home and roofed mobile home accessory buildings and structures on a mobile home lot.
2. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-01

33-33-01-02. Application for license. A complete scaled plan and list of specifications for new construction or for altering or enlarging of an existing mobile home park must be submitted to the department for approval. The application must contain the following:

1. A legal description of property and a description of the site location with regard to highways, streets, and landmarks.
2. Name and address of developer.

3. Name and address of architect, engineer, or designer.
4. The area and dimensions of the site.
5. The number, location, and dimensions of all mobile home lots and detail of each typical lot for each mobile home.
6. The location and width of roadways, automobile parking facilities, and walkways, including whether they are paved, blacktopped, graveled, etc.
7. The location and details of service buildings and any other proposed structures.
8. The location and details of lighting and electrical systems.
9. The location and specifications of the water supply, sewer, and refuse disposal facilities, including approved soil testing results and details of wells, pumping stations, and service riser pipes.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-03

33-33-01-03. Lot sizing and spacing requirements.

1. The occupied area of a mobile home lot may not exceed seventy-five percent of the lot area.
2. No mobile home, attachment, or other structure may be located within fifteen feet [4.57 meters] of any other mobile home, attachment, or structure on a bordering lot. However, the minimum distance between mobile homes end to end must be ten feet [3.05 meters]. No mobile home, attachment, or structure may be located so as to create hazard to the mobile home or park occupants or restrict emergency vehicles and personnel from performing necessary services. Mobile home courts constructed after August 1, 1984, must be constructed so that no mobile home, attachment, or structure may be located closer than fifteen feet [4.57 meters] of the right-of-way line of any street, nor within ten feet [3.05 meters] of any boundary of the mobile home park.
3. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:

- a. Two-way streets with parking on both sides 34 feet [10.36 meters]
 - b. Two-way streets with parking on one side only 27 feet [8.23 meters]
 - c. Two-way streets without parking . . 24 feet [7.32 meters]
 - d. One-way streets with parking on both sides 27 feet [8.23 meters]
 - e. One-way streets with parking on one side only 18 feet [5.49 meters]
 - f. One-way streets without parking . . 14 feet [4.27 meters]
4. The street system must give an unobstructed access to the public street, highway, or access road.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-10-02
Law Implemented: NDCC 23-10-07

33-33-01-04. Facilities provided.

- 1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.
- 2. Streets and walkways must be lighted to provide a minimum average maintained illumination of four-tenths foot-candles [4.31 lux], with a uniformity ratio of no greater than six to one.
- 3. Each lot in a mobile home park must be provided with an adequate and approved electrical service outlet.
- 4. Each lot in a mobile home park must be provided with an adequate and approved plumbing system.
- 5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state codes, is required before issuance of the mobile home license.
- 6. No shed or attachment may obstruct the exit ways of the mobile home.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(2), 23-10-02
Law Implemented: NDCC 23-10-07

33-33-01-05. Noxious plant and animal control.

1. The grounds, buildings, and structures of a mobile home park must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department.
2. All areas must be maintained free of accumulations of debris; the growth of brush, weeds, and grass must be controlled to prevent harborage or breeding places for noxious insects and vermin. Mobile home parks must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.
3. Storage areas must be maintained so as to prevent rodent harborage; lumber, firewood, pipe, and other building materials must be stored neatly at least one foot [0.30 meters] above the ground.
4. Any skirting of trailers must be of a type and construction which will not provide harborage. Where trailers are skirted, an access opening must be provided near service connections.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-07

33-33-01-06. Maintenance of service buildings. Service buildings, sinks, toilets, and other equipment must be kept in a clean and sanitary condition and in good repair at all times.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-07

**CHAPTER 33-33-02
TRAILER PARK AND CAMPGROUND RULES**

Section

33-33-02-01	Definitions
33-33-02-02	Application for License
33-33-02-03	Spacing Requirements
33-33-02-04	Facilities Provided
33-33-02-05	Noxious Plant and Animal Control
33-33-02-06	Maintenance of Service Buildings

33-33-02-01. Definitions. As used in this chapter:

1. "Recreational vehicle" means a travel trailer.

2. "Service building" means a structure housing shower, bath, toilet, lavatory, and such other facilities as may be required by the North Dakota state plumbing code.
3. "Tent" means a collapsible shelter of canvas or other fabric stretched and sustained by poles and used for camping outdoors.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-01

33-33-02-02. Application for license. A complete scaled plan and list of specifications for new construction or for altering or enlarging of an existing trailer park or campground must be submitted to the department for approval. The application must contain the following:

1. A legal description of property and a description of the site location with regard to highways, streets, and landmarks.
2. Name and address of developer.
3. Name and address of architect, engineer, or designer.
4. The area and dimensions of the site.
5. The number, location, and dimensions of all trailer or campground lots and detail of each typical lot for each trailer or tent.
6. The location and width of roadways, automobile parking facilities, and walkways, including whether they are paved, blacktopped, graveled, etc.
7. The location and details of service buildings and any other proposed structures.
8. The location and details of lighting and electrical systems.
9. The location and specifications of the water supply, sewer, and refuse disposal facilities; including approved soil testing results and details of wells, pumping stations, and service riser pipes.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-03

33-33-02-03. Spacing requirements.

1. No tent, recreational vehicle, or other attachment may be located within ten feet [3.05 meters] of any other tent, recreational vehicle, or part thereof. No recreational vehicle or tent in a trailer park or campground may be located closer than fifteen feet [4.57 meters] of the right-of-way line of any street, roadway, or alley; nor may such recreational vehicle be located closer than ten feet [3.05 meters] from any boundary of the trailer park or campground.
2. Streets must be of adequate widths to accommodate the contemplated parking and traffic load in accordance with the type of street. In all cases, streets must meet the following minimum requirements:
 - a. Two-way streets with parking on both sides 34 feet [10.36 meters]
 - b. Two-way streets with parking on one side only 27 feet [8.23 meters]
 - c. Two-way streets without parking 24 feet [7.32 meters]
 - d. One-way streets with parking on both sides 27 feet [8.23 meters]
 - e. One-way streets with parking on one side only 18 feet [5.49 meters]
 - f. One-way streets without parking 14 feet [4.27 meters]
3. The street system must give an unobstructed access to the public street, highway, or access road.
4. Tenting areas must be designated for tents only.

History: Effective August 1, 1988.
General Authority: NDCC 23-10-02, 23-01-03(3)
Law Implemented: NDCC 23-10-07

33-33-02-04. Facilities provided.

1. Conversion of a mobile home park, trailer park, or campground from one type to another must be approved by the department.
2. Streets must be lighted to provide a minimum of one-tenth foot-candle [1.09 lux] throughout the street system. Potentially hazardous locations, such as major street intersections and steps or stepped ramps, must be individually illuminated with a minimum of three-tenths foot-candles [3.23 lux].

3. Where provided, electrical service outlets must be adequate and approved.
4. Where provided, individual sewer connections must be adequate and approved. Recreational vehicle waste disposal stations, watering stations, and service building facilities must be provided and constructed in accordance with the North Dakota state plumbing code.
5. A certification from the electrical and plumbing installer, stating all installations were made in accordance with state codes, is required before issuance of the trailer park or campground license.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-07

33-33-02-05. Noxious plant and animal control.

1. The grounds, buildings, and structures of a trailer park or campground must be maintained free of harborage for insects, rodents, and other vermin. Extermination methods and other measures to control insects and rodents must conform with the requirements of the department.
2. All areas must be maintained free of accumulations of debris; the growth of brush, weeds, and grass must be controlled to prevent harborage or breeding places for noxious insects and vermin. Trailer parks and campgrounds must be so maintained as to prevent the growth of noxious weeds considered detrimental to health.
3. Storage areas must be maintained so as to prevent rodent harborage; lumber, firewood, pipe, and other building materials must be stored neatly at least one foot [0.30 meters] above the ground.

History: Effective August 1, 1988.

General Authority: NDCC 23-01-03(3), 23-10-02

Law Implemented: NDCC 23-10-07

33-33-02-06. Maintenance of service buildings.

1. Service buildings, sinks, toilets, and other equipment must be kept in a clean and sanitary condition and in good repair at all times.
2. Toilet tissue must be provided and conveniently located in each toilet room.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-10-02
Law Implemented: NDCC 23-10-07

CHAPTER 33-33-03 FOOD VENDING RULES

Section	
33-33-03-01	Definitions
33-33-03-02	License Issuance, Suspension, Revocation, and Reinstatement
33-33-03-03	Sale, Examination, Condemnation of Adulterated or Misbranded Food
33-33-03-04	Inspection of Machines and Commissaries
33-33-03-05	Sanitation Requirements
33-33-03-06	Disease Control
33-33-03-07	Procedure When Infection Is Suspected
33-33-03-08	Commissaries Outside North Dakota

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; (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 and consolidated laboratories 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. "Easily cleanable" means readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.
7. "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.
8. "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.
9. "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.
10. "Department" means the state department of health and consolidated laboratories.
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 food, means temperatures of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 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.
20. "Vending machine" means any self-service device which upon insertion of a coin, coins, or tokens 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 bottled or canned soft drink dispensers; prepackaged ice dispensers and freezers; prepackaged candy, cookie, cracker, or similar nonpotentially hazardous food dispensers; and gumball, nut, and panned candy dispensers.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

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.
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.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-03. Sale, examination, condemnation of adulterated or misbranded food. It shall be unlawful for any person within North Dakota to sell, offer, or expose for sale, through vending machines, or to have in possession with intent to sell therefrom any food which is adulterated or misbranded. Samples of food may be taken and examined by the department as often as may be necessary to determine freedom from adulteration or misbranding. The department may, on written notice to the operator, impound and forbid the sale of any food which is adulterated or misbranded, or which the department has probable cause to believe to be adulterated or misbranded. After the operator has been given an opportunity for a hearing, the department may cause to be removed or destroyed any food which is adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, such food may be released to the operator for correct labeling under the supervision of the department.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-04. Inspection of machines and commissaries.

1. The department may inspect the servicing, maintenance, and operation of vending machines and commissaries as often as needed to determine compliance with this chapter. The department, after proper identification, shall be permitted to enter at any reasonable time upon any private or public property within North Dakota where vending machines or commissaries are operated, or from which such machines are otherwise serviced, for the purpose of determining compliance with the provisions of these regulations. The operator shall make provision for the department to have access, either in company with an employee or otherwise, to the interior of all vending machines operated by the operator.
2. Whenever the department discovers a violation of any provision of this chapter, it shall notify the operator concerned either by the inspection report form or by other written notice. Such form or notice shall (1) describe the condition found and

state which section of this chapter is violated by such condition; (2) provide a specific and reasonable period of time for the correction of the condition; and (3) state that an opportunity for a hearing on inspection findings will be provided, if a written request for such hearing is filed with the department within ten days of receipt of the notice. The department may also advise the operator in writing that unless the violations are corrected within the specified period of time, any license issued under the provisions of this chapter may be suspended or revoked, in accordance with provisions of section 33-33-03-02, or court action may be initiated.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-05. Sanitation requirements.

1. Food, consumer containers, equipment maintenance, and operations.

- a. Food intended for sale through vending machines and condiments available at vending machine locations shall be obtained from sources complying with the regulations of North Dakota. Such food shall be wholesome, free from spoilage, and shall be processed, prepared, handled, and stored in such a manner as to be protected against contamination and adulteration. All food-contact surfaces of containers and equipment shall be protected from contamination. If condiments are provided for service in conjunction with food dispensed by a vending machine, they shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized, and filled at the commissary. Relish bowls and similar non-self-closing condiment containers shall not be used. Potentially hazardous food shall be held at safe temperatures except during necessary periods of preparation.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
 - (1) All food offered for sale through vending machines shall be manufactured, processed, and prepared in commissaries or establishments which comply with all applicable state laws and regulations.
 - (2) All food offered for sale through vending machines shall be wholesome.

- (3) All food shall be stored or packaged in clean protective containers, and shall be handled, transported, and vended in a sanitary manner. Condiments provided for service in conjunction with food dispensed by a vending machine shall be packaged in individual portions in single-service containers or shall be dispensed from approved sanitary dispensers which are washed, sanitized, and filled at the commissary. Fresh fruits which may be eaten raw without peeling may be dispensed unpackaged but must be thoroughly washed in potable water before being placed in the vending machine. Storage of cartoned, bottled, canned, or packaged food by placing or submerging it in liquid is prohibited. Submerging such containers of food in ice is prohibited.
- (4) Potentially hazardous food offered for sale through vending machines shall be handed or dispensed to the consumer in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, or such products shall be dispensed into single-service containers from containers which were filled at the commissary or at the manufacturer's or processor's plant.
- (5) In those vending machines which dispense potentially hazardous food from bulk, the bulk supplies of such food shall be transferred only to bulk vending machine containers and appurtenances which have been cleaned and sanitized.
- (6) Potentially hazardous food within the vending machine shall be maintained at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable; provided, that exceptions may be made for (a) the actual time required to load or otherwise service the machine and for a maximum recovery period of thirty minutes, following completion of loading or servicing operation; and (b) in the case of hot food vending machines, a maximum of one hundred twenty minutes to heat food through the forty-five degrees Fahrenheit [7.22 degrees Celsius] to one hundred forty degrees Fahrenheit [60 degrees Celsius] temperature zone. In hot food vending machines which are not equipped with refrigerated storage, there shall be no time delay to preclude heat from being applied to potentially hazardous food immediately after it is loaded or placed in the machine. Potentially hazardous food once heated to, or held at, a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius]

or above, shall be maintained at such temperature until served or discarded.

Vending machines dispensing potentially hazardous food shall be provided with adequate refrigerating or heating units, or both, and thermostatic controls which ensure the maintenance of applicable temperatures at all times. Such vending machines shall also have controls which prevent the machine from vending potentially hazardous food until serviced by the operator, in the event of power failure or other condition which results in noncompliance with temperature requirements in the food storage compartment.

Hot food vending machines designed to heat food through the forty-five degrees Fahrenheit [7.22 degrees Celsius] to one hundred forty degrees Fahrenheit [60 degrees Celsius] temperature range, shall also be equipped with automatic controls which render the machine incapable of vending potentially hazardous food until serviced by the operator in the event that heating through this temperature range is not accomplished in one hundred twenty minutes or less.

Potentially hazardous food which has failed to conform to the time-temperature requirements of this paragraph shall be removed from the vending machine, and be denatured or otherwise rendered unusable for human consumption.

Vending machines dispensing potentially hazardous food shall be provided with one or more thermometers which, to an accuracy of minus two degrees Fahrenheit [minus 18.89 degrees Celsius], indicates the air temperature of the warmest part of the refrigerated food storage compartment, or the coldest part of the heated food storage compartment, whichever is applicable.

- (7) Milk and fluid milk products offered for sale through vending machines shall be pasteurized and shall be dispensed only in individual, original containers or from bulk containers into which such product was placed at the milk plant; provided, that such products may be reconstituted automatically within the vending machine when (a) the powder or concentrate is made from a pasteurized milk or milk product and is from an approved source; (b) the mixing chambers or bowls and any food-contact surface downstream from such mixing units are maintained at safe temperatures; and (c) the product is

reconstituted for immediate dispensing in individual unit servings.

- (8) Milk and fluid milk products used as an ingredient in hot liquid beverages dispensed from vending machines may be transferred to a multiuse machine canister at the machine location; provided, that (a) the location offers adequate protection against dust, insects, and other contamination; (b) the milk or fluid milk product is transferred from a dairy-filled container of not to exceed one-half gallon [1.89 liter] capacity; (c) the entire contents of such dairy-filled container are used in the transfer; (d) unused portions removed from the machine are discarded to waste; and (e) the milk or fluid milk product is poured only into an empty canister which has been effectively cleaned and sanitized at the commissary; provided further, that milk or fluid milk products shall not be used as an ingredient under the terms of this paragraph unless the temperature of the hot beverage at the point of mixing with the milk product is one hundred sixty degrees Fahrenheit [71.11 degrees Celsius] or higher.

Vending machine canisters and appurtenances used for the transfer of such milk products shall be effectively cleaned and sanitized at approved, fixed facilities at the commissary by methods approved by the department. After sanitization, the canister and appurtenances shall be fully wrapped in a single-service bag or cover which shall not be opened until the canister unit is installed in the refrigerated compartment of the vending machine. Canisters and appurtenances shall be so designed and constructed that the handling of contact surfaces at the machine location is unnecessary; and, such surfaces shall not be handled during canister installation, tube insertion, or product transfer.

- (9) All parts of any bulk milk vending machine which come into direct contact with the milk or milk product shall be effectively cleaned and sanitized at the milk plant; provided, that single-service dispensing tubes which receive sanitizing treatment at the fabricating plant and which are individually packaged in such manner as to preclude contamination, may be exempted from this provision. The can or other bulk milk container shall be filled only at the milk plant and shall be sealed in such manner as to make it impractical to withdraw any part of its contents or to introduce any substance without breaking the seal or seals. The delivery tube and any milk-contact parts of the dispensing device shall be attached at

the milk plant, and shall be protected by a moistureproof covering, or housed in a compartment with a moisture-tight closure which shall not be removed until after the container is placed in the refrigerated compartment of the vending machine.

- (10) With the exception of food-contact surfaces of bulk milk vending machines for which separate provisions for cleaning and sanitizing are specified in paragraph 9, all multiuse containers or parts of vending machines which come into direct contact with potentially hazardous food shall be removed from the machine daily and shall be thoroughly cleaned and effectively sanitized at the commissary or other approved facility; provided, that the requirement for daily cleaning and sanitizing may be waived for those food-contact surfaces which are maintained at all times at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable, and an approved cleaning frequency is followed. Such parts shall, after sanitizing, be protected from contamination.
- (11) All parts of vending machines which come into direct contact with other than potentially hazardous food shall be thoroughly cleaned by approved methods. The frequency of such cleaning shall be established by the department based upon the type of product being dispensed. A record of such cleaning operations shall be maintained by the operator in each machine or shall be made available at the time of inspection and shall be current for at least the past thirty days.
- (12) All single-service articles shall be purchased in sanitary cartons or packages which protect the articles from contamination, shall be stored in a clean, dry place until used, and shall be handled in a sanitary manner. Such articles shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the magazine or dispenser of the vending machine. Single-service articles stored within the vending machine shall be protected from manual contact, dust, insects, rodents, and other contamination.

2. Machine location.

- a. The machine location shall be such as to minimize the potential for contamination of the food, shall be well lighted, easily cleanable, and shall be kept clean.

Conveniently located handwashing facilities shall be available for use by employees servicing or loading bulk food machines.

b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:

(1) Each vending machine shall be located in a room, area, or space which can be maintained in a clean condition and which is protected from overhead leakage or condensation from water, waste, or sewer piping. The immediate area in which the machine is located shall be well lighted. Each vending machine shall be so located that the space around and under the machine can be easily cleaned and maintained, and so that insect and rodent harborage is not created.

(2) The floor area where vending machines are located shall be reasonably smooth, of cleanable construction, and be capable of withstanding repeated washing and scrubbing. This space and the immediate surroundings of each vending machine shall be maintained in a clean condition.

(3) Adequate handwashing facilities, including hot and cold or tempered running water, soap, and individual towels, shall be convenient to the machine location and shall be available for use by employees servicing or loading bulk food machines.

3. Exterior construction and maintenance.

a. The exterior construction of the vending machine shall be such as to facilitate cleaning and to minimize the entrance of insects and rodents, and the exterior of the machine shall be kept clean. Service connections to machines vending potentially hazardous food or food in bulk shall be such as to protect against unintentional or accidental interruption of service to the machine.

b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:

(1) The vending machine shall be of sturdy construction and the exterior shall be so designed, fabricated, finished, and maintained so as to facilitate its being kept clean, and to minimize the entrance of insects and rodents. The exterior of the machine shall be kept clean.

- (2) Door and panel access openings to the food and container storage spaces of the machine shall be tight fitting, and if necessary, gasketed, so as to prevent the entrance of dust, moisture, insects, and rodents.
- (3) All ventilation louvers or openings into vending machines shall be effectively screened. Screening material for openings into food and container storage spaces of the machine shall be not less than sixteen mesh to the inch [2.54 centimeters] or equivalent. Screening material for openings into condenser units which are separated from food and container storage spaces shall be not less than eight mesh to the inch [2.54 centimeters] or equivalent.
- (4) In all vending machines in which the condenser unit is an integral part of the machine, such unit when located below the food and container storage space shall be separated from such space by a dustproof barrier, and when located above, shall be sealed from such space.
- (5) Unless the vending machine is sealed to the floor or counter so as to prevent seepage underneath, or can be manually moved with ease, one or more of the following provisions shall be utilized to facilitate cleaning operations: (a) The machine shall be mounted on legs six inches [15.24 centimeters] or more in height; provided, that countertop machines may use four-inch [10.16-centimeter] legs; or (b) the machine shall be mounted on casters or rollers; or (c) the machine shall be mounted on gliders which permit it to be easily moved.
- (6) All service connections through an exterior wall of the machine, including water, gas, electrical, and refrigeration connections, shall be grommeted or closed to prevent the entrance of insects and rodents. All service connections to machines vending potentially hazardous food or food in bulk shall be such as to discourage their unauthorized or unintentional disconnection.

4. Interior construction and maintenance.

- a. All interior surfaces and component parts of the vending machine shall be so designed and constructed as to permit easy cleaning, and shall be kept clean. All food-contact surfaces of the machine shall be of smooth, nontoxic, corrosion-resistant, and relatively nonabsorbent material, and shall be capable of withstanding repeated cleaning and

sanitizing by normal procedures. Such surfaces shall be protected against contamination.

b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:

- (1) The nonfood-contact surfaces of the interior of vending machines shall be so designed and constructed as to permit easy cleaning, and to facilitate maintenance operations. Inaccessible surfaces or areas shall be minimized.
- (2) All food-contact surfaces of vending machines shall be smooth, in good repair, and free of breaks, corrosion, open seams, cracks, and chipped places. The design of such surfaces shall be such as to preclude routine contact between food and V-type threaded surfaces. All joints and welds in food-contact surfaces shall be smooth; and all internal angles and corners of such surfaces shall be rounded to facilitate cleaning.
- (3) All food-contact surfaces of vending machines, including containers, pipes, valves, and fittings, shall be constructed of nontoxic, corrosion-resistant, and relatively nonabsorbent materials, and shall be kept clean. In all vending machines in which carbon dioxide is used to propel water, food, or other ingredients, all food-contact surfaces in the system shall be of such material as to preclude the production of toxic substances which might result from interaction between the carbon dioxide and food-contact surfaces. All food-contact surfaces, unless designed for in-place cleaning, shall be accessible for manual cleaning and inspection: (a) without being disassembled; (b) by disassembly without the use of tools; or (c) by easy disassembly with the use of only simple tools such as a screwdriver or an open-end wrench. In machines of such design that food-contact surfaces are not readily removable, in-place cleaning of such surfaces may be permitted; provided, that (a) they are so arranged that cleaning and sanitizing solutions can be circulated throughout the fixed system; (b) such solutions will contact all food-contact surfaces; (c) the system is self-draining or otherwise completely evacuated; and (d) the procedures utilized result in thorough cleaning of the equipment.
- (4) The openings into all nonpressurized containers used for the storage of vendable food, including water, shall be provided with covers which prevent

contamination from reaching the interior of the containers. Such covers shall be designed to provide a flange which overlaps the opening, and shall be sloped to provide drainage from the cover wherever the collection of condensation, moisture, or splash is possible. Concave covers or cover areas are prohibited. Any port opening through the cover shall be flanged upward at least three-sixteenths inch [4.76 millimeters], and shall be provided with an overlapping cover flanged downward. Condensation, drip, or dust deflecting aprons shall be provided on all piping, thermometers, equipment, rotary shafts, and other functional parts extending into the food container, unless a watertight joint is provided. Such aprons shall be considered as satisfactory covers for those openings which are in continuous use. Gaskets, if used, shall be of a material which is nontoxic, relatively stable, and relatively nonabsorbent, and shall have a smooth surface. All gasket retaining grooves shall be easily cleanable.

- (5) The delivery tube or chute and orifice of all bulk food and bulk beverage vending machines shall be protected from normal manual contact, dust, insects, rodents, and other contamination. The design shall be such as to divert condensation or other moisture from the normal filling position of the container receiving the food or beverage. The vending stage of such machines shall be provided with a tight-fitting, self-closing door or cover which is kept shut, except when food is being removed.
- (6) The food storage compartment within vending machines dispensing packaged liquid food shall be so constructed as to be self-draining; or shall be provided with a drain outlet which permits complete draining of the compartment. All such drains shall be easily cleanable.
- (7) Opening devices which come into contact with the food or the food-contact surface of the containers shall be constructed of smooth, nontoxic, corrosion-resistant, and relatively nonabsorbent materials. Unless the opening device is of a single-service type, it shall be readily removable for cleaning, and shall be kept clean. Parts of multiuse opening devices which come into contact with the food or food-contact surface of containers shall be reasonably protected from manual contact, dust, insects, rodents, and other contamination; and such parts shall be readily removable for cleaning.

5. Water supply.

- a. Water used in vending machines shall be from an approved source, and shall be of a safe and sanitary quality. Vending machines shall be so installed and operated as to prevent the production of toxic substances in the water.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
 - (1) All water used in vending machines shall be of a safe and sanitary quality and from an approved source. Water used as a food ingredient shall be piped to the vending machine under pressure or brought to the vending machine in portable containers or urns which have been filled in a sanitary manner directly from an approved water supply outlet at the commissary or other approved location. Ingredient water shall not be transferred from one container to another at the machine location. Containers for the storage of ingredient water or ice, which are not a part of this closed water system, shall be designed and maintained as food-contact surfaces. Water containers or urns shall be cleaned and sanitized at the commissary or other approved facility after each use. Such portable containers shall be continuously protected against contamination from the time of sanitizing until placed in the vending machine. Protection shall be effected which will prevent unauthorized persons from tampering with or refilling the water container. All plumbing connections and fittings shall be installed in accordance with state and local plumbing regulations.
 - (2) If used, water filters or other water conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.
 - (3) All vending machines which dispense carbonated beverages, and which are connected to a water supply system, shall be equipped with two (or a double) check valves; or an airgap; or a device to vent carbon dioxide to the atmosphere; or other approved device, which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system.
 - (4) Where check valves are used for the protection of the water supply system, a screen of not less than one hundred mesh to the inch [2.54 centimeters] shall be installed in the waterline immediately upstream from the check valves.

- (5) In all vending machines which dispense carbonated beverages and which are connected to a water supply system, the ingredient water-contact surfaces from the check valves or other protective device downstream, including the device itself, shall be of such material as to preclude the production of toxic substances which might result from interaction with carbon dioxide or carbonated water.

6. Waste disposal.

- a. All wastes shall be properly disposed of, and pending disposition, shall be kept in suitable containers so as to prevent creating a nuisance.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
 - (1) All trash and other waste material shall be removed from the machine location as frequently as may be necessary to prevent nuisance and unsightliness, and shall be disposed of in an approved manner.
 - (2) Self-closing, leakproof, easily cleanable, plainly labeled and designated waste container or containers shall be provided in the vicinity of each machine or machines to receive used cups, cartons, wrappers, straws, closures, and other single-service items. After being emptied, each waste container shall be thoroughly cleaned. Such waste containers shall not be located within the vending machine; provided, that an exception may be made for those machines dispensing only packaged food with crown closures. In case of an exception, the closure receptacle may be located within the machine. Suitable racks or cases shall be provided for multiuse containers or bottles.
 - (3) Containers shall be provided within all machines dispensing liquid food in bulk for the collection of drip, spillage, overflow, or other internal wastes. An automatic shutoff device shall be provided which will place the vending machine out of operation before such container overflows. Containers or surfaces on which such wastes may accumulate shall be readily removable for cleaning, shall be easily cleanable, and shall be corrosion-resistant. If liquid wastes from drip, spillage, or overflow, which originate within the machine are discharged into a sewerage system, the connection to the sewer shall be through an airgap.

7. Delivery of food, equipment, and supplies to machine location.

- a. Food, food-contact surfaces of containers, equipment, and supplies shall be protected from contamination while in transit to machine location. Potentially hazardous food, while in transit and in storage on location, shall be maintained at safe temperatures.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the following requirements are met:
 - (1) Food, while in transit to vending machine locations, shall be protected from the elements, dirt, dust, insects, rodents, and other contamination. Similar protection shall be provided for single-service containers, and for the food-contact surfaces of equipment, containers, and devices in transit to machine locations.
 - (2) Potentially hazardous food, prior to being loaded in the delivery vehicle, shall be maintained at a temperature of forty-five degrees Fahrenheit [7.22 degrees Celsius] or below, or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above, whichever is applicable. Such food shall also comply with the applicable temperature requirements while in transit to machine locations.
 - (3) If potentially hazardous food is stored at machine locations, the applicable safe temperature shall be maintained during storage.

8. Cleanliness of personnel.

- a. Employees shall maintain a high degree of personal cleanliness and shall conform to hygienic practices while engaged in handling foods, or food-contact surfaces of utensils or equipments.
- b. Satisfactory compliance. Subdivision a shall be deemed to have been satisfied when the requirements of this subdivision are met. Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them into contact with food, or with food-contact surfaces of utensils, containers, or equipment. While engaged in such servicing operations, employees shall wear clean outer garments, shall conform to hygienic practices, and shall not use tobacco in any form.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-06. Disease control. No person, while affected with any disease in a communicable form, or while a carrier of such disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any area of a commissary or vending operation in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms, or transmitting disease to other individuals. No person known or suspected of being affected with any such disease or condition shall be employed in such an area or capacity. If the manager or person in charge of the establishment has reason to suspect that any employee has contracted any disease in a communicable form or has become a carrier of such disease, the manager or person in charge shall notify the department immediately.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-07. Procedure when infection is suspected. When the department has reasonable cause to suspect the possibility of disease transmission from any employee, the department shall secure a morbidity history of the suspected employee or make such other investigation as may be indicated, and take appropriate action. The department may require any or all of the following:

1. The immediate exclusion of the employee from all commissaries and vending machine operations.
2. The immediate closure of the commissaries and operations concerned until, in the opinion of the department, no further danger of disease outbreak exists.
3. Restriction of the employee's services to some area of work where there would be no danger of transmitting disease.
4. Adequate medical examination of the employee and of the employee's associates, with such laboratory examinations as may be indicated.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

33-33-03-08. Commissaries outside North Dakota. Food from commissaries outside of North Dakota may be sold within the state if such commissaries conform to the provisions of the food-service establishment sanitation regulations of North Dakota, or to

substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authorities in the jurisdictions where the commissary or commissaries are located.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-24

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33-33-04-01. (1101) Definitions. For the purpose of this chapter:

1. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored.
2. "Corrosion-resistant materials" means those materials that maintain their original surface characteristics under prolonged influence of the food to be contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions-of-use environment.
3. "Department" means the state department of health and consolidated laboratories or its designated agent.
4. "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.
5. "Employee" means the permitholder, individuals having supervisory or management duties and any other person working in a food service establishment.
6. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtanks, and similar items other than utensils, used in the operation of a food service establishment.
7. "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.
8. "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.
9. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
10. "Food service establishment" means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term also includes delicatessen-type operations that prepare sandwiches intended for individual portion service. The term does not

- include private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, and supply vehicles.
11. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its content after processing.
 12. "Kitchenware" means all multiuse utensils other than tableware.
 13. "Law" includes federal, state, and local statutes, ordinances, and regulations.
 14. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
 15. "Packaged" means bottled, canned, cartoned, or securely wrapped.
 16. "Person" includes any individual, partnership, corporation, association, or other legal entity.
 17. "Person in charge" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee present is the person in charge.
 18. "Potentially dangerous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic micro-organisms. The term does not include clean, whole, uncracked, odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.
 19. "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.
 20. "Reconstituted" means dehydrated food products recombined with water or other liquids.
 21. "Regulatory authority" means the state and local enforcement authority or authorities having jurisdiction over the food service establishment.

22. "Safe materials" means articles 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 any food. If materials used are food additives or color additives as defined in section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act [Pub. L. 75-717; 52 Stat. 1040; 21 U.S.C. 301 et seq.], they are "safe" only if they are used in conformity with regulations established pursuant to section 409 or section 706 of the Act. Other materials are "safe" only if, as used, they are not food additives or color additives as defined in section 201(s) or (t) of the Federal Food, Drug, and Cosmetic Act and are used in conformity with all applicable regulations of the food and drug administration.
23. "Sanitization" means effective bactericidal treatment by a process that provides enough accumulated heat or concentration of chemicals for enough time to reduce the bacterial count, including pathogens, to a safe level on utensils and equipment.
24. "Sealed" means free of cracks or other openings that permit the entry or passage of moisture.
25. "Single-service articles" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks and similar articles intended for one-time, one-person use and then discarded.
26. "Tableware" means multiuse eating and drinking utensils.
27. "Temporary food service establishment" means a food service 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.
28. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-02. (2101) General care of food supplies. Food shall be in sound condition, free from spoilage, filth, or other contamination and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-03. (2102) Special requirements.

1. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law. Dry milk and dry milk products shall be made from pasteurized milk and milk products.
2. Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag or label that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency.
3. Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquids, frozen, or dry eggs or pasteurized dry egg products shall be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-04. (2201) General food protection. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be forty-five degrees Fahrenheit [7.2 degrees Celsius] or below or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above at all times, except as otherwise provided in this chapter.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-05. (2202) Emergency occurrences. In the event of a fire, flood, power outage, or similar event that might result in contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately contact the department. Upon receiving the notice of this occurrence, the department shall take whatever action that it deems necessary to protect the public health.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-06. (2301) General food storage.

1. Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
2. Containers of food shall be stored a minimum of six inches [15.24 centimeters] above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:
 - a. Metal pressurized beverage containers, and cased food packaged in cans, glass, or other waterproof containers need not be elevated when the food containers are not exposed to floor moisture.
 - b. Containers may be stored on dollies, racks, or pallets, if such equipment is easily movable.
3. Food and containers of food shall not be stored under exposed or unprotected sewerlines or waterlines except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.
4. Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.
5. Packaged food shall not be stored in contact with water or drained ice. Wrapped sandwiches shall not be stored in direct contact with ice.

6. Unless its identity is unmistakable, bulk food such as cooking oil, syrup, salt, sugar, or flour, not stored in the product container or package in which it was obtained, shall be stored in a container identifying the food by common name.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-07. (2302) Refrigerated storage.

1. Enough conveniently located refrigeration facilities or effectively insulated facilities shall be provided to assure the maintenance of potentially hazardous food at required temperatures during storage. Each mechanically refrigerated facility storing potentially hazardous food shall be provided with a numerically scaled indicating thermometer, accurate to \pm three degrees Fahrenheit [\pm 16.11 degrees Celsius], located to measure the air temperature in the warmest part of the facility and located to be easily readable. Recording thermometers, accurate to \pm three degrees Fahrenheit [\pm 16.11 degrees Celsius], may be used in lieu of indicating thermometers.
2. Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below. Potentially hazardous foods of large volume or prepared in large quantities shall be rapidly cooled, utilizing such methods as shallow pans, agitation, quick chilling or water circulation external to the food container so that the cooling period shall not exceed four hours. Potentially hazardous food to be transported shall be prechilled and held at a temperature of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below unless maintained in accordance with subsection 2 of section 33-33-04-08.
3. Frozen food shall be kept frozen and should be stored at a temperature of zero degrees Fahrenheit [17.78 degrees Celsius] or below.
4. Ice intended for human consumption shall not be used as a medium for cooling stored food, food containers or food utensils, except that such ice may be used for cooling tubes conveying beverages or beverage ingredients to a dispenser head. Ice used for cooling stored food and food containers shall not be used for human consumption.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-08. (2303) Hot storage.

1. Enough conveniently located hot food storage facilities shall be provided to assure the maintenance of food at the required temperature during storage. Each hot food facility storing potentially hazardous food shall be provided with a numerically scaled recording or indicating thermometer, accurate to \pm three degrees Fahrenheit [\pm 16.11 degrees Celsius], located to measure the air temperature in the coolest part of the facility and located to be easily readable. Where it is impractical to install thermometers on equipment such as bainmaries, steamtables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a product thermometer must be available and used to check internal food temperature.
2. The internal temperature of potentially hazardous food requiring hot storage shall be one hundred forty degrees Fahrenheit [60 degrees Celsius] or above except during necessary periods of preparation. Potentially hazardous food to be transported shall be held at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above unless maintained in accordance with subsection 2 of section 33-33-04-07.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-09. (2401) General food preparation. Food shall be prepared with the least possible manual contact, with suitable utensils, and on surfaces that prior to use have been cleaned, rinsed, and sanitized to prevent cross-contamination.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-10. (2402) Raw fruits and raw vegetables. Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-11. (2403) Cooking potentially hazardous foods. Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least one hundred forty degrees Fahrenheit [60 degrees Celsius], except that:

1. Poultry, poultry stuffing, stuffed meats, and stuffing containing meat shall be cooked to heat all parts of the food to at least one hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius] with no interruption of the cooking process.
2. Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius].
3. Rare roast beef shall be cooked to an internal temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius], and rare beefsteak shall be cooked to a temperature of one hundred thirty degrees Fahrenheit [54.4 degrees Celsius] unless otherwise ordered by the immediate consumer.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-12. (2404) Dry milk and dry milk products. Reconstituted dry milk and dry milk products may be used in instant desserts and whipped products, or for cooking and baking purposes.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-13. (2405) Liquid, frozen, dry eggs and egg products. Liquid, frozen, dry eggs and egg products shall be used only for cooking and baking purposes.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-14. (2406) Reheating. Potentially hazardous foods that have been cooked and then refrigerated, shall be reheated rapidly to one hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius] or higher throughout before being served or before being placed in a hot food storage facility. The use of steamtables, bainmaries, warmers, and similar hot food holding facilities for the rapid reheating of potentially hazardous foods is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-15. (2407) Nondairy products. Nondairy creaming, whitening, or whipping agents may be reconstituted on the premises only

when they are stored in sanitized, covered containers not exceeding one gallon [3.785 liters] in capacity and cooled to forty-five degrees Fahrenheit [7.2 degrees Celsius] or below within four hours after preparation.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-16. (2408) Product thermometers. Metal stem-type numerically scaled indicating thermometers, accurate to \pm two degrees Fahrenheit [\pm 16.67 degrees Celsius], shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-17. (2409) Thawing potentially hazardous foods. Potentially hazardous foods shall be thawed in any one of the following ways:

1. In refrigerated units at a temperature not to exceed forty-five degrees Fahrenheit [7.2 degrees Celsius].
2. Under potable running water of a temperature of seventy degrees Fahrenheit [21.1 degrees Celsius] or below, with sufficient water velocity to agitate and float off loose food particles into the overflow.
3. In a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven.
4. As part of the conventional cooking process.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-18. (2501) Food display and service of potentially hazardous foods. Potentially hazardous foods shall be kept at an interval temperature of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below or an internal temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above during display and service, except that rare roast beef shall be held for service at a

temperature of at least one hundred thirty degrees Fahrenheit [54.4 degrees Celsius].

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-19. (2502) Milk and cream dispensing.

1. Milk and milk products for drinking purposes shall be provided to the consumer in an unopened, commercially filled package not exceeding one pint [0.473 liters] in capacity, or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser. Where a dispenser for milk and milk products is not available and portions of less than one-half pint [0.236 liters] are required for mixed drinks, cereal, or dessert service, milk and milk products may be poured from a commercially filled container of not more than one-half gallon [1.892 liters] capacity.
2. Cream of half and half shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-20. (2503) Nondairy product dispensing. Nondairy creaming or whitening agents shall be provided in an individual service container, protected pour-type pitcher, or drawn from a refrigerated dispenser designed for such service.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-21. (2504) Condiment dispensing.

1. Condiments, seasonings, and dressings for self-service use shall be provided in individual packages, from dispensers or from containers protected in accordance with section 33-33-04-25.
2. Condiments provided for table or counter service shall be individually portioned, except that catsup and other sauces may be served in the original container or pour-type dispenser. Sugar for consumer use shall be provided in individual packages or in pour-type dispensers.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-22. (2505) Ice dispensing. Ice for consumer use shall be dispensed only by employees with scoops, tongs, or other ice-dispensing utensils or through automatic self-service, ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface

or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored in a way that protects them from contamination. Ice storage bins shall be drained through an airgap.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-23. (2506) Dispensing utensils. To avoid unnecessary manual contact with food, suitable dispensing utensils shall be used by employees or provided to consumers who serve themselves. Between uses during service, dispensing utensils shall be stored in any one of the following ways:

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

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-24. (2507) Re-serving. Once served to a consumer, portions of leftover food shall not be served again, except that packaged food, other than potentially hazardous food, that is still packaged and is still in sound condition, may be re-served.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-25. (2508) Display equipment. Food on display shall be protected from consumer contamination by the use of packaging or by the use of easily cleanable counter, serving line or salad bar protector devices, display cases, or other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-26. (2509) Reuse of tableware. Reuse of soiled tableware by self-service consumers returning to the service area for additional food is prohibited. Beverage cups and glasses are exempt.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-27. (2601) General food transportation. During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or catering operations, food shall meet the requirements relating to food protection and food storage.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-28. (3101) General employee health. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, shall work in a food service establishment in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-29. (3201) General personal cleanliness. Employees shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting work, during work as often as necessary to keep them clean, and after smoking, eating, drinking, or

using the toilet. Employees shall keep their fingernails clean and trimmed.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-30. (3301) General clothing.

1. The outer clothing of all employees shall be clean.
2. Employees shall use effective hair restraints to prevent the contamination of food or food-contact surfaces.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-31. (3401) General employee practices.

1. Employees shall consume food only in designated dining areas. An employee dining area shall not be so designated if consuming food there may result in contamination of other food, equipment, utensils, or other items needing protection.
2. Employees shall not use tobacco in any form while engaged in food preparation or service, or while in areas used for equipment or utensil washing or food preparation. Employees shall use tobacco only in designated areas. An employee tobacco-use area shall not be designated for that purpose if the use of tobacco there may result in contamination of food, equipment, utensils, or other items needing protection.
3. Employees shall handle soiled tableware in a way that minimizes contamination of their hands.
4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the food service establishment.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-32. (4101) General equipment and utensils materials. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and

single-service articles shall not impart odors, color, or taste, nor contribute to the contamination of food.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-33. (4102) Solder. If solder is used, it shall be composed of safe materials and be corrosion resistant.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-34. (4103) Wood. Hard maple or equivalently nonabsorbent material that meets the general requirements set forth in section 33-33-04-32 may be used for cutting blocks, cutting boards, salad bowls, and baker's tables. Wood may be used for single-service articles, such as chopsticks, stirrers, or ice cream spoons. The use of wood as a food-contact surface under other circumstances is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-35. (4104) Plastics. Safe plastic, safe rubber, or safe rubberlike materials that are resistant, under normal conditions of use, to scratching, scoring, decomposition, crazing, chipping, and distortion, that are of sufficient weight and thickness to permit cleaning and sanitizing by normal dishwashing methods, and which meet the general requirements set forth in section 33-33-04-32 are permitted for repeated use.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-36. (4105) Mollusk and crustacea shells. Mollusk and crustacea shells may be used only once as a serving container. Reuse of such shells for food service is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-37. (4106) Single-service articles. Reuse of single-service articles is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-38. (4201) General design and fabrication. All equipment and utensils, including plasticware, shall be designed and fabricated for durability under conditions of normal use and shall be resistant to denting, buckling, pitting, chipping, and crazing, and shall meet the following standards as applicable:

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

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-39. (4202) Accessibility. Unless designed for in-place cleaning, food-contact surfaces shall be accessible for cleaning and inspection in any of the following ways:

1. Without being disassembled.
2. By disassembling without the use of tools.

3. By easy disassembling with the use of only simple tools such as a mallet, a screwdriver, or an open-end wrench kept available near the equipment.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-40. (4203) In-place cleaning. Equipment intended for in-place cleaning shall be so designed and fabricated that all of the following requirements are met:

1. Cleaning and sanitizing solutions are circulated throughout a fixed system using an effective cleaning and sanitizing regimen.
2. Cleaning and sanitizing solutions contact all interior food-contact surfaces.
3. The system is self-draining or capable of being completely evacuated.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-41. (4204) Pressure spray cleaning. Fixed equipment designed and constructed to be cleaned and sanitized by pressure spray methods shall have sealed electrical wiring, switches, and connections.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-42. (4205) Thermometers. Indicating thermometers required for immersion into food or cooking media shall be of metal stem-type construction, numerically scaled and accurate to \pm two degrees Fahrenheit [\pm 16.67 degrees Celsius].

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-43. (4206) 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, shall be designed and constructed to be smooth, washable, free of unnecessary ledges, projections, or crevices, and readily accessible for

cleaning, and shall be of such material and in such repair as to be easily maintained in a clean and sanitary condition.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-44. (4207) Ventilation hoods. Ventilation hoods and devices shall be designed to prevent grease or condensation from collecting on walls and ceilings and from dripping into food or onto food-contact surfaces. Filters or other grease-extracting equipment shall be readily removable for cleaning and replacement if not designed to be cleaned in place.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-45. (4208) Existing equipment. Equipment installed in a food service establishment prior to October 1, 1979, that does not fully meet all of the design and construction requirements of this chapter, shall be deemed acceptable in that establishment if it is in good repair, capable of being maintained in a sanitary condition, and if the food-contact surfaces are nontoxic. Replacement equipment and new equipment acquired after October 1, 1979, shall meet the requirements of this chapter.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-46. (4301) General equipment installation and location. Equipment, including icemakers and ice storage equipment, shall not be located under exposed or unprotected sewerlines or waterlines, open stairwells, or other sources of contamination. This requirement does not apply to automatic fire protection sprinkler heads that may be required by law.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-47. (4302) Table-mounted equipment.

1. Equipment that is placed on tables or counters, unless portable, shall be sealed to the table or counter or elevated on legs to provide at least a four-inch [10.16-centimeter] clearance between the table or counter and equipment, and

shall be installed to facilitate the cleaning of the equipment and adjacent areas.

2. Equipment is portable within the meaning of subsection 1 if both of the following requirements are met:
 - a. Small and light enough to be moved easily by one person.
 - b. It has no utility connection, or has a utility connection that disconnects quickly, or has a flexible utility connection line of sufficient length to permit the equipment to be moved for easy cleaning.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-48. (4303) Floor-mounted equipment.

1. Floor-mounted equipment, unless easily movable, shall be:
 - a. Sealed to the floor;
 - b. Installed on a raised platform of concrete or other smooth masonry in a way that meets all the requirements for sealing or floor clearance; or
 - c. Elevated on legs to provide at least a six-inch [15.24-centimeter] clearance between the floor and equipment. However, vertically mounted floor mixers may be elevated to provide at least a four-inch [10.16-centimeter] clearance between the floor and equipment if no part of the floor under the mixer is more than six inches [15.24 centimeters] from cleaning access.
2. Equipment is easily movable if:
 - a. It is mounted on wheels or casters; and
 - b. It has no utility connection or has a utility connection that connects quickly, or has a flexible utility line of sufficient length to permit the equipment to be moved for easy cleaning.
3. Unless sufficient space is provided for easy cleaning between, behind, and above each unit of fixed equipment, the space between it and adjoining equipment units and adjacent walls or ceilings shall be not more than one thirty-second of an inch [.794 millimeters]; or if exposed to seepage, the equipment shall be sealed to the adjoining equipment or adjacent walls or ceilings.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-49. (4304) Aisles and working spaces. Aisles and working spaces between units of equipment and walls shall be unobstructed and of sufficient width or space to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-50. (5101) Cleaning frequency of equipment and utensils cleaning and sanitizing.

1. Tableware shall be washed, rinsed, and sanitized after each use.
2. To prevent cross-contamination, kitchenware and food-contact surfaces of equipment shall 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 shall be washed, rinsed, and sanitized at intervals throughout the day on a schedule based on food temperature, type of food, and amount of food particle accumulation.
4. The food-contact surfaces of grills, griddles, and similar cooking devices and the cavities and door seals of microwave ovens shall be cleaned at least once a day. However, this shall not apply to hot oil cooking equipment and hot oil filtering systems. The food-contact surfaces of all cooking equipment shall be kept free of encrusted grease deposits and other accumulated soil.
5. Nonfood-contact surfaces of equipment shall 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.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-51. (5102) Wiping cloths.

1. Cloths used for wiping food spills on tableware, such as plates or bowls, being served to the consumer, shall be clean, dry, and used for no other purpose.
2. Moist cloths or sponges used for wiping food spills on kitchenware and food-contact surfaces of equipment shall 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 and sponges shall be stored in the sanitizing solution between uses.
3. Moist cloths or sponges used for cleaning nonfood-contact surfaces of equipment, such as counters, dining tabletops, and shelves, shall be clean and rinsed as specified in subsection 2 and used for no other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-52. (5103) Manual cleaning and sanitizing.

1. For manual washing, rinsing, and sanitizing of utensils and equipment, a sink with not fewer than three compartments shall be provided and used. Sink compartments shall be large enough to permit the accommodation of the equipment and utensils, and each compartment of the sink shall be supplied with hot and cold potable running water. Fixed equipment and utensils and equipment too large to be cleaned in sink compartments shall be washed manually or cleaned through pressure spray methods.
2. Drainboards or easily movable dish tables of adequate size shall be provided for proper handling of soiled utensils prior to washing and for cleaned utensils following sanitizing, and shall be located so as not to interfere with the proper use of the dishwashing facilities.
3. Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.
4. Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:
 - a. Sinks shall be cleaned prior to use.

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

hundred seventy degrees Fahrenheit [76.67 degrees Celsius].

- b. A numerically scaled indicating thermometer, accurate to \pm three degrees Fahrenheit [\pm 16.11 degrees Celsius], convenient to the sink for frequent checks of water temperature.
 - c. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.
7. When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted under 21 CFR 178.1010 and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-53. (5104) Mechanical cleaning and sanitizing.

1. Cleaning and sanitizing may be done by spray-type or immersion dishwashing machines or by any other type of machine or device, if it is demonstrated that it thoroughly cleans and sanitizes equipment and utensils. These machines and devices shall be properly installed and maintained in good repair. These machines and devices shall be operated in accordance with manufacturers' instructions, and utensils and equipment placed in these machines shall be exposed to all dishwashing cycles. Automatic detergent dispensers, wetting agent dispensers, and liquid sanitizer injectors, if any, shall be properly installed and maintained.
2. The pressure of final rinse water supplies to spray-type dishwashing machines shall not be less than fifteen nor more than twenty-five pounds per square inch [11.34 kilograms per 6.45 square centimeters] measured in the waterline immediately adjacent to the final rinse control valve. A one-fourth inch [6.35 millimeters] IPS valve shall be provided immediately upstream from the final rinse control valve to permit checking the flow pressure of the final rinse water.
3. Machine or waterline mounted numerically scaled indicating thermometers, accurate to \pm three degrees Fahrenheit [\pm 16.11 degrees Celsius], shall be provided to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.

4. Rinse water tanks shall be protected by baffles, curtains, or other effective means, to minimize the entry of wash water into the rinse water. Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles, in accordance with manufacturers' specifications attached to the machines.
5. Drainboards shall be provided and be of adequate size for the proper handling of soiled utensils prior to washing and cleaned utensils following sanitization, and shall be so located and constructed as not to interfere with the proper use of the dishwashing facilities. This does not preclude the use of easily movable dish tables for the storage of clean or soiled utensils following sanitization.
6. Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine, unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food-contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.
7. Machines (single-tank, stationary-rack, door-type machines and spray-type glass washers) using chemicals for sanitization may be used if the following requirements are met:
 - a. The temperature of the wash water shall not be less than one hundred twenty degrees Fahrenheit [48.89 degrees Celsius].
 - b. The wash water shall be kept clean.
 - c. Chemicals added for sanitization purposes shall be automatically dispensed.
 - d. Utensils and equipment shall be exposed to the final chemical sanitizing rinse in accordance with manufacturers' specifications for time and concentration.
 - e. The chemical sanitizing rinse water temperature shall be not less than seventy-five degrees Fahrenheit [23.89 degrees Celsius], nor less than the temperature specified by the machine's manufacturer.
 - f. Chemical sanitizers used shall meet the requirements of 21 CFR 178.1010.
 - g. A test kit or other device that accurately measures the parts per million concentration of the solution shall be available and used.

8. Machines using hot water for sanitization may be used if the wash water and pumped rinse water is kept clean and the water is maintained at not less than the temperature stated in this section.
 - a. Single-tank, stationary-rack, dual temperature machine:
 - Wash temperature One hundred fifty degrees Fahrenheit [65.55 degrees Celsius]
 - Final rinse temperature One hundred eighty degrees Fahrenheit [82.22 degrees Celsius]
 - b. Single-tank, stationary-rack, single-temperature machine:
 - Wash temperature One hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius]
 - Final rinse temperature One hundred sixty-five degrees Fahrenheit [73.88 degrees Celsius]
 - c. Single-tank, conveyor machine:
 - Wash temperature One hundred sixty degrees Fahrenheit [71.11 degrees Celsius]
 - Final rinse temperature One hundred eighty degrees Fahrenheit [82.22 degrees Celsius]
 - d. Multitank, conveyor machine:
 - Wash temperature One hundred fifty degrees Fahrenheit [65.55 degrees Celsius]
 - Pumped rinse temperature One hundred sixty degrees Fahrenheit [71.11 degrees Celsius]
 - Final rinse temperature One hundred eighty degrees Fahrenheit [82.22 degrees Celsius]
 - e. Single-tank, pot, pan, and utensil washer (either stationary or moving rack):
 - Wash temperature One hundred forty degrees Fahrenheit [60 degrees Celsius]
 - Final rinse temperature One hundred eighty degrees Fahrenheit [82.22 degrees Celsius]
9. All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-54. (5105) Drying. After sanitization, all equipment and utensils shall be air dried.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-55. (5201) Handling of equipment and utensil storage. Cleaned and sanitized equipment and utensils shall be handled in a way that protects them from contamination. Spoons, knives, and forks shall be touched only by their handles. Cups, glasses, bowls, plates, and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-56. (5202) Storage.

1. Cleaned and sanitized utensils and equipment shall 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 shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewerlines or waterlines, except for automatic fire protection sprinkler heads that may be required by law.
2. Utensils shall be air dried before being stored or shall be stored in a self-draining position.
3. Glasses and cups shall be stored inverted. Other stored utensils shall be covered or inverted, whenever practical. Facilities for the storage of knives, forks, and spoons shall 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 shall protect these articles from contamination and present the handle of the utensil to the consumer.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-57. (5203) Single-service articles.

1. Single-service articles shall be stored at least six inches [15.24 centimeters] above the floor in closed cartons or containers which protect them from contamination 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.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-58. (5204) Prohibited storage areas. The storage of food, equipment, utensils, or single-service articles in toilet rooms or vestibules is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-59. (6101) General water supplies. Enough potable water for the needs of the food service establishment shall be provided from a source constructed and operated according to law.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-60. (6102) Transportation. All potable water not provided directly by pipe to the food service establishment from the source shall be transported in a bulk water transport system and shall be delivered to a closed-water system. Both of these systems shall be constructed and operated according to law.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-61. (6103) Bottled water. Bottled and packaged potable water shall be obtained from a source that complies with all laws and shall be handled and stored in a way that protects it from contamination. Bottled and packaged potable water shall be dispensed from the original container.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-62. (6104) Water under pressure. Water under pressure at the required temperatures shall be provided to all fixtures and equipment that use water.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-63. (6105) Steam. Steam used in contact with food or food-contact surfaces shall be free from any materials or additives other than those specified in 21 CFR 173.310.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-64. (6201) General sewage. All sewage, including liquid waste, shall be disposed of by a public sewerage system or by a sewage disposal system constructed and operated according to law. Nonwater-carried sewage disposal facilities are prohibited, except as permitted by sections 33-33-04-125 and 33-33-04-132 (pertaining to temporary food service establishments), or as permitted by this department in remote areas or because of special situations.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-65. (6301) General plumbing. Plumbing shall be sized, installed, and maintained according to law. There shall be no cross-connection between the potable water supply and any nonpotable or questionable water supply or any source of pollution through which the potable water supply might become contaminated.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-66. (6302) Nonpotable water system. Use of a nonpotable water system is permitted only for purposes such as air-conditioning and fire protection, and only if the system is installed according to law and the nonpotable water does not contact, directly or indirectly, food, potable water, equipment that contacts food, or utensils. The piping of any nonpotable water system shall be durably identified so that it is readily distinguishable from piping that carries potable water.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-67. (6303) 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.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-68. (6304) Grease traps. If used, grease traps shall be located to be easily cleaned.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-69. (6305) Garbage grinders. If used, garbage grinders shall be installed and maintained according to law.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-70. (6306) 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 [15.24 decimeters] of a trapped floor drain, the dishwasher waste outlet may be connected directly on the inlet side of a properly vented floor drain trap.

History: Effective August 1, 1988.

General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-71. (6401) Toilet facility installation. Toilet facilities shall be installed according to law, shall be the number required by law, shall be conveniently located, and shall be accessible to employees at all times.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-72. (6402) Toilet design. Toilets and urinals shall be designed to be easily cleaned.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-73. (6403) 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.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-74. (6404) 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.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-75. (6501) Lavatory facility installation.

1. Lavatories shall be at least the number required by law, shall be installed according to law, and shall be located to permit convenient use by all employees in food preparation and utensil-washing areas.
2. Lavatories shall be accessible to employees at all times.

3. Lavatories shall also be located in or immediately adjacent to toilet rooms. Sinks used for food preparation or for washing equipment or utensils shall not be used for handwashing.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-76. (6502) Lavatory faucets. Each lavatory shall be provided with hot and cold water tempered by means of a mixing valve or combination faucet. Any self-closing, slow-closing, or metering faucet shall be designed to provide a flow of water for at least fifteen seconds without the need to reactivate the faucet. Use of steam-mixing valves is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-77. (6503) Lavatory supplies. A supply of hand-cleansing soap or detergent shall be available at each lavatory. A supply of sanitary towels or a hand-drying device providing heated air shall be conveniently located near each lavatory. The use of common towels is prohibited. If disposable towels are used, easily cleanable waste receptacles shall be conveniently located near the handwashing facilities.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-78. (6504) Lavatory maintenance. Lavatories, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-79. (6601) Garbage and refuse containers.

1. Garbage and refuse shall be kept in durable, easily cleanable, 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 service 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.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-80. (6602) 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 and maintained in good repair.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-81. (6603) Disposal.

1. Garbage and refuse shall be disposed of often enough to prevent the development of odor and the attraction of insects and rodents.
2. Where garbage or refuse is burned on the premises, it shall be done by controlled incineration which prevents the escape of particulate matter in accordance with law. Areas around incineration facilities shall be clean and orderly.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-82. (6701) General insect and rodent control.

Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-83. (6702) Openings. Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects by tight-fitting, self-closing doors, closed windows, screening, controlled air currents, or other means. Screen doors shall be self-closing, and screens for windows, doors, skylights, transoms, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks. Screening material shall not be less than sixteen mesh to the inch [2.54 centimeters].

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-84. (7101) 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. Nothing in this section shall prohibit the use of antislip floor covering in areas where necessary for safety reasons.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-85. (7102) Floor carpeting. Carpeting, if used as a floor covering, shall be of closely woven construction, properly installed, easily cleanable, and maintained in good repair. Carpeting is prohibited in food preparation, equipment-washing, and utensil-washing areas where it would be exposed to large amounts of grease and water, in food storage areas, and toilet room areas where urinals or toilet fixtures are located.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-86. (7103) Prohibited floor covering. The use of sawdust, wood shavings, peanut hulls, or similar material as a floor covering is prohibited.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-87. (7104) Floor drains. Properly installed, trapped floor drains shall be provided in floors that are water-flushed for cleaning, or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Such floors shall be constructed only of sealed concrete, terrazzo, ceramic tile, or similar materials, and shall be graded to drain.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-88. (7105) Mats and duckboards. Mats and duckboards shall be of nonabsorbent, grease-resistant materials and of such size, design, and construction as to facilitate easy cleaning. Duckboards shall not be used as storage racks.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-89. (7106) Floor junctures. In all new or extensively remodeled establishments utilizing concrete, terrazzo, ceramic tile, or similar flooring materials, and where water-flush cleaning methods are used, the junctures between walls and floors shall not present an open seam of more than one thirty-second of an inch [.794 millimeters].

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-90. (7107) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the floor. In all new or extensively remodeled establishments, installation of exposed horizontal utility lines and pipes on the floor is prohibited.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-91. (7201) Wall and ceiling maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be maintained in good repair.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-92. (7202) Construction. The walls, including nonsupporting partitions, wall coverings, and the ceilings of walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide an easily cleanable surface.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-93. (7203) Exposed construction. Studs, joists, and rafters shall not be exposed in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules. If exposed in other rooms or areas, they shall be finished to provide an easily cleanable surface.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-94. (7204) Utility line installation. Exposed utility service lines and pipes shall be installed in a way that does not obstruct or prevent cleaning of the walls and ceilings. Utility service lines and pipes shall not be unnecessarily exposed on walls or ceilings

in walk-in refrigerating units, food preparation areas, equipment and utensil-washing areas, toilet rooms, and vestibules.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-95. (7205) Attachments. Light fixtures, vent covers, wall-mounted fans, decorative materials, and similar equipment attached to walls and ceilings shall be easily cleanable and shall be maintained in good repair.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-96. (7206) Covering material installation. Wall and ceiling covering materials shall be attached and sealed as to be easily cleaned.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-97. (7301) General cleaning physical facilities. Cleaning of floor and walls, except emergency cleaning of floors, shall be done during periods when the least amount of food is exposed, such as after closing or between meals. Floors, mats, duckboards, walls, ceilings, and attached equipment and decorative materials shall be kept clean. Only dustless methods of cleaning floors and walls shall be used, such as vacuum cleaning, wet cleaning, or the use of dust-arresting sweeping compounds with brooms.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-98. (7302) Utility facility. In new or extensively remodeled establishments at least one utility sink or curbed cleaning facility with a floor drain shall be provided and used for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mopwater or similar liquid wastes. The use of lavatories, utensil or equipment-washing, or food preparation sinks for this purpose is prohibited in new or extensively remodeled establishments.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-99. (7401) General lighting.

1. Permanently fixed artificial light sources shall be installed to provide at least twenty foot-candles of light on all food preparation surfaces and at equipment or utensil-washing work levels.
2. Permanently fixed artificial light sources shall be installed to provide, at a distance of thirty inches [76.2 centimeters] from the floor.
 - a. At least twenty foot-candles of light in utensil and equipment storage areas and in lavatory and toilet areas; and
 - b. At least ten foot-candles of light in walk-in refrigerating units, dry food storage areas, and in all other areas, including dining areas during cleaning operations.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-100. (7402) Protective shielding.

1. Shielding to protect against broken glass falling onto food shall be provided for all artificial lighting fixtures located over, by, or within food storage, preparation, service, and display facilities.
2. Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond the bulb, leaving only the face of the bulb exposed.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-101. (7501) General ventilation. All rooms shall have sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes. Ventilation systems shall be installed and operated according to law and, when vented to the outside, shall not create an unsightly, harmful, or unlawful discharge.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-102. (7502) Special ventilation.

1. Intake and exhaust air ducts shall be maintained to prevent the entrance of dust, dirt, and other contaminating materials.
2. In new or extensively remodeled establishments, all rooms from which obnoxious odors, vapors, or fumes originate shall be mechanically vented to the outside.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-103. (7601) Dressing rooms or areas. If employees routinely change clothes within the establishment, rooms or areas shall be designated and used for that purpose. These designated rooms or areas shall not be used for food preparation, storage or service, or for utensil washing or storage.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-104. (7602) Locker area. Enough lockers or other suitable facilities shall be provided and used for the orderly storage of employee clothing and other belongings. Lockers or other suitable facilities may be located only in the designated dressing rooms, in food storage rooms, or areas containing only completely packaged food or packaged single-service articles.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-105. (7701) Poisonous or toxic materials permitted. There shall be present in food service establishments only those poisonous or toxic materials necessary for maintaining the establishment, cleaning and sanitizing equipment and utensils, and controlling insects and rodents.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-106. (7702) Labeling of materials. Containers of poisonous or toxic materials shall be prominently and distinctly labeled according to law for easy identification of contents.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-107. (7703) Storage of materials.

1. Poisonous or toxic materials consist of the following three categories:
 - a. Insecticides and rodenticides.
 - b. Detergents, sanitizers, and related cleaning or drying agents.
 - c. Caustics, acids, polishes, and other chemicals.
2. Each of the three categories set forth in subsection 1 shall be stored and physically located separate from each other. All poisonous or toxic materials shall be stored in cabinets or in a similar physically separate place used for no other purpose. To preclude contamination, poisonous or toxic materials shall not be stored above food, food equipment, utensils, or single-service articles, except that this requirement does not prohibit the convenient location of detergents or sanitizers at utensil or dishwashing stations.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-108. (7704) Use of materials.

1. Bactericides, cleaning compounds, or other compounds intended for use on food-contact surfaces shall not be used in a way that leaves a toxic residue on such surfaces or that constitutes a hazard to employees or other persons.
2. Poisonous or toxic materials shall not be used in a way that contaminates food, equipment, or utensils, in a way that constitutes a hazard to employees or other persons, or in a way other than in full compliance with the manufacturer's labeling.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-109. (7705) Personal medications. Personal medications shall not be stored in food storage, preparation, or service areas.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-110. (7706) First-aid supplies. First-aid supplies shall be stored in a way that prevents them from contaminating food and food-contact surfaces.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-111. (7801) General premises.

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

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-112. (7802) Living areas. No operations of a food service establishment shall be conducted in any room used as living or sleeping quarters. Food service operations shall be separated from any living or sleeping quarters by complete partitioning and solid, self-closing doors.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-113. (7803) Laundry facilities.

1. Laundry facilities in a food service establishment shall be used only for the washing and drying of linens, cloths, uniforms, and aprons necessary to the operation. If such items are laundered on the premises, an electric or gas dryer shall be provided and used.
2. Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-114. (7804) Linen and clothes storage.

1. Clean clothes and linens shall be stored in a clean place and protected from contamination until used.
2. Soiled clothes and linens shall be stored in nonabsorbent containers or washable laundry bags until removed for laundering.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-115. (7805) Cleaning equipment storage. Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, utensils, equipment, or linens and shall be stored in an orderly manner.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-116. (7806) Animals. Live animals, including birds and turtles, shall be excluded from the food service premises and from adjacent areas under the control of the permitholder. This exclusion does not apply to edible fish, crustacea, shellfish, or fish in

aquariums. Patrol dogs accompanying security or police officers, or guide dogs accompanying blind persons, shall be permitted in dining areas.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-117. (8101) General mobile food service. Mobile food units or pushcarts shall comply with the requirements of this chapter, except as otherwise provided in this section and in section 33-33-04-118. The department may impose additional requirements to protect against health hazards related to the conduct of the food service establishment as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify requirements of this chapter relating to physical facilities, except those requirements of sections 33-33-04-120, 33-33-04-121, 33-33-04-122, 33-33-04-123, and 33-33-04-124, which may not be waived.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-118. (8102) General mobile food service - Restricted operations. Mobile food units or pushcarts serving only food prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this chapter, or beverages that are not potentially hazardous and are dispensed from covered urns or other protected equipment, need not comply with requirements of this chapter pertaining to the necessity of water and sewage systems or those requirements pertaining to the cleaning and sanitization of equipment and utensils if the required equipment for cleaning and sanitization exists at the commissary. However, frankfurters may be prepared and served from these units or pushcarts.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-119. (8103) Single-service articles. Mobile food units or pushcarts shall provide only single-service articles for use by the consumer.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-120. (8104) Water system. A mobile food unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning and sanitizing, and handwashing, in accordance with the requirements of this chapter. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this chapter.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-121. (8105) Waste retention. If liquid waste results from operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that has a capacity of at least fifteen percent or larger than the water supply tank. Liquid waste shall not be discharged from the retention tank when the mobile food unit is in motion. All connections of the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-122. (8201) Base of commissary operations.

1. Mobile food units or pushcarts shall operate out of a commissary or other fixed food service establishment and shall report at least daily to all such locations for all supplies and cleaning and servicing operations.
2. The commissary or other fixed food service establishments used as a base of operation for mobile food units or pushcarts shall be constructed and operated in compliance with the requirements of this section.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-123. (8301) Servicing area and operations.

1. A mobile food unit servicing area shall be provided and shall include at least overhead protection for any supplying, cleaning, or servicing operation. Within this servicing area there shall be a location provided for the flushing and drainage of liquid wastes which is separate from the locations provided for water servicing and for the loading and unloading of food and related supplies. This servicing area will not be required where only packaged food is placed on the mobile food unit or pushcart, or where mobile food units do not contain waste retention tanks.
2. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt, and shall be maintained in good repair, kept clean, and graded to drain.
3. The construction of the walls and ceilings of the servicing area is exempted from the provision of sections 33-33-04-91 through 33-33-04-96.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-124. (8302) 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.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-125. (9101) Temporary food service establishment. A temporary food service establishment shall comply with the requirements of this chapter, except as otherwise provided in this section. The department may impose additional requirements to protect against health hazards, related to the conduct of the temporary food service establishments, may prohibit the sale of some or all potentially

hazardous foods, and when no health hazard will result, may waive or modify requirements of this chapter relating to temporary food service establishments.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-126. (9102) Temporary food service establishment - Restricted operations.

1. This section is applicable whenever a temporary food service establishment is permitted, under the provisions of section 33-33-04-125 to operate without complying with all the requirements.
2. Only those potentially hazardous foods requiring limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs, or fish, is prohibited. This prohibition does not apply to any potentially hazardous food that has been prepared and packaged under conditions meeting the requirements of this chapter, is packaged in individual servings, is stored at a temperature of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below or at a temperature of one hundred forty degrees Fahrenheit [60 degrees Celsius] or above in facilities meeting the requirements of this chapter, and is served directly in the unopened container in which it was packaged.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-127. (9103) Ice. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this chapter. The ice shall be obtained only in chipped, crushed, or cubed form and packaged in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-128. (9104) Equipment.

1. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.
2. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-129. (9105) Single-service articles. All temporary food service establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-130. (9106) Water. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for handwashing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-131. (9107) Wet storage. Storage of packaged food in contact with water or undrained ice is prohibited. Wrapped sandwiches shall not be stored in direct contact with ice.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-132. (9108) Waste. All sewage, including liquid waste, shall be disposed of according to law.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-133. (9109) Handwashing. A convenient handwashing facility shall be available for employee handwashing. At a minimum, this facility shall consist of warm running water, soap, and individual paper towels.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-134. (9110) 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 materials effectively treated to control dust.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-135. (9111) Walls and ceilings of food preparation areas.

1. Ceilings shall be made of wood, canvas, or other material that protects the interior of the establishment from the weather. Walls and ceilings of food preparation areas shall be constructed in a way that prevents the entrance of insects. Doors to food preparation areas shall be solid or screened and shall be self-closing. Screening material used for walls, doors, or windows shall be at least sixteen mesh to the inch [2.54 centimeters].
2. Counter-service openings shall be no larger than necessary for the particular operation conducted. These openings shall be provided with tight-fitting solid or screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of flying insects. Counter-service openings shall be kept closed, except when in actual use.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-136. (10205) Inspection report form FD 2420. The inspection report form is attached to this chapter as an appendix.

History: Effective August 1, 1988.
General Authority: NDCC 19-02.1-20, 23-01-03(3)
Law Implemented: NDCC 19-02.1-09

33-33-04-137. (10401) Submission of plans. Whenever a food service establishment is constructed or extensively remodeled, and whenever an existing structure is converted to use as a food service establishment, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to this department for review and approval before construction, remodeling, or conversion is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, and construction materials of work areas, and the types and models of proposed fixed equipment and facilities. The department shall approve the plans and specifications if they meet the requirements of this chapter. No food service establishment shall be constructed, extensively remodeled, or converted except in accordance with plans and specifications approved by the department.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

33-33-04-138. (10402) Preoperational inspection. Whenever plans and specifications are required by section 33-33-04-137 to be submitted to the department, the department shall inspect the food service establishment prior to the start of operations to determine compliance with the approved plans and specifications and with the requirements of this chapter.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 19-02.1-09

ITEM NO.	REMARKS	CORRECTED BY

**CHAPTER 33-33-05
SMOKE DETECTOR RULES**

Section	
33-33-05-01	Smoke Detectors Required
33-33-05-02	Passageway Devices - General Alarm
33-33-05-03	Devices for the Hard of Hearing
33-33-05-04	Initial Testing and Certification
33-33-05-05	System Inspection - Testing - Maintenance

33-33-05-01. Smoke detectors required. Every sleeping room in a hotel, motel, or lodginghouse 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.

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 access from sleeping rooms to the outside shall have hallways or ingress-egress passageways equipped with listed smoke detection devices. Hallway or ingress-egress passageway smoke detection devices shall be wired into an approved general fire alarm system so as to sound a general 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 regardless of the maximum noise level under normal conditions of occupancy. In all cases one appliance must be installed for each seventy-five feet [22.86 meters] of hallway or ingress-egress passageway or fraction thereof.

History: Effective August 1, 1988.

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 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.

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 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.

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 of a hotel, motel, or lodginghouse shall spot test the smoke detection system at least weekly and shall maintain written records 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 as necessary to assure proper operational condition.

3. The owner or manager of a hotel, motel, or lodginghouse 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.

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

Law Implemented: NDCC 23-09-02.1

CHAPTER 33-33-06 BED AND BREAKFAST FACILITIES

Section	
33-33-06-01	Definitions
33-33-06-02	Water Supply
33-33-06-03	Sewage
33-33-06-04	Food Supplies
33-33-06-05	General Food Protection
33-33-06-06	Food Service Equipment and Utensils Materials
33-33-06-07	General Employee Health
33-33-06-08	Lighting and Ventilation
33-33-06-09	Toilet, Handwashing, Laundry, and Bathing Facilities
33-33-06-10	Beds, Linens, and Furniture
33-33-06-11	Insect and Rodent Control
33-33-06-12	General Requirements
33-33-06-13	Swimming Pools and Spas
33-33-06-14	Fire Safety
33-33-06-15	Inspection - Records Kept
33-33-06-16	License - Application
33-33-06-17	Failure to Comply with Provisions of Chapter

33-33-06-01. Definitions.

1. "Approved" means acceptable to the department based on a determination as to conformance with appropriate standards and good public health practice.
2. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
3. "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.

4. "Department" means the state department of health and consolidated laboratories or its designated agent.
5. "Easily cleanable" means that surfaces are readily accessible and made of such materials and finish and so fabricated that residue may be effectively removed by normal cleaning methods.
6. "Employee" means the permitholder, individuals having supervisory or management duties, and any other person working in a bed and breakfast facility.
7. "Equipment" means stoves, ovens, ranges, hoods, slicers, mixers, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steampables, and similar items other than utensils, used in the operation of a bed and breakfast facility.
8. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.
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. "Food processing establishment" means a commercial establishment in which food is manufactured or packaged for human consumption. The term does not include a food service establishment, retail food store, or commissary operation.
12. "Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its content after processing.
13. "Kitchenware" means all multiuse utensils other than tableware.
14. "Perishable food" means any food of such type or in such condition as may spoil.
15. "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.

16. "Proprietor" means the person in charge of the bed and breakfast facility whether as owner, lessee, manager, or agent.
17. "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.
18. "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. "Tableware" means multiuse eating and drinking utensils.
20. "Utensil" means any implement used in the storage, preparation, transportation, or service of food.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-02. Water supply. The water supply must be adequate, of a safe sanitary quality and from a source approved by the department. The water supply may not contain bacteriological, chemical, or physical impurities which affect, or tend to affect public health, must meet the bacteriological standards of the United States public health service for waters used upon public or interstate common carriers, and is subject to examination by the state department of health and consolidated laboratories. If it is unfit for drinking under these requirements, it either shall be improved to fulfill the standards or the use thereof shall be discontinued.

1. Each private water source shall be sampled and tested for bacteria initially and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
2. Each private water source shall be sampled initially for nitrate analysis and every twelve-month period thereafter. Seasonal operations shall be sampled during the peak operating season.
3. Additional bacteriological or chemical tests may be required by the department.

4. Initially each private source shall be inspected for location, source protection, and design standards.
5. No backflow connections or cross connections with unapproved water supplies may exist.
6. Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-03. Sewage. All sewage shall be disposed of in a public sewerage system or in a sewage disposal system approved by the department.

1. An initial inspection shall be made of all existing onsite sewage disposal systems by the department. This inspection shall evaluate system adequacy and if no expansion of existing dwelling facilities is occurring, no expansion of the system may be required as long as the system is not failing or otherwise contaminating surface or ground water.
2. If an expansion of the dwelling facilities occurs, then evaluation of the onsite sewage disposal system shall be completed by the state department of health and consolidated laboratories. If the system is adequate then no expansion of the system will be required. If the system is not adequate in size, then system expansion shall be required as per local regulations or, the requirements in ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home). Plans for expansion shall be submitted to the local jurisdiction or, the state department of health and consolidated laboratories, water supply and pollution control division, for review and approval prior to construction.
3. The department may require that the septic tank be opened to check its construction. If the department sanitarian determines that pumping of the tank is necessary, the sanitarian may require this to occur.
4. If the department determines that the onsite system needs repair or a new system is required, then the system shall be repaired or replaced in accordance with local regulations, or ND Publication WP-74-1 (Septic Tank and Absorption Field Disposal Systems for the Home).

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-04. Food supplies. Food must be in sound condition, free from spoilage, filth, or other contamination and must be safe for human consumption. Food shall be obtained from or be equal to food from sources that comply with all laws relating to food and food labeling. Before serving any food to the public, the bed and breakfast facility shall comply with all applicable inspections of food required by law. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited. Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards established by law.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-05. General food protection.

1. 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 and chemicals. The temperature of potentially hazardous food must be forty-five degrees Fahrenheit [7.2 degrees Celsius] or below or one hundred forty degrees Fahrenheit [60 degrees Celsius] or above at all times, except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of forty-five degrees Fahrenheit [7.2 degrees Celsius] or below; or quick-thawed as part of the cooking process. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.
2. Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.

3. Live pets are not allowed in any room or area in which food is being prepared for guests.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-06. Food service equipment and utensils materials. Multiuse equipment and utensils shall be constructed and repaired with safe materials, including finishing materials, shall be corrosion resistant and nonabsorbent; and shall be smooth, easily cleanable, and durable under conditions of normal use. Single-service articles shall be made from clean, sanitary, safe materials. Equipment, utensils, and single-service articles may not impart odors, color, or taste, nor contribute to the contamination of food.

Multiuse eating and drinking utensils, kitchenware, and tableware used in the facility shall be sanitized after each use or, single-service items may be used.

Acceptable means of dishwashing/sanitization shall be:

1. Manual cleaning and sanitizing utilizing a sink with two or three compartments with approved chemical sanitizer. Utensils shall be air dried.
2. Mechanical home style dishwasher with a one hundred sixty degrees Fahrenheit [71.1 degrees Celsius] water supply provided by a booster heater or sanitizing cycle.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-07. General employee health.

1. No person, while infected with a disease in a communicable form that can be transmitted by foods or who is a carrier of organisms that can cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, may work in a bed and breakfast facility in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.
2. Bed and breakfast personnel shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices. Personnel shall thoroughly wash their hands with soap and warm water before preparing or serving food.

History: Effective August 1, 1988.

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

33-33-06-08. Lighting and ventilation. Rooms and areas used in conjunction with bed and breakfast homes shall be lighted and ventilated as needed and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-09. Toilet, handwashing, laundry, and bathing facilities.

1. Bed and breakfast homes shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast homes, shall be kept clean and in good repair.
2. All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.
3. The temperature of hot water furnished to handwashing sinks (lavatories), showers, and bathtubs may not exceed one hundred twenty degrees Fahrenheit [48.9 degrees Celsius].
4. Clean towels and bath cloths shall be stored and handled in a sanitary manner.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-10. Beds, linens, and furniture.

1. Furniture, mattresses, curtains, and draperies, etc. shall be kept clean and in good repair.
2. Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.
3. Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-11. Insect and rodent control. Effective measures intended to minimize the presence of rodents, flies, and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents. Openings to the outside shall be protected effectively against the entrance of rodents and insects by tight-fitting, self-closing doors, closed windows, screening, or other means.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-12. General requirements.

1. Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.
2. Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.
3. Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.
4. Bed and breakfast facilities shall be kept in a clean and sanitary condition.

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-13. Swimming pools and spas. When swimming pools and spas are provided for use by bed and breakfast facility guests, they shall be operated in accordance with article 33-29 (Pool Facilities in North Dakota).

History: Effective August 1, 1988.
General Authority: NDCC 23-01-03(3), 23-09.1-02
Law Implemented: NDCC 23-09.1-02

33-33-06-14. Fire safety. Bed and breakfast facilities shall be in compliance with the requirements of the Uniform Building Code and Uniform Fire Code as adopted and enforced by the state fire marshal. The state department of health and consolidated laboratories and its inspectors shall report to the state fire marshal violations of any

provision of the code which might constitute a fire hazard in the premises so inspected.

The requirements for fire/life/safety shall include, but not be limited to, the following:

1. Smoke detectors.
 - a. A smoke detection device in good operating condition shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. All smoke detectors shall be inspected and listed by underwriters' laboratories or an equivalent. Smoke detectors shall be installed in accordance with the manufacturer's installation instructions.
 - b. A smoke detector shall be installed in the basement of dwelling units having a stairway which opens from the basement into the dwelling. Such detector shall be connected to a sounding device or other detector to provide an alarm which will be audible in the sleeping area.
 - c. The owner of the facility shall test the smoke detectors at least weekly and shall maintain written records which detail the date and results of the test.
2. Every sleeping unit shall provide a minimum of fifty square feet [4.65 square meters] of floor area per guest.
3. Every sleeping unit shall have at least one operable window or exterior door approved for emergency escape or rescue. The units shall be operable from the inside to provide a full clear opening without the use of separate tools. All escapes or rescue windows from sleeping rooms must have a minimum net clear opening of 5.7 square feet [.52 square meters]. The minimum net clear opening height dimension must be twenty-four inches [60.96 centimeters]. The minimum net clear opening width dimensions must be twenty inches [50.8 centimeters]. Where windows are provided as a means of escape or rescue, they must have a finished sill height not more than forty-four inches [111.76 centimeters] above the floor. No sleeping unit in bed and breakfast facilities may be in attic lofts or in basement rooms with a single major means of escape.
4. A fire extinguisher rated 2A and having a BC rating must be conveniently located and accessible in the bed and breakfast facility. The maximum travel distance to the extinguisher must be no more than seventy-five feet [22.86 meters].
5. Emergency numbers shall be posted on the telephones in the bed and breakfast facility.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-15. Inspection - Records kept. Every bed and breakfast facility shall be inspected once in each year by the department. The department and its inspectors may not be denied entrance to any such establishment at reasonable hours to determine whether the facility is in compliance with the provisions of this chapter. The department shall keep a complete set of books for public use and inspection showing the condition of each establishment inspected, the name of the proprietor thereof, and its sanitary condition, the number and condition of its fire escapes, and any other information which may be required for the betterment of the public service.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-16. License - Application. Before any bed and breakfast facility may be operated in this state, it must be licensed by the department. Application for license shall be made to the department during December of every year, or prior to the operating of the bed and breakfast facility. Such application shall be in writing on forms furnished by the department, and shall be accompanied by the required fee.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

33-33-06-17. Failure to comply with provisions of chapter. Any proprietor of any bed and breakfast facility who fails to comply with any of the requirements of this chapter, or chapter 23-09.1 of the North Dakota Century Code, shall be given notice of the violation and of a reasonable time within which to comply with the requirements. The notice shall be in writing and shall be delivered personally by an inspector of the department or shall be sent to the proprietor by any form of mail requiring a signed receipt and resulting in delivery to the proprietor. If the proprietor of the bed and breakfast facility fails to remedy the violations within the time stated within the notice, the department may refuse to grant a new license, or suspend or revoke the license through an administrative hearing held pursuant to chapter 28-32 of the North Dakota Century Code.

History: Effective August 1, 1988.

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

Law Implemented: NDCC 23-09.1-02

5. **Alcohol specifications.** The denatured ethanol at the time of blending either gasohol or leaded gasohol must contain no more than one and twenty-five one-hundredths weight percent of water. It shall be made unfit for beverage use by the addition of noxious or toxic materials (denaturants), as required by the United States department of treasury, bureau of alcohol, tobacco, and firearms.
6. **Permissible levels of alcohol.** The maximum permitted level or levels of ethanol, methanol, or other alcohol, in gasoline or gasohol must be in accord with any levels as established by the environmental protection agency of the United States department of the interior. Any blender or wholesaler distributing a gasoline containing methanol which has been granted an exemption or waiver by the environmental protection agency in reference to this section shall inform the state department of health and consolidated laboratories and the retailer of the blended product of this exemption or waiver in writing prior to distribution.

History: Effective August 1, 1988.

General Authority: NDCC 19-10-10, 23-01-03(3)

Law Implemented: NDCC 19-10-10

33-34-01-02. Labeling specifications.

1. **Road octane.** The road octane of a gasoline or gasohol is the mathematical average of the octane as determined by the ASTM Research Method and the octane as determined by the ASTM Motor Method.
 - a. The road octane must appear on the dispenser's front panel in a type not less than one-inch [2.54 centimeters] high.
 - b. Only gasoline or gasohol with a road octane greater than or equal to ninety-two may be labeled "premium".
 - c. Only gasoline or gasohol with a road octane greater than or equal to ninety may be labeled "super".
2. **Alcohol-blended gasolines.**
 - a. All gasoline or gasohol sold or offered for sale containing ethanol, methanol or cosolvent alcohol, or any combination thereof, shall be labeled with the conventional name or names of the alcohol contained in the gasoline or gasohol if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. The label must be on any price advertising and the dispenser's front panel in a position that is clear and conspicuous from the driver's position.

- b. Maximum percentage of methanol and cosolvent alcohol must both be conspicuously displayed or labeled if the product contains three percent or more by volume of methanol.
 - c. No person may sell gasoline or gasohol in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
 - d. Suppliers of alcohol-blended gasoline to retail service stations or to other resuppliers must provide to the retailer or other reseller an invoice or delivery ticket indicating to within one percentage point the specific content by volume of any alcohol contained if the gasoline or gasohol consists of one percent or more by volume of any alcohol or combinations of alcohols. This information must be made readily available to the consumer of an alcohol-blended gasoline.
3. **Gasoline grade designations.** All gasolines or alcohol-blended gasolines sold or offered for sale must bear on the dispenser's front panel and on any price advertising the appropriate leaded or lead free grade designation. This label must be posted in a position that is clear and conspicuous from the driver's position.

History: Effective August 1, 1988.

General Authority: NDCC 19-01-02, 19-10-02, 23-01-03(3)

Law Implemented: NDCC 19-10-01(4), 19-10-03.1, 19-10-04

33-34-01-03. Kerosene specifications. Kerosene shall meet the specifications of this section.

- 1. Kerosene shall be a petroleum fraction, shall be free from water, additives, foreign and or suspended matter, and shall be suitable for use as an illuminating oil.
- 2. Burning test, hours (minimum)* 16
- 3. Flash point, degrees
Fahrenheit (minimum) 115
- 4. End point, degrees
Fahrenheit (maximum) 572
- 5. Sulfur, percent (maximum) 0.13
- 6. Color, Saybolt number,
(minimum) 21
- Color, Saybolt number,
(minimum) (after heating 16 hours) 16

7. Cloud point, degrees Fahrenheit (maximum) 5

*After the first weighing, the rate of burning shall not be greater than twenty-nine milliliters per hour with the liquefied petroleum gas burner or forty-five milliliters per hour with the American society for testing and materials-27 burner. At the end of test the chimney shall be clear or only slightly clouded; the wick shall have no appreciable hard incrustation; the flame shall not be smoky and shall be practically as large at the end of test as when the final adjustment of the wick was made.

History: Effective August 1, 1988.
 General Authority: NDCC 19-10-10, 23-01-03(3)
 Law Implemented: NDCC 19-10-10

33-34-01-04. Tractor fuel specifications. Tractor fuel specifications shall be as provided in this section.

Test	Light Grade
Distillation	
10 percent recovered degrees Fahrenheit maximum	347
95 percent recovered degrees Fahrenheit	465 to 518
Octane number American society for testing and materials motor method, minimum	35
Corrosion copper strip, maximum	No. 2
Sulfur percent, maximum	1.0

Test	Regular Grade
Distillation	
10 percent recovered degrees Fahrenheit	347 to 401
95 percent recovered degrees Fahrenheit	465 to 518
Octane number American society for testing and materials motor method, minimum	35
Corrosion, copper strip, maximum	No. 2
Sulfur percent, maximum	1.0

Tractor fuel may be colored green.

History: Effective August 1, 1988.

General Authority: NDCC 19-10-10, 23-01-03(3)
Law Implemented: NDCC 19-10-10

33-34-01-05. Heating oil specifications. Heating oil specifications are listed and described in the appendix to this chapter labeled North Dakota heating oil specifications.

History: Effective August 1, 1988.
General Authority: NDCC 19-10-10, 23-01-03(3)
Law Implemented: NDCC 19-10-10

33-34-01-06. Diesel fuel specifications. Diesel fuel specifications are listed and described in the appendix to this chapter labeled North Dakota diesel fuel specifications.

History: Effective August 1, 1988.
General Authority: NDCC 19-10-10, 23-01-03(3)
Law Implemented: NDCC 19-10-10

NORTH DAKOTA GASOLINE SPECIFICATIONS

TEST	MOTOR			
	a	b	c	d
Water and Sediment.	None	None	None	None
Color Saybolt, min.				
Color, Dye.	e	e	e	e
Dye Content				
Permissible blue dye (f)				
max. mg/gal				
Permissible yellow dye (g)				
max. mg/gal				
Permissible red dye (h)				
max. mg/gal				
Antiknock Compound (j) g/gal. max . . .	i	i	i	i
Distillation Test				
10 percent Evap. degrees F. max . . .	122	131	140	149
50 percent Evap. degrees F. min . . .	170	170	170	170
50 percent Evap. degrees F. max . . .	230	235	240	245
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	365	365	374
End Point degrees F. max.	437	437	437	437
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min . . .	---	---	---	---
Distillation Recovery percent min . .	---	---	---	---
Residue percent max	2	2	2	2
Loss percent max.	---	---	---	---
Vapor Pressure (Reid) lbs. max.	15.0	13.5	11.5	10.0
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	105	116	124	133
V/L max	20	20	20	20
Corrosion (copper strip) max.	No. 1	No. 1	No. 1	No. 1
Sulphur percent max				
(lead free gasolines)	0.1	0.1	0.1	0.1
Sulphur percent max				
(lead gasolines).	0.15	0.15	0.15	0.15
Gum, mgs/100 ml max	5	5	5	5

Potential Gum (m) (5 hr. aging gum)				
max. mg/per 100 ml.	---	---	---	---
Freezing Point degrees F. max	---	---	---	---
Net Heat of Combustion				
min. BTU/lb	---	---	---	---
Acidity of Distillation Residue	---	---	---	---
Visible Lead Precipitate (n)				
max. mg/1000 ml	---	---	---	---
Water Reaction.	---	---	---	---
Permissible antioxidants degrees				
max. lb/1000 bbl.	---	---	---	---
Knock Value				
Motor and Research Octane No., min.	e	e	e	e
Octane Number Lean Rating, min.	---	---	---	---
Octane Number Rich Rating, min.	---	---	---	---
Oxidation stability, Minutes min.	---	---	---	---

NORTH DAKOTA GASOLINE SPECIFICATIONS (Continued)

TEST	STOVE AND LIGHT	80	AVIATION 100	100LL
Water and Sediment.	None			
Color Saybolt, min.	15			
Color, Dye.	None	Red(k)	Green	Blue
Dye Content				
Permissible blue dye (f)				
max. mg/gal		0.5	4.7	5.7
Permissible yellow dye (g)				
max. mg/gal		None	5.9	None
Permissible red dye (h)				
max. mg/gal		8.65	None	None
Antiknock Compound (j) g/gal. max	Trace	0.5(j)	4.0	2.0

Distillation Test				
10 percent Evap. degrees F. max . . .	158	167	167	167
50 percent Evap. degrees F. min . . .	---	---	---	---
50 percent Evap. degrees F. max . . .	266	221	221	221
90 percent Evap. degrees F. min . . .	---	---	---	---
90 percent Evap. degrees F. max . . .	365	275	275	275
End Point degrees F. max.	---	338	338	338
Sum of 10 and 50 degrees F				
Evap. Points degrees F. min	---	307	307	307
Distillation Recovery percent min . .	---	97	97	97
Residue percent max	2	1.5	1.5	1.5
Loss percent max.	---	1.5	1.5	1.5
Vapor Pressure (Reid) lbs. max.	10	7.0	7.0	7.0
Vapor/Liquid Ratio				
Minimum Test Temp. degrees F.	---	---	---	---
V/L max	---	---	---	---
Corrosion (copper strip) max.	None	No. 1	No. 1	No. 1
Sulphur percent max				
(lead free gasolines)	0.1			
Sulphur percent max				
(leaded gasolines).		0.05	0.05	0.05
Gum, mgs/100 ml max	4	---	---	---
Potential Gum (m) (5 hr. aging gum)				
max. mg/per 100 ml.	---	6	6	6
Freezing Point degrees F. max	---	-72	-72	-72
Net Heat of Combustion				
min. BTU/lb	---	18.720	18.720	18.720
Acidity of Distillation Residue	---	Not Acid	Not Acid	Not Acid
Visible Lead Precipitate (n)				
max. mg/1000 ml	---	3	3	3
Water Reaction.	---	Volume change not to exceed (+)(-) 2 ml		
Permissible antioxidants degrees				
max. lb/1000 bbl.	---	4.2	4.2	4.2

Knock Value				
Motor and Research Octane No., min.	---	---	---	---
Octane Number Lean Rating, min.	---	80	100	Iso + 47 TEL/gal.
Octane Number Rich Rating, min.	---	87	Iso + 1.28 TEL/gal.	Iso + 2.0 TEL/gal.
Oxidation stability, Minutes min.	480	---	---	---

FOOTNOTES TO NORTH DAKOTA GASOLINE SPECIFICATIONS

- a. Applies to gasoline sold during the months of January, February, March, November, and December.
- b. Applies to gasoline sold during the months of March, April, October, and November.
- c. Applies to gasoline sold during the months of April, May, June, September, and October.
- d. Applies to gasoline sold during the months of June, July, August, and September.
- e. The minimum octane for premium gasoline shall be 92 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for super gasoline shall be 90 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for leaded regular gasoline shall be 88 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. The minimum octane for unleaded regular gasoline shall be 87 as determined by the sum of the Research Method plus the Motor Method all divided by two $((R+M)/2)$. No person shall sell gasoline in any manner, including coloring, which shall deceive, tend to deceive, or has the effect of deceiving the purchaser as to grade or type.
- f. The only blue dye which shall be present in the finished gasoline shall be essentially 1, 4-dialkylaminoantraquinone.
- g. The only yellow dye which shall be present in the finished gasoline shall be essentially p-diethylaminoazobenzene (Color Index No. 11020).
- h. The only red dye which shall be present in the finished gasoline shall be essentially methyl derivatives of azolbenzene-4-azo-2-naphthol (methyl derivatives of Color Index No. 26105).

- i. The lead content of gasoline shall be in accordance with environmental protection agency requirements.
- j. The tetraethyllead shall be added in the form of an antiknock mixture containing not less than 61 percent by weight of tetraethyllead and sufficient ethylene dibromide to provide two bromine atoms per atom of lead. The balance shall contain no added ingredients other than kerosene, and approved inhibitors, and blue dye, as specified, herein.
- k. If mutually agreed upon between purchaser and supplier, Grade 80 may be required to be free from tetraethyllead. In such case the fuel shall not contain any dye and color shall not be darker than +20 Saybolt.
- l. Vapor pressure shall follow the seasonal requirements for regular and premium gasoline.
- m. If mutually agreed upon between purchaser and supplier, aviation gasoline may be required to meet a sixteen-hour aging gum test instead of the five-hour aging gum test. In some cases the gum content shall not exceed 10 mg per 100 ml and the visible lead precipitate shall not exceed 4 mg per 100 ml. In such fuel the permissible antioxidants shall not exceed 8.4 lb per 1000 bbl (42 gallons).
- n. The visible lead precipitate requirement applies only to leaded fuels.
- o. Permissible antioxidants are as follows:

- N,N'-diisopropyl-para-phenylenediamine
- N,N' di-secondary-butyl-para-phenylenediamine
- 2,4-dimethyl-6-tertiary-butylphenol
- 2,6-ditertiary-butyl-4-methylphenol
- 2,6-ditertiary butylphenol

Mixed tertiary butylphenols, composition:

75 percent 2,6-ditertiary butylphenol - 10 to 15 percent 2,4,6-tritertiary butylphenol 10 to 15 percent 0-tertiary butylphenol - 75 percent min 2,4-dimethyl-6-tertiary butylphenol, and 28 percent max monomethyl and dimethyl tertiary butylphenols.

NORTH DAKOTA HEATING OIL SPECIFICATIONS

	No. 1	No. 2	No. 4	No.5 Light	No.5 Heavy	No. 6
Corrosion (Copper Strip) Maximum	No. 3					
Flash Point (Tag closed tester) °F						
Minimum.....	100	115	115	115	115	115
Pour Point °F Maximum	0	20a	20			
Water and sediment percent maximum	Trace	0.05	0.50	1.00	1.00	2.00
Carbon Residue (On 10% Residuum)						
percent maximum	0.15	0.35				
Ash percent maximum			0.10	0.10	0.10	
Distillation Test:						
10% Recovered °F maximum	420	b				
90% Recovered °F maximum.....	550	640				
90% Recovered °F minimum		540c				
Viscosity at 100°F Seconds						
Saybolt Universal, minimum.....		32.6	45	150	350	900
Maximum		37.53	125	300	750	9000
Viscosity at 122°F Saybolt Furol.....						
Minimum					23	45
Maximum					40	300
Viscosity at 100°F Kinematic Centistokes						
minimum	1.4	2.0c	5.8	32	75	
Maximum	2.2	3.6	26.4	65	162	
Viscosity at 122°F Kinematic Centistokes						
minimum					42	92
Maximum					81	638
Gravity °API Minimum	35	30				
Sulphur, percent maximum	0.5	0.5				

- a. Shall not exceed 0° whenever required by conditions of storage or use.
- b. The 10% point shall be 440°F. maximum for use in other than atomizing burners.
- c. When Pour Point less than 0°F. is specified, the minimum viscosity shall be 1.8cs. (32.0 seconds Saybolt Universal) and minimum 90% point shall be waived.

Effective August 1, 1988.

NORTH DAKOTA DIESEL FUEL SPECIFICATION

Grade of Diesel Fuel Oil	Flash Point deg Fahr	Pour Point, deg Fahr	Water and Sedi- ment, percent by volume	Carbon Residue on 10% Residuum, percent	Ash percent by weight	Distillation Temperatures Degrees Fahrenheit		Viscosity at 100°F. Kinematic, centistoke (or Saybolt Universal, sec.)		Sulphur percent by weight	Copper Strip Corrosion	Cetane Number c
						90 percent Point		Min.	Max.			
	Min.	Max.	Max.	Max.	Max.	Min.	Max.	Min.	Max.	Max.	Max.	Min.
No. 1-D A volatile distillate fuel oil for engines in service requiring frequent speed and load changes.	115	a	Trace	0.15	0.01	---	550	1.4	2.5 (34.4)	0.50	No.3	40
No. 2-D A distillate fuel oil of lower volatility for engines in industrial and heavy mobile service.	115	a	0.05	0.35	0.01	540b	640	2.0b (32.6)	4.3 (40.1)	0.50	No.3	40
No. 4-D A fuel oil for low and medium speed engines.	115	a	0.50	---	0.10	---	---	5.8 (45)	26.4 (125)	2.0	--	30

- a. For cold weather operations, the pour point should be specified 10°F. below the ambient temperature at which the engine is to be operated except where fuel oil heating facilities are provided.
- b. When pour point less than 0°F. is specified, the minimum viscosity shall be 1.8cs (32.0 sec.S.U.) and the minimum 90 percent point shall be waived.
- c. Where cetane number by Method D613 Test for ignition Quality of Diesel Fuels by the Cetane Method, is not available, Calculated Cetane Index may be used as an approximation. Where there is disagreement, Method D613 shall be the referee method.

OCTOBER 1988

33-06-04-06. Rabies.

1. How reported. Whenever any physician or other person has knowledge that any person or animal has been bitten or injured by a dog or other animal infected or suspected of being infected with rabies and whenever the physician or person has knowledge of a case of rabies or suspected rabies in animals, the physician or person shall report the fact immediately to the state department of health and consolidated laboratories.
2. Any domestic animal that bites a human or any domestic animal suspected of having rabies, regardless of the animal's immunization history, must be placed in strict isolation under the observation of a licensed veterinarian for ten days at the owner's expense must be confined and observed for a period of ten days and evaluated by a licensed veterinarian, at the owner's expense, at the beginning of confinement, at the first sign of any illness during confinement, and prior to release from confinement. If an animal warden or veterinarian so determines, the warden or veterinarian may order that the animal be impounded and evaluated. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue shall be examined for rabies.
3. Any stray or unwanted domestic animal or wild animal that bites a person, must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.
4. Any domestic, vaccinated animal that is bitten or scratched by a rabid animal or exposed to a rabid animal in a manner that reasonably indicates a bite or scratch may have occurred, must

be revaccinated immediately and observed by the owner for ninety days. If the animal shows clinical signs of rabies during the period of observation, it must be humanely destroyed immediately in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.

5. Any domestic, unvaccinated animal that is bitten or scratched by a rabid animal or exposed to a suspected rabid animal in a manner that reasonably indicates a bite or scratch may have occurred, must be destroyed immediately or, at the owner's expense, be placed in strict isolation under the observation of a licensed veterinarian for six months and vaccinated one month prior to being released. If the animal shows clinical signs of rabies during the period of isolation, it must be humanely destroyed immediately, in a manner that preserves the brain intact, and the brain tissue must be examined for rabies.
6. Specimens collected for examination for rabies must be packaged, not frozen, on wet ice or icepacks and must comply with the following requirements:
 - a. The specimen must be placed in a suitable sealed watertight container strong enough to prevent leakage during transit.
 - b. If wet ice is used as a refrigerant, it must be in a liquid-tight bag or container.
 - c. The specimen bag or container along with refrigerant must then be placed in a sealed plastic, metal, or styrofoam container.
 - d. The sealed plastic, metal, or styrofoam container must be placed in a corrugated or cardboard carton for shipment.
 - e. The exterior of the outside carton must be labeled "Perishable - Keep Away From Heat" and must include the sender's name and return address.
 - f. If there is human exposure, the package must be addressed to:

State Department of Health and
Consolidated Laboratories
Division of Microbiology
1205 Avenue A West
Box 5520
Bismarck, ND 58502-5520

If there is no human exposure, the package must be addressed to:

Veterinary Diagnostic Laboratory
North Dakota State University
Fargo, ND 58105

- g. Accompanying the specimen, a data sheet must be completed and should include the following:
- (1) Name, phone number, and address of submitter.
 - (2) Name and age of person exposed.
 - (3) Date of exposure.
 - (4) Date of collection.
 - (5) Location of bite.
 - (6) Type of animal.
 - (7) Status of the animal.
 - (a) Vaccination history.
 - (b) Whether animal died or was destroyed.
 - (c) Whether animal was confined or observed before death.
 - (8) Description of animal's behavior.
 - (9) Circumstances surrounding the exposure (provoked or unprovoked).
 - (10) Name, phone number, and address of medical and veterinary personnel to be informed of test results.

History: Amended effective July 1, 1987; October 1, 1988.

General Authority: NDCC 23-01-03, 23-01-18, 28-32-02

Law Implemented: NDCC 23-01-03

TITLE 37
Highway Department

OCTOBER 1988

37-04-01-01. Definitions. The terms herein shall have the same meaning as in North Dakota Century Code title 24, except:

1. "Back-slope" means that portion of the highway right of way commencing at the outer ditch bottom and angling to the top of the ditch section at the outer edge of the right of way.
2. "Inslope" means that portion of the highway commencing at the edge of the shoulder and sloping to the ditch bottom.
3. "Permit" means written authorization from the state highway commissioner to the sponsoring party permitting the use of the highway right of ways for racing purposes.
4. "Recreational vehicle" means a snowmobile as defined by subsection 9 of North Dakota Century Code section 39-24-01, or an all-terrain vehicle as defined by subsection 1 of North Dakota Century Code section 39-01-01.
5. "State highway system" means those highways designated as a United States (US) route, a North Dakota (ND) route, but excluding the interstate system.

History: Effective January 1, 1979; amended effective October 1, 1988.

General Authority: NDCC 39-24-08, 39-29-08

Law Implemented: NDCC 39-24-08, 39-29-08

37-04-01-02. Prohibited use of highway right of way. No person shall operate a snowmobile upon the roadway, shoulder, in-slope or median of any state highway except as provided for by this chapter or by ~~law.~~ Repealed effective October 1, 1988.

History: Effective January 1, 1979;

General Authority: ~~NDCC 39-24-08~~
Law Implemented: ~~NDCC 39-24-08~~

37-04-01-03. Permitted use of highway rights of way. A person having a valid ~~driver's~~ operator's license may operate a registered snowmobile recreational vehicle upon the ditch bottoms, back-slopes, and the top of the back-slope on any state highway.

History: Effective January 1, 1979; amended effective October 1, 1988.
General Authority: NDCC 39-24-08, 39-29-08
Law Implemented: NDCC 39-24-08, 39-29-08

37-04-01-04. Crossing of state highways. A person may make a direct crossing of a divided state highway provided the crossing is made only at an intersection of such highway with another highway. Repealed effective October 1, 1988.

History: Effective January 1, 1979.
General Authority: ~~NDCC 39-24-08~~
Law Implemented: ~~NDCC 39-24-08~~

37-04-01-05. Transitory operation on shoulder, inslope, or roadway. A person may operate a snowmobile recreational vehicle upon the shoulder, inslope, or roadway of a state highway only when an obstruction prevents the safe operation of the snowmobile recreational vehicle upon the ditch bottom and the back-slope. The operation on the shoulder, inslope, or roadway shall be for the sole purpose of avoiding the obstruction and upon passing the obstruction, the operator shall return the snowmobile recreational vehicle to the ditch bottom of back-slope.

History: Effective January 1, 1979; amended effective October 1, 1988.
General Authority: NDCC 39-24-08, 39-29-08
Law Implemented: NDCC 39-24-08, 39-29-08

37-04-01-06. Organized races permitted. The highway commissioner may authorize utilization of the ditches, back-slopes, and tops of the back-slopes for organized and bona fide snowmobile recreational vehicle races on highways under the commissioner's jurisdiction. Such authorization shall be in the form of a written permit as prescribed by the commissioner.

History: Effective January 1, 1979; amended effective October 1, 1988.
General Authority: NDCC 39-24-08, 39-29-08
Law Implemented: NDCC 39-24-08, 39-29-08

37-04-01-07. Applications for racing permit. An application for the use of highway right of way for recreational vehicle racing ~~purposes~~

shall be made upon the form provided for that purpose by the highway commissioner. Such application shall include, but not be limited to, the following: route selection, date and time of the race, sponsor of the race, safety precautions instituted, if any, and the designation of any crossings crossing of the roadway that are requested a highway on the state highway system.

History: Effective January 1, 1979; amended effective October 1, 1988.

General Authority: NDCC 39-24-08, 39-29-08

Law Implemented: NDCC 39-24-08, 39-29-08

37-04-01-08. Headlamps. All snowmobiles recreational vehicles shall be equipped with at least one headlamp mounted in front of the vehicle. Such headlamp on a snowmobile recreational vehicle shall be of a sufficient intensity to reveal a person or vehicle under the following conditions:

1. Not less than one hundred feet [34.8 meters] when the snowmobile recreational vehicle is operated at any speed less than twenty-five miles [40.23 kilometers] per hour.
2. At a distance of not less than two hundred feet [69.6 meters] when the snowmobile recreational vehicle is operated at a speed of twenty-five miles [40.23 kilometers] or more per hour.
3. At a distance of not less than three hundred feet [104.4 meters] when the snowmobile recreational vehicle is operated at a speed of thirty-five miles [56.33 kilometers] or more per hour.

The headlamp shall be so mounted that when the snowmobile recreational vehicle is not loaded, none of the light shall, at a distance of twenty-five feet [7.6 meters] ahead, project higher than a level of five inches [12.7 centimeters] below the level of the center of the lamp and in no case higher than forty-two inches [106.68 centimeters] above the level on which the snowmobile recreational vehicle stands at a distance of seventy-five feet [22.86 meters] ahead.

History: Effective January 1, 1979; amended effective October 1, 1988.

General Authority: NDCC ~~39-24-09~~ 39-24-08, 39-29-08

Law Implemented: NDCC ~~39-24-09~~ 39-24-08, 39-29-08

37-04-01-09. Taillamps. All snowmobiles recreational vehicles shall be equipped with at least one taillamp being so mounted to be visible to the rear of the vehicle. The taillamp shall be capable of being seen and distinguished under normal atmospheric conditions at the time lights are required at a distance of four hundred feet [121.92 meters] from the rear of the snowmobile recreational vehicle. Such taillamp shall not be altered in any manner that would diminish its light intensity or alignment.

History: Effective January 1, 1979; amended effective October 1, 1988.
General Authority: NDCC ~~39-24-09~~ 39-24-08, 39-29-08
Law Implemented: NDCC ~~39-24-09~~ 39-24-08, 39-29-08

37-04-01-10. Brakes. ~~Snowmobiles~~ Recreational vehicles shall be equipped with brakes capable of controlling the ~~vehicle~~ vehicles under normal ~~operation~~ operating conditions.

History: Effective January 1, 1979; amended effective October 1, 1988.
General Authority: NDCC ~~39-24-09~~ 39-24-08, 39-29-08
Law Implemented: NDCC ~~39-24-09~~ 39-24-08, 39-29-08

APPENDIX A

PERMIT TO CONDUCT ~~SNOWMOBILE~~ RECREATIONAL VEHICLE RACE

_____, is hereby authorized pursuant to Section
sponsor
North Dakota Century Code sections 39-24-08 of the North Dakota Century
Code, and 39-29-08 to conduct a ~~snowmobile~~ recreational vehicle race,
pursuant to the terms and conditions of its application, a copy of which
is annexed hereto and incorporated as a part of this permit, all or
limited by the following:

CONDITIONS: _____

WALTER R. HJELLE
Highway Commissioner

Dated this ___ day of _____, 19___, at Bismarck, North Dakota.

(Form 17-7-2)

APPENDIX B

APPLICATION FOR PERMIT TO CONDUCT ~~SNOWMOBILE~~ RECREATIONAL VEHICLE RACE

The applicant requests a permit to conduct a ~~snowmobile~~,
recreational vehicle race, which will be sponsored by _____,
name

_____, to take place on the rights of way of the following
address

state highways:

Such race will take place on _____ and will commence
date

at _____.m. and will terminate at _____.m.

The route selected for the race will require the crossing of
state highways at the following listed locations:

The following safety precautions have been instituted and
will be utilized during the period in which the race is conducted:

Dated this ____ day of _____, 19__ at _____

North Dakota.

Applicant

Sponsor

{Form 17-7-1}

TITLE 45
Insurance, Commissioner of

JULY 1988

STAFF COMMENT: Chapters 45-03-10, 45-05-04, 45-06-05 and 45-08-03 contain all new material but are not underscored so as to improve readability.

CHAPTER 45-03-10
UNFAIR SEX DISCRIMINATION

Section	Purpose
45-03-10-01	Purpose
45-03-10-02	Definitions
45-03-10-03	Applicability and Scope
45-03-10-04	Availability Requirements

45-03-10-01. Purpose. The purpose of this rule is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

History: Effective July 1, 1988.

General Authority: NDCC 26.1-04-08

Law Implemented: NDCC 26.1-04-03(7), 26.1-04-03(11)

45-03-10-02. Definitions.

1. "Contracts" means any insurance policy, certificate, plan, or binder, including any rider or endorsement thereto offered by an insurer.
2. "Insurer" means any insurance company, association, reciprocal or interinsurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance

organization, fraternal benefit society, or beneficial association.

History: Effective July 1, 1988.

General Authority: NDCC 26.1-04-08

Law Implemented: NDCC 26.1-04-03(7), 26.1-04-03(11)

45-03-10-03. Applicability and scope. This rule applies to all contracts delivered or issued for delivery in this state or renewed by the payment of premium or otherwise by an insurer on or after July 1, 1988, and to all existing group contracts which are substantially amended on or after July 1, 1988.

History: Effective July 1, 1988.

General Authority: NDCC 26.1-04-08

Law Implemented: NDCC 26.1-04-03(7), 26.1-04-03(11)

45-03-10-04. Availability requirements. Availability of any insurance contract may not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions, or type of coverage may not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions, or type of coverage vary as a result of the application of rate differentials permitted under the North Dakota insurance code. However, nothing in this section prohibits an insurer from taking marital status into account for purposes of defining persons eligible for dependent benefits, except with regard to legally recognized minor children. Specific examples of practices prohibited by this section include, but are not limited to, the following:

1. Denying coverage to females gainfully employed at home, employed part time, or employed by relatives when coverage is offered to males similarly employed.
2. Denying policy riders to females when the riders are available to males.
3. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.
4. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.
5. Denying disability income contracts to employed women when coverage is offered to men similarly employed.

6. Treating complications of pregnancy differently from any other illness or sickness under the contract.
7. Restricting, reducing modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.
8. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.
9. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.
10. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.
11. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents' benefits.
12. Denying individual coverage to a married person who elects not to cover his or her spouse or other dependents, except that if any dependents other than the spouse are to be covered, all dependent children may be required to be covered.

History: Effective July 1, 1988.

General Authority: NDCC 26.1-04-08

Law Implemented: NDCC 26.1-04-03(7), 26.1-04-03(11)

**CHAPTER 45-05-04
PROPERTY AND CASUALTY INSURANCE POLICYHOLDER'S RIGHT TO LOSS
AND CLAIM INFORMATION**

Section

45-05-04-01	Release of Loss and Claim Information
45-05-04-02	Scope of Information Required
45-05-04-03	Fee
45-05-04-04	Record Retention

45-05-04-01. Release of loss and claim information. Upon written and notarized authorization or request of the policyholder, every insurer licensed to sell property and casualty insurance as that is defined in North Dakota Century Code section 26.1-25-02, shall mail or deliver the policyholder's loss information to the policyholder or a designated, authorized agent or broker within twenty days of receipt of request by the insured, provided the request is:

1. Dated;
2. Signed by the individual policyholder; and
3. Noted as to whether information should be sent directly to the policyholder or a designated, authorized agent or broker.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25-09, 26.1-39-12, 26.1-39-17, 26.1-40-11

45-05-04-02. Scope of information required. The policyholder's loss and claim information shall include all data in the insurer's possession pertaining to the following:

1. All closed claims and incurred losses;
2. All open claims and paid amounts, excluding therefrom any information regarding established reserves on open claims; and
3. Notices of any occurrences including dates and descriptions.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25-09, 26.1-39-12, 26.1-39-17, 26.1-40-11

45-05-04-03. Fee. The insurer may charge a reasonable fee, not to exceed fifty cents per page of information, incurred in the production of claim and loss information to be paid by the policyholder. An insurer may apply to the insurance commissioner for approval of a higher fee for individual cases where warranted by the facts and circumstances.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-25-09, 26.1-39-12, 26.1-39-17, 26.1-40-11

45-05-04-04. Record retention. For the three-year period immediately preceding the cancellation or nonrenewal of policyholder coverage, the following loss and claim information must be retained:

1. Date of loss or claim;
2. General nature of loss or claim; and
3. Amount paid.

This information must be retained by the insurer for a period of one year after cancellation or nonrenewal of policyholder coverage.

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-25-09, 26.1-39-12, 26.1-39-17, 26.1-40-11

**CHAPTER 45-06-05
LONG-TERM CARE INSURANCE MODEL REGULATION**

Section	
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45-06-05-01. Applicability and scope. Except as otherwise specifically provided, this section applies to all long-term care insurance policies delivered or issued for delivery in this state on or after July 1, 1988, by insurers, fraternal benefit societies, nonprofit health, hospital and medical service corporations, prepaid health maintenance organizations, and all similar organizations.

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-02. Definitions. For the purpose of this regulation, the terms "long-term care insurance", "group long-term care insurance", "commissioner", "applicant", "policy", and "certificate" have the meanings set forth in North Dakota Century Code section 26.1-45-01.

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-03. Policy definitions. No long-term care insurance policy delivered or issued for delivery or renewed in this state may use the terms set forth in this section, unless the terms are defined in the policy and the definitions satisfy the following requirements:

1. "Medicare" must be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended", or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-ninth Congress of the United States of America and popularly known as the

Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof", or words of similar import.

2. "Mental or nervous disorder" may not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.
3. "Skilled nursing care", "intermediate care", "personal care", "home care", and other services must be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.
4. All providers of services, including, but not limited to, "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency" must be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-04. Policy practices and provisions.

1. **Renewability.** The terms "guaranteed renewable" and "noncancelable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of section 45-06-04-05.
 - a. No such policy issued to an individual may contain renewal provisions less favorable to the insured than "guaranteed renewable". However, the commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the commissioner, to best protect the interests of the insureds, if the insurer demonstrates:
 - (1) That renewal will jeopardize the insurer's solvency; or
 - (2) That:
 - (a) The actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies;

- (b) The policies will continue to experience substantial and unexpected losses over their lifetime;
 - (c) The projected loss experience of the policies cannot be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods; and
 - (d) The insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including the timely filing for rate adjustments.
- b. The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.
 - c. The term "noncancelable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.
2. **Limitations and exclusions.** No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition, or accident, except as follows:
- a. Preexisting conditions or diseases;
 - b. Mental or nervous disorders; however, this does not permit exclusion or limitation of benefits on the basis of alzheimer's disease;
 - c. Alcoholism and drug addiction;
 - d. Illness, treatment, or medical condition arising out of:
 - (1) War or act of war (whether declared or undeclared);
 - (2) Participation in a felony, riot, or insurrection;
 - (3) Service in the armed forces or units auxiliary thereto;

- (4) Suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or
 - (5) Aviation (this exclusion applies only to nonfare paying passenger).
- e. Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under medicare or other governmental program (except medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.
- f. This subsection is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.
3. **Extension of benefits.** Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.
4. **Continuation or conversion.** An insurer or similar organization issuing a group long-term care insurance policy shall provide a basis for continuation or conversion of coverage.

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-05. Required disclosure provisions.

- 1. **Renewability.** Individual long-term care insurance policies must contain a renewability provision. Such provision must be appropriately captioned, must appear on the first page of the policy, and must clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.
- 2. **Riders and endorsements.** Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance

policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy must require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge must be set forth in the policy, rider, or endorsement.

3. **Payment of benefits.** A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import must include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
4. **Limitations.** If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations must appear as a separate paragraph of the policy or certificate and be labeled as "preexisting condition limitations".

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-06. Requirements for replacement.

1. **Question concerning replacement.** Individual and direct response solicited long-term care insurance application forms must include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and sickness or long-term care insurance policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.
2. **Solicitations other than direct response.** Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agents, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice must be retained by the applicant and an additional copy signed by the applicant must be retained by the insurer. The required notice must be provided in the following manner:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL
ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by (Company Name) Insurance Company. Your new policy provides ten (10) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

(Date)

(Applicant's Signature)"

3. **Direct response solicitations.** Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice must be provided in the following manner:

"NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by (Company Name) Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware and seriously consider the factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)"

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-07. Discretionary powers of commissioner. The commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provision of this chapter with respect to a specific long-term care insurance policy or certificate upon a written finding that:

1. The modification or suspension would be in the best interest of the insureds; and
2. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
 - a. The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;
 - b. The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or
 - c. The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

History: Effective July 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 26.1-45

45-06-05-08. Mandated loss ratio. Benefits under individual long-term care insurance policies must be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration must be given to all relevant factors, including:

1. Statistical credibility of incurred claims experience and earned premiums;
2. The period for which rates are computed to provide coverage;
3. Experienced and projected trends;

4. Concentration of experience within early policy duration;
5. Expected claim fluctuation;
6. Experience refunds, adjustments, or dividends;
7. Renewability features;
8. All appropriate expense factors;
9. Interest;
10. Experimental nature of the coverage;
11. Policy reserves;
12. Mix of business by risk classification; and
13. Product features such as long elimination periods, high deductibles, and high maximum limits.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

45-06-05-09. Filing requirement. Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to North Dakota Century Code section 26.1-45-03, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

History: Effective July 1, 1988.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 26.1-45

CHAPTER 45-08-03 GROUP SUBSTANCE ABUSE AND MENTAL CARE INSURANCE

Section

45-08-03-01

Group Substance Abuse and Mental Care Insurance -
Definitions

45-08-03-01. Group substance abuse and mental care insurance - Definitions. As used in North Dakota Century Code sections 26.1-36-08 and 26.1-36-09:

1. The term "licensed psychologist" means a licensed clinical psychologist who by virtue of his or her training, education, and experience is properly licensed or certified to provide treatment, diagnosis, and evaluation services for alcoholism, drug addiction, mental disorders, and other related illnesses and is listed or eligible for listing in the national register of psychologists.

2. The phrase "under the supervision of" means participation by the physician or psychologist in the diagnosis, evaluation, and application of appropriate treatment services. Such treatment services may however be actually carried out by other competent, and if required by law, properly licensed persons. However, the supervision provided by the physician or psychologist must be of a nature that the physician or psychologist remains at all times legally and professionally responsible for the care and appropriateness of treatment provided to each individual patient.

History: Effective July 1, 1988.

General Authority: NDCC 26.1-36-38, 28-32-02

Law Implemented: NDCC 26.1-36-08, 26.1-36-09

TITLE 48
Livestock Sanitary Board

JULY 1988

48-02-01-05. Sheep. A health certificate is required for sheep.

1. For all sheep imported into North Dakota, all of the following are required:

a. A health certificate.

b. A permit.

c. Sheep must be free of any visible signs of infectious foot rot and must originate from flocks that have been inspected and are free from any visible signs of infectious foot rot. The health certificate of veterinary inspection must specifically state that all of the sheep are free of any visible signs of infectious foot rot. Special permission may be given by the state veterinarian to import registered breeding sheep without meeting the requirements of this subsection. Registered breeding sheep imported by special permission must be held under quarantine and isolated from other sheep for a minimum of thirty days, upon entry into North Dakota.

2. All breeding rams imported into North Dakota must comply with all of the following requirements:

a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or

older. The health certificate of veterinary inspection must include specific negative test information concerning brucella ovis.

- b. Rams must be individually identified with registration ear tag or tattoo, or other identification approved by the state veterinarian.
3. All rams sold for breeding purposes in North Dakota must comply with all of the following requirements:
 - a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older.
 - b. Rams testing positive to an official brucella ovis test must be isolated, branded with a B brand on the left jaw, and sold for slaughter only, or they must be neutered before leaving the premises.
 - c. Rams must be individually identified by registration ear tag or tattoo, or other identification approved by the state veterinarian.
4. All tests for brucella ovis administered pursuant to this section must be tests officially recognized or otherwise approved by the state veterinarian.

History: Amended effective July 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

SEPTEMBER 1988

48-02-01-01. **Importation - All livestock.** All imported livestock must be accompanied by an official ~~health~~ certificate of veterinary inspection, except animals originating directly from a producer's premises, not diverted en route, and consigned to an auction market, or stockyards approved by the livestock sanitary board; and livestock consigned to a federally inspected slaughtering establishment.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-02. **General.** No animal or poultry that is ~~affected~~ infected, or recently exposed to any infectious or transmissible disease, shall be imported. A ~~veterinary health~~ certificate of veterinary inspection is required.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-03. **Cattle.** Tests for brucellosis shall be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin.

1. Tuberculosis. No test is required.
2. Brucellosis. Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis test" means the blood agglutination test conducted at the state-federal laboratory in Bismarck. Vaccination is required. No female cattle over twelve months (three hundred sixty-five days) of age may be

imported unless officially calfhood vaccinated against brucellosis and properly identified. Exempted from this requirement are cattle entering licensed ~~quarantined~~ monitored feedlots.

3. **Permits.** Permits shall be required on all female cattle over twelve months (three hundred sixty-five days) of age. Permits shall be required on all cattle originating from any state where scabies may be introduced in shipments originating from such state ~~as determined by the judgment~~ at the discretion of the board.
4. **Dipping.** Dipping in a solution approved by the board shall be required on all cattle originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on cattle originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with ivermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture, guidelines for veterinary services, found in 9 CFR Part 73 is acceptable.
5. **Calves.** Calf permits are required on all imported calves under four months of age. Imported calves are not to be resold in less than sixty days. Purchasers must pick up imported calves at the sellers' premises. Calves accompanying dams are excluded from the requirements of this section.

History: Amended effective April 1, 1980; June 1, 1983; September 1, 1984; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-04. ~~Dairy calves.~~ Permits are required on dairy calves under six months of age Bison.

1. Tuberculosis. A negative tuberculosis test is required on all bison except nursing calves accompanying negative-tested dams.
2. Brucellosis. Tests for brucellosis must be conducted by a state or federal laboratory or by a veterinarian approved in the state of origin. "Brucellosis Test" means the blood agglutination test conducted and confirmed in a state or federal laboratory. No female bison over twelve months (three hundred sixty-five days) of age may be imported unless officially calfhood vaccinated against brucellosis and properly identified.
3. Permits. Permit shall be required on all bison.

4. Dipping. Dipping in a solution approved by the board shall be required on all bison originating from states where scabies permits are required. Two dippings, ten to fourteen days apart, may be required on bison originating from states determined by the board to have a large number of infested herds. In lieu of dipping, treatment with ivermectin administered by a licensed accredited veterinarian in accordance with the United States department of agriculture guidelines for veterinary services, found in 9 CFR Part 73, is acceptable.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-05. Sheep.

1. For all sheep imported into North Dakota, all of the following are required:
 - a. A ~~health~~ certificate of veterinary inspection.
 - b. A permit.
 - c. Sheep must be free of any visible signs of infectious foot rot and must originate from flocks that have been inspected and are free from any visible signs of infectious foot rot. The ~~health~~ certificate of veterinary inspection must specifically state that all of the sheep are free of any visible signs of infectious foot rot. Special permission may be given by the state veterinarian to import registered breeding sheep without meeting the requirements of this subsection. Registered breeding sheep imported by special permission must be held under quarantine and isolated from other sheep for a minimum of thirty days, upon entry into North Dakota.
2. All breeding rams imported into North Dakota must comply with all of the following requirements:
 - a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older. The ~~health~~ certificate of veterinary inspection must include specific negative test information concerning brucella ovis.

- b. Rams must be individually identified with registration ear tag or tattoo, or other identification approved by the state veterinarian.
3. All rams sold for breeding purposes in North Dakota must comply with all of the following requirements:
- a. Breeding rams six months of age or over must have had a negative test for brucella ovis, or the flock of origin must have a negative brucella ovis status. To qualify a flock as a negative brucella ovis status flock, two negative tests for brucella ovis must have been administered, forty-five to sixty days apart, during the same year, to all rams one year of age or older, and thereafter a yearly negative test must have been administered to all rams in the flock one year of age or older.
 - b. Rams testing positive to an official brucella ovis test must be isolated, branded with a B brand on the left jaw, and sold for slaughter only, or they must be neutered before leaving the premises.
 - c. Rams must be individually identified by registration ear tag or tattoo, or other identification approved by the state veterinarian.
4. All tests for brucella ovis administered pursuant to this section must be tests officially recognized or otherwise approved by the state veterinarian.

History: Amended effective July 1, 1988; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-08. Dogs and cats. Dogs and cats must have a certification of no known exposure to rabies within one hundred days prior to importation and cannot be from an area under quarantine. If over ~~four~~ three months of age, dogs and cats must be vaccinated for rabies. The state game and fish department requires hunting dogs to have been vaccinated at least thirty days prior to import date.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-09. Horses. All equine species require negative tests for equine infectious anemia within twelve months prior to date of importation, unless originating from states exempted from test requirements by the state veterinarian. ~~Reactor~~ North Dakota horses

testing positive to equine infectious anemia must be positively and individually identified by permanent brand.

History: Amended effective June 1, 1983; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-01-09.1. Skunks. Skunks may not be imported into North Dakota for any purpose.

History: Effective September 1, 1988.

General Authority: NDCC 36-21.1-12

Law Implemented: NDCC 36-21.1-12

48-02-01-10. All other animals. Importation of all animals not included in the preceding sections, including domesticated wild animals, game animals, game birds and eggs of game birds, shall be accompanied by a permit issued by the North Dakota game and fish department or the livestock sanitary board, unless the purpose of importation is for bona fide scientific or educational purposes. The state veterinarian may require any such animals and birds to test negative for any disease prior to importation.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-21.1-12

Law Implemented: NDCC 36-21.1-12

48-02-01-11. Swine - Breeding and feeder purposes - Pseudorabies.

1. It is the intent of this section to implement the criteria established by the national pseudorabies control board (NPCB) for recognizing pseudorabies (PRV) low prevalence areas as a method by which a state or area could be demonstrated to have a very low prevalence of pseudorabies or no pseudorabies. This method is not an eradication program.
2. All imported swine must test negative for pseudorabies within thirty days prior to entry into North Dakota or comply with one of the following:
 - a. Be from a class A or class B state or area, or other approved classification, as designated by the national pseudorabies control board;
 - b. Be from a qualified pseudorabies negative herd; or
 - c. Be from a feeder swine pseudorabies monitored herd as designated by the national pseudorabies control board.

3. All swine for breeding or feeder purposes in North Dakota or imported into North Dakota must be ~~individually~~ identified by ~~official ear tag or other~~ identification approved by the state veterinarian.
4. A pseudorabies vaccination for all swine is prohibited except with written approval of the state veterinarian.
5. All breeding and feeder swine of unknown status must be quarantined until their pseudorabies status is determined by isolation and a pseudorabies test, at the owner's expense, as well as a retest in thirty to sixty days at the owner's expense, or such swine must be shipped direct to slaughter.
6. A pseudorabies infected swine herd, as determined by a livestock sanitary board approved test, must be quarantined and isolated from other susceptible animals on the farm, or other premises where the infected herd is located. All reactor animals must be slaughtered. Then, the infected herd must be retested and receive two negative tests, the tests at least thirty days apart, with the first test occurring not sooner than thirty days after the last reactor animal is removed from the herd. Nursing piglets need not be tested. As an alternative to retest, the entire infected herd may be sent directly to slaughter. The quarantine will be lifted only after the retests required pursuant to this subsection have occurred, or the entire infected herd has been shipped directly to slaughter. Before the quarantine is lifted, the premises of the infected herd must be cleaned and disinfected as approved by the state veterinarian or his assistant, or other agent of the livestock sanitary board.
7. All slaughter sows and boars must receive pseudorabies testing at the first point of sale in North Dakota, if a mandatory pseudorabies testing program is instituted by the livestock sanitary board. The livestock sanitary board may, pursuant to this section, by board action, at any time, institute a mandatory pseudorabies testing program in North Dakota.
8. All swine in North Dakota ~~or imported into North Dakota~~ being used for exhibition purposes must meet all of the same requirements of this chapter as for breeding swine, until such time as North Dakota achieves a pseudorabies class B status, at which time this requirement will no longer be required.
9. Disposal of carcasses of swine dying from pseudorabies must be by a method approved by the state veterinarian.

History: Effective March 15, 1988; amended effective September 1, 1988.

General Authority: NDCC 36-01-08

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

48-02-02-01. Horses. There are no requirements on horses Livestock exhibition and import for exhibition.

1. For all livestock imported for exhibition purposes, a certificate of veterinary inspection is required.
2. Equine species require a negative test for equine infectious anemia within twelve months prior to date of importation, unless originating from a state exempted from the test requirement by the North Dakota state veterinarian.
3. For all cattle imported for exhibition purposes, a negative brucellosis test is required within thirty days prior to date of entry unless the cattle are official brucellosis vaccinates originating from certified free herds or areas. Female cattle, not vaccinated for brucellosis, over one year of age, may be imported for exhibition purposes only. A permit is required for all female cattle over one year of age and for all cattle originating from any state where scabies may be introduced, as determined by the board.
4. Sheep imported for exhibition purposes must meet the same requirements as sheep imports for other purposes.
5. All swine imported into North Dakota being used for exhibition purposes must meet the same requirements as swine imports for other purposes.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-02-02-02. Cattle. A health certificate is required for cattle. A negative tuberculosis test is required thirty days prior to shipment unless from an accredited herd or area. A brucellosis test is required within thirty days prior to date of entry unless cattle are official brucellosis vaccinates or bulls originating from certified free herds or areas. Repealed effective September 1, 1988.

General Authority: ~~NDCC 36-01-08~~

Law Implemented: ~~NDCC 36-01-08~~

48-02-02-04. Sheep. A health certificate is required for sheep. Repealed effective September 1, 1988.

General Authority: ~~NDCC 36-01-08~~

Law Implemented: ~~NDCC 36-01-08~~

48-03-01-06. Cleaning and disinfecting of trucks, trailers, and other conveyances used for hauling diseased livestock to public

stockyards. Persons hauling diseased livestock to public stockyards are required to clean and disinfect trucks by an approved a method approved by the state veterinarian before leaving stockyards with apparently healthy sheep and hogs livestock.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-03-01-07. Diseased livestock at auction markets.

1. Paving of pens: Paved pens are required and shall be set aside for diseased animals delivered to market. Such diseased livestock is to be properly marked and sold after the sale of healthy livestock is completed.
2. Reactors - Permits: Reactors to the brucellosis and tuberculosis test may be taken to an auction market holding a permit from the livestock sanitary board to handle such reactor cattle, if accompanied by an official permit issued by an agent of the board. The official permit is to accompany shipment from market to slaughter.

Livestock auction markets are required to set aside paved pens for diseased animals delivered to the market. Diseased animals must be marked in a manner approved by the state veterinarian and sold directly to slaughter facilities. The official permit of the United States department of agriculture for movement of diseased animals is to accompany shipment of diseased animals from market to slaughter.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-05-07

48-03-01-09. Livestock market facilities. All licensed livestock markets must provide and maintain facilities, for use by brand inspectors and veterinary inspectors, that are adequate to perform their duties, and that are safe, sanitary, and in good condition.

History: Effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-05-07, 36-05-10

48-04-01-02. Livestock quarantines. The board may quarantine any domestic animal which is infected with any contagious or infectious disease or which has been exposed to infection, or which may have been exposed to infection. Animals imported for which no certificate of veterinary inspection is produced must be quarantined until the disease status of the animals can be determined and until all vaccination and test requirements can be verified. Upon verification that any animal

does not meet North Dakota test and vaccination requirements, the animal must be sent directly to slaughter or returned to the state of origin. The form of notice of official quarantine shall must be specified by the board and served on the owner or keeper of the animal by sending, by registered or certified mail, a copy of the quarantine notice to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, personally serve a copy of the quarantine notice upon the owner or keeper of the animal.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-12

48-04-01-11. Garbage feeding to swine. No permit is to be issued under North Dakota Century Code section ~~36-01-22~~ unless the cooking equipment used is equipped with a recording thermometer and agitator which meets the requirements set by the board. Repealed effective September 1, 1988.

History: ~~Amended effective June 1, 1983.~~

General Authority: ~~NDCC 36-01-08~~

Law Implemented: ~~NDCC 36-01-22~~

48-04-01-12. Sale of virulent products. All persons, firms, or corporations are prohibited from distributing or selling any products containing any live germs, cultures, or viruses for the treatment or vaccination of any domestic animals without written permit by the executive officer of the livestock sanitary board. Nontransferable permits will be issued to all qualified applicants as determined by the livestock sanitary board and may be obtained only upon written application by the ~~North Dakota~~ person, firm, or corporation selling the product at retail levels. A written application for a permit shall be provided in a form as approved by the executive officer of the livestock sanitary board. The livestock sanitary board may revoke a permit to sell virulent products for violation of North Dakota Century Code chapter 36-01, or any rules adopted pursuant to that chapter. This section does not apply to licensed veterinarians practicing in North Dakota.

History: Amended effective June 1, 1983; April 1, 1985; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-04-01-13. Permit requirements - Virulent products. An applicant for a permit to sell or distribute virulent products shall:

1. Agree not to sell or distribute any of the following vaccines:
 - a. ~~All brucella~~ Brucella vaccines.

- b. ~~All pseudorabies~~ Pseudorabies vaccines.
- c. ~~All rabies~~ Rabies vaccines.
- d. ~~All anthrax~~ Anthrax vaccines.
- e. Contagious ecthyma (~~modified~~ live).
- f. Erysipelas (live cultures).

This list may be modified by the livestock sanitary board from time to time by the state veterinarian as required.

- 2. Require four hours of training annually for the applicant and all employees pertaining to the use of virulent vaccines. Certification of this training must be furnished by the principal biological suppliers or other qualified persons as determined by the livestock sanitary board.
- 3. Store live germs, cultures, or viruses offered for sale, or sold, in a dark place at a temperature of not more than forty-five degrees Fahrenheit [7.22 degrees Celsius] and not less than thirty-five degrees Fahrenheit [1.67 degrees Celsius] until such time as they are sold. Live germs, cultures, or viruses may not be sold after their expiration date.
- 4. Offer for sale, products in their original containers only.
- 5. Agree not to accept for return retail purchases of live germs, cultures, or viruses.
- 6. Comply with subsections 1 through 5 with respect to on the farm sales.

History: Effective April 1, 1985; amended September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-06-01-01. Uniform methods and rules - Brucellosis eradication. In accordance with North Dakota Century Code section 36-01-08, the current recommended brucellosis eradication uniform methods and rules as they appear in publication APHIS 91-1 of the veterinary services, animal and plant health inspection service of the United States department of agriculture, dated June 1983, are hereby adopted and constitute a rule of the board. An animal shall be declared infected with brucellosis when adjudged determined to be diseased by the state veterinarian.

History: Amended effective June 1, 1983; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-06-01-03. Brucellosis vaccination of calves. Licensed veterinarians are permitted to contract with owners to vaccinate female calves. Female bovine animals may be vaccinated while from four through twelve months (one hundred twenty through three hundred sixty-five days) of age with a vaccine approved by the state veterinarian. Vaccinated animals shall be tattooed in the right ear and tagged in the upper right ear. The veterinarian must submit reports of vaccination on form 18V the appropriate form provided by veterinary services, animal and plant health inspection service of the United States department of agriculture, to the board within thirty days.

History: Amended effective July 1, 1982; June 1, 1983; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-15-21

48-06-01-04. Sale of cattle out of brucellosis-infected herds. Herds of cattle infected shall be quarantined, with the quarantine prohibiting sale of all cattle intact bulls and females, except to licensed monitored feedlots or for slaughter, under written permit. Such cattle shall be held separate and apart. Sales to licensed quarantine feedlots or slaughter must be accompanied by written permit. The quarantine shall be released when no reactors are disclosed on a herd test conducted at two 60-day intervals or one 120-day period following the date of disposal of the last reactor. Quarantines are to be rigidly enforced. Any exceptions must be covered by official permits granted by the state veterinarian as provided for in this section.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-12

48-06-01-06. Branding of condemned cattle. All cattle that are determined to be infected with brucellosis must be marked by hot iron branding the letter B on the left jaw, and by having a reactor tag inserted in the upper left ear.

History: Effective September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-07-01-01. Payment of indemnity for steers or unregistered bulls condemned on account of tuberculosis. In accordance with the provisions of North Dakota Century Code section 36-15-09, if the agricultural research service fails to provide an equal amount of indemnity with North Dakota, then the owner shall be paid one-half of the difference between the appraised value and the net value of the salvage thereof. Repealed effective September 1, 1988.

General Authority: NDCC 36-15-08

Law Implemented: ~~NDCC 36-15-09~~

48-07-01-02. Uniform methods and rules - Tuberculosis. In accordance with North Dakota Century Code section 36-01-08, the current uniform methods and rules on bovine tuberculosis eradication as they appear in the animal health division publication of the veterinary services, animal and plant health inspection service of the United States department of agriculture publication dated January 4, 1982, are hereby adopted and constitute a rule of the board.

History: Amended effective June 1, 1983; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-07-01-03. Branding of condemned cattle.

- ~~1-~~ All cattle that are adjudged affected determined to be infected with tuberculosis shall be marked by firebranding hot iron branding the letter T on the left jaw, and by having a reactor tag inserted in the upper left ear.
- ~~2-~~ All cattle that are adjudged affected with brucellosis shall be marked by firebranding the letter B on the left jaw, and by having a reactor tag inserted in the left ear.
- ~~3-~~ All branding and tagging referred to above shall be completed within ~~twenty-one~~ days following the date the blood sample was collected.

History: Amended effective June 1, 1983; September 1, 1988.

General Authority: NDCC 36-01-08

Law Implemented: NDCC 36-01-08

48-08-01-01. Definition. A quarantined monitored livestock feedlot includes all premises where feeder cattle, including female dairy cattle over ~~eight~~ twelve months of age and female beef cattle over ~~eleven~~ months of age which have not been brucellosis vaccinated, are placed, maintained, or fed.

History: Amended effective September 1, 1988.

General Authority: NDCC 36-01-29

Law Implemented: NDCC 36-01-29

48-08-01-04. Importation of cattle to licensed feedlots. Tests for tuberculosis and brucellosis not required for cattle imported to licensed quarantined feedlots. Repealed effective September 1, 1988.

General Authority: ~~NDCC 36-01-29~~

Law Implemented: ~~NDCC 36-01-29~~

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

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
3. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers, and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.
6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications, and to extend or remove such approval.
7. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.

9. A buying station is a point where cattle, horses, or mules are gathered for sale.
10. A bill of lading is required by railroads or motor carriers when livestock is going to out-of-state markets where inspection is maintained for North Dakota livestock.
11. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
12. A fee of fifty cents per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor, at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee. A permanent transportation inspection permit may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.
13. The following terminal markets and auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association: ~~Sioux City stockyards,~~ ~~Sioux City, Iowa,~~ Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; ~~Leola livestock sale co., Leola, South Dakota,~~ Herreid livestock sale co., Herreid, South Dakota; ~~Bowdle livestock sales, co., Bowdle, South Dakota,~~ Baker livestock auction, inc., Baker, Montana; Glendive livestock auction,

Glendive, Montana; Sidney livestock market center, Sidney, Montana.

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

General Authority: NDCC 36-22-03

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

TITLE 50
Medical Examiners, Board of

JULY 1988

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

1. **History and function.** The 1890 legislative assembly passed a medical practice act, codified as North Dakota Century Code chapter 43-17. This chapter requires the governor to appoint a state board of medical examiners. The board, generally speaking, stands between the medical school graduate and the public. It is the responsibility of the board to protect the public against poorly trained physicians.
2. **Board membership.** The board consists of ten members appointed by the governor. Nine members are medical physicians and surgeons and one member is an osteopathic physician and surgeon. Members of the board serve three-year terms, and not more than four terms expire each year. No member may serve on the board more than two successive terms.
3. **Executive secretary and treasurer.** The executive secretary and treasurer of the board is appointed by the board and is responsible for administration of the board's activities.
4. **Credentials committee.** A credentials committee is appointed by the chairman of the board and is responsible for issuing provisional temporary licenses authorizing the practice of medicine in the intervals between board meetings. The credentials committee will consist of at least three active members of the board appointed by the president and will act only pursuant to specific authority granted and under periodic directives of the board.
5. **Inquiries.** Inquiries regarding the board may be addressed to the executive secretary and treasurer:

Mr. Rolf P. Sletten

Executive Secretary and Treasurer
State Board of Medical Examiners
City Center Plaza
418 E. Broadway, Suite C-10
Bismarck, North Dakota 58501

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

General Authority: NDCC 28-32-02.1

Law Implemented: NDCC 28-32-02.1

50-02-08-01. Membership and authority. The credentials committee will consist of at least three active members of the board appointed by the president and will act only pursuant to specific authority granted and under periodic directives of the board. Repealed effective July 1, 1988.

General Authority: NDCC ~~43-17-13~~

Law Implemented: NDCC ~~43-17-13~~

50-03-01-01. Description and authority of physician's trained assistant. The physician's trained assistant is a skilled person, qualified by academic and clinical training to provide patient services under the supervision and responsibility of a fully licensed doctor of medicine or osteopathy who is, in turn, responsible for the performance of that assistant. The assistant may be involved with the patients of the physician in any medical setting for which the physician is responsible. Those now employed in the state as medex have until December 1978 to be accepted as physicians' trained assistants by successfully passing the examination given by the national commission on certification of physicians' assistants.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-02. Examination requirements. No physician's trained assistant may be employed in the state until the assistant has passed the certifying examination of the national commission on certification of physicians' assistants or other certifying examinations approved by the North Dakota state board of medical examiners.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-03. Employment Supervision contract requirements. Upon entering a contract of employment with undertaking the supervision of an assistant as contemplated by this chapter, the physician shall file a

copy thereof with the board. The contract must show of the contract showing the following information:

1. The full name of the assistant with a brief summary of the assistant's pertinent education and experience.
2. A list of the specific tasks which the physician contemplates may be assigned to the assistant, which must be approved by the North Dakota state board of medical examiners.

The contract should be renewed annually on January first of each calendar year, and the state board of medical examiners should be advised of the termination of the contract within seventy-two hours following termination of the contract.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-04. Supervising physician's responsibility. It is the responsibility of the ~~licensed~~ supervising physician to direct and review the work, records, and practice of the physician's assistant on a daily, continuous basis to ensure ~~the patient, the physician, and the physician's assistant~~ that good appropriate and safe treatment is rendered. The supervising physician must be available continuously for contact personally or by telephone or radio, and the supervision must include at least eight hours per week of onsite, personal supervision.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-05. Designation of substitute supervising physician. Under no circumstances shall the supervising physician designate the physician's ~~trained~~ assistant to take over the physician's duties or cover the physician's practice. During any absence or temporary disability of the supervising physician, it is mandatory that the supervising physician designate a substitute physician to cover the supervising physician's practice and perform the supervising physician's duties. The physician's ~~trained~~ assistant, during this period, will be responsible to the substitute physician.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-06. Assistant's functions limited. The physician's ~~trained~~ assistant shall function only in those areas where the supervising physician provides care for the physician's patients.

History: Amended effective July 1, 1988.
General Authority: NDCC 43-17-13
Law Implemented: NDCC 43-17-02(10)

50-03-01-07. ~~Assistant not to prescribe drugs. The physician's trained assistant shall not prescribe drugs. Drug therapy. A physician's assistant may dispense prepackaged medications prepared by a registered pharmacist acting on a physician's written order and labeled to show the name of the physician's assistant and the physician. The dispensation authorized shall be limited to controlled drugs of schedules four and five and nonscheduled drugs. The dispensation by the physician's assistant must be authorized by, and within, the preestablished guidelines of the supervising physician.~~

History: Amended effective July 1, 1988.
General Authority: NDCC 43-17-13
Law Implemented: NDCC 43-17-02(10)

50-03-01-08. ~~Assignment of tasks by supervising physician. The supervising physician may assign specific tasks to the physician's trained assistant according to the assistant's ability, always keeping in mind the supervising physician's ultimate responsibility for the patient's welfare. Repealed effective July 1, 1988.~~

General Authority: ~~NDCC 43-17-13~~
Law Implemented: ~~NDCC 43-17-02(10)~~

50-03-01-09. ~~Number of assistants under physician's supervision limited. No physician may have under the physician's supervision more than two physician's trained assistants currently qualified under section 50-03-01-02, unless compelling reasons are presented to, and approved by, the board.~~

History: Amended effective July 1, 1988.
General Authority: NDCC 43-17-13
Law Implemented: NDCC 43-17-02(10)

50-03-01-10. ~~Assistant's services limited. The services of the physician's trained assistant are limited to assisting the supervising physician in the particular fields for which the assistant has been trained. Repealed effective July 1, 1988.~~

General Authority: ~~NDCC 43-17-13~~
Law Implemented: ~~NDCC 43-17-02(10)~~

50-03-01-11. ~~Revocation of registration. The board may deny, suspend, or revoke any registration of a physician's assistant upon the~~

grounds that the applicant or physician's trained assistant is guilty of any of the following grounds:

1. Soliciting patients for any practitioner of the healing arts failing to demonstrate the qualifications for registration under this act or the regulations of the board.
2. Soliciting or receiving any form of compensation from any person other than the assistant's registered employer for services performed as a physician's trained assistant.
3. Willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician.
4. The habitual or excessive use of intoxicants or drugs.
5. Aiding or abetting the practice of medicine by a person not licensed by the board.
6. Gross negligence in performing the duties, tasks, or functions assigned to the assistant by the employer-physician.
7. Manifest incapacity or incompetence to perform as a physician's trained assistant.
8. Conduct unbecoming in a person registered as a physician's ~~trained~~ assistant or detrimental to the best interests of the public or the profession.
9. Repeated or willful violation of the contract of employment on file with the board.
10. Representing himself or herself to be a physician.
11. Fraud or deceit in obtaining initial registration as a physician's assistant, the renewal of registration as a physician's assistant, or in the practice of the physician's assistant profession.

History: Amended effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

50-03-01-13. Fees. The fee for initial registration of a physician's assistant is fifty dollars. The annual renewal fee and fee for approval of employment contract changes is twenty-five dollars.

History: Effective July 1, 1988.

General Authority: NDCC 43-17-13

Law Implemented: NDCC 43-17-02(10)

TITLE 54
Nursing, Board of

AUGUST 1988

54-02-07-01. Definition of unprofessional conduct.
~~Unprofessional conduct includes but is not limited to:~~

- ~~1. Intentionally falsifying information on patient's records.~~
- ~~2. Negligence in planning and administering therapeutic and nursing measures.~~
- ~~3. Aiding and abetting another person in performing an act prohibited by law.~~
- ~~4. Misappropriation of supplies, equipment, and drugs.~~
- ~~5. Misuse (betrayal) of a trust or confidence.~~

Repealed effective August 1, 1988.

History: ~~Amended effective June 1, 1982.~~

General Authority: ~~NDCC 43-12.1-08~~

Law Implemented: ~~NDCC 43-12.1-14~~

54-02-07-02. Definitions. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 43-12.1, except:

1. "Denial" means the board's refusal to issue a current license upon application.
2. "Probation" means issuance of a current license marked "encumbered", and identification of specific requirements.

3. "Reprimand" means written communication to the licensee stating the board's concerns, and public notification of the licensee's name, address, and reason for the reprimand.
4. "Revocation" means the withdrawal by the board of the license to practice nursing for a specified length of time of no less than one year.
5. "Suspension" means the withholding by the board of the license to practice nursing for a specified length of time.
6. "Unprofessional conduct" includes, but is not limited to:
 - a. Failure to provide nursing care because of diagnosis, age, sex, race, religion, creed, or color.
 - b. Abusing a patient verbally, physically, emotionally, or sexually.
 - c. Failure to supervise persons to whom nursing functions have been delegated or assigning unqualified persons to perform functions of licensed nurses.
 - d. The practice of nursing without sufficient knowledge, skills, or nursing judgment.
 - e. Inaccurate or incomplete documentation or recording, or the falsification, alteration, or destruction of patient, employee, or employer records.
 - f. Aiding or abetting another person in performing an act prohibited by law or rule, or failure to perform an act required by law, rule, or standard of professional care.
 - g. Diverting supplies, equipment, or drugs for personal use or unauthorized use.
 - h. Misuse or betrayal of a trust or confidence.
 - i. Deliberate exploitation of a patient or family, or both, for financial or personal gain.
7. "Willfully" includes, but is not limited to:
 - a. Continued action after notice from the board that such action is not warranted or authorized.
 - b. Disregard of the expiration date of a license to practice nursing.
 - c. Providing false or incorrect information to an employer regarding the status of a license to practice nursing.

d. Lack of diligence in which a licensee understood an obligation, had an ability to comply and failed to comply.

History: Effective August 1, 1988.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-03. Complaints. Any individual having personal knowledge or information concerning an alleged violation of North Dakota Century Code chapter 43-12.1 may initiate the disciplinary process by filing a written request for investigation with the board. The request must include:

1. The full name, address, and telephone number (if available) of the complainant.
2. The name, address, and telephone number (if known) of the licensee.
3. A statement of the facts concerning the alleged violation.

A request for investigation that does not include the required information shall require a motion by the board before investigation is commenced.

History: Effective August 1, 1988.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

54-02-07-04. Investigation. The executive director or executive director's designee will investigate complaints in order to determine whether sufficient grounds exist to believe a violation of applicable law or rule has occurred. The investigation will result in one of the following:

1. Filing of a formal complaint and scheduling a disciplinary hearing pursuant to North Dakota Century Code chapter 28-32.
2. Presentation of the complaint to the board and recommendation for dismissal because insufficient evidence exists.
3. Requesting the board to appoint a peer review committee to review the complaint and investigation and submit a report of its findings to the board.
4. Other action as warranted including referral of the facts alleged or found to exist to another affected agency.

Subpoena for the attendance of witnesses, the production of documents and other objects described in subpoenas, submission of and response to interrogatories, requests for production, depositions, and other

discovery procedures will be available to the board and any party the subject of an investigation, pursuant to North Dakota Century Code section 28-32-09 and applicable rules of civil procedure.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-09; NDRCivP 45

54-02-07-05. Settlements. The licensee may request to explore a settlement of the allegations in the complaint at any time prior to the hearing. Exploration of a settlement will be with the executive director or the executive director's designee and the attorney for the board. If the above persons agree to negotiate a settlement through informal disposition of the complaint, a proposed stipulation and consent order will be written and presented to the licensee for the licensee's signature. The signed stipulation and consent order will be presented to the board for final approval. The presentation of the signed stipulation and consent order does not divest the board of its authority to either approve or reject the proposed informal disposition. If a stipulation and consent order proposal is rejected by the board, a hearing will be held.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-05

54-02-07-06. Board decision - Revocation - Suspension. The final decision will be adopted by a simple majority of the board and will include findings of fact, conclusions of law, and order. The decision of the board to impose or modify any restrictions upon the licensee or the licensee's practice of nursing or to reinstate a license will be communicated to the licensee in the form of a board order.

1. If the board issues a revocation order, it may also indicate in the order the specific action necessary for the reapplication for licensure by the individual. The national nursing licensing examination may be waived by the board as a condition for the reissuance of a previously revoked license. The initial licensure fee will be assessed for the reissuance of a revoked license.
2. If the board issues a suspension order, it may also indicate the specific action necessary for the reissuance of the license. An individual whose license is suspended may request reinstatement by the board at any regularly scheduled meeting. The current year's renewal fee will be required for reissuance of a suspended license.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-13, 43-12.1-14

54-02-07-07. Costs and disbursements. Reasonable costs and disbursements to be recovered from the licensee following any hearing at which the licensee's license is suspended, probated, or revoked, or at which a penalty fee or reprimand is issued by the board, shall include witness fees and reimbursement of the board's reasonable expenses. If a witness is subpoenaed by the board to appear at the request of the licensee, the licensee is to deposit with the board sufficient funds to cover expenses for mileage, food, and lodging as allowed by state reimbursement policies plus fifteen dollars per day for each day the witness is to appear. In the case of any request by the licensee for the subpoena by the board of an expert witness, sufficient funds will also be deposited with the board, prior to the issuance of such subpoena, to cover such expert witness fees. The deposit with the board of funds for witness fees and expenses must be made prior to the issuance of the subpoena. The request for the subpoena by the board of a witness for the licensee must be made in writing.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 28-32-09, 43-12.1-14

54-02-07-08. Application for reinstatement. Any person whose license has been suspended or revoked by the board may apply in writing for reinstatement at the conclusion of the time period specified in the order. The burden of proof is on the licensee to prove to the satisfaction of the board that the condition that led to a sanction no longer exists or no longer has a material bearing on the licensee's professional ability, or both. The board will consider the written application for reinstatement at the next regularly scheduled board meeting. If the board votes for reinstatement, the board may impose reasonable terms and conditions to be imposed prior to reinstatement or as a condition of reinstatement. If the board denies reinstatement, reasons for denial must be communicated to the applicant.

History: Effective August 1, 1988.

General Authority: NDCC 43-12.1-08

Law Implemented: NDCC 43-12.1-14

54-02-07-09. Practice without a license. A licensee who applies for renewal of licensure shall present evidence to the board that the licensee has not been engaged in the practice of nursing without a current license. If evidence is received by the board that the individual has been practicing nursing without a current license, the licensee will be offered an opportunity to enter into an administrative settlement for review. Entry into an administrative settlement shall be required of a licensee making application for renewal after January first of the current year who admits, without other evidence of noncompliance of North Dakota Century Code chapter 43-12.1 and this chapter, to practicing without a license and desires to have the board issue a current license. The administrative settlement is a written statement signed by the licensee identifying the circumstances of the

practice without a license, an agreement to accept a public reprimand, and an agreement to remit the penalty fee and late renewal fee. Upon receipt of the written statement and correct fee, the executive director or executive director's authorized designee may issue a current license to practice. The written statement must be presented to the board at the next regular meeting for acceptance. If the board does not accept the administrative settlement, the licensee shall have the opportunity for a disciplinary hearing as outlined in North Dakota Century Code chapter 28-32 and this chapter.

History: Effective August 1, 1988.
General Authority: NDCC 43-12.1-08
Law Implemented: NDCC 43-12.1-14

TITLE 58

Parks and Recreation Department

OCTOBER 1988

58-02-08-05. Limitation of cabin, dormitory, or campsite occupancy.

1. A person or group of persons may not occupy any cabin, dormitory, or campsite for more than fourteen days within any thirty-day period without the written permission of the park manager.
2. Daily vehicle permits used for day use activity expire one-half hour after sunset on the day of purchase.
3. Vehicle permits purchased with camping permits are valid until noon on the date of expiration.
4. Only one camping unit with a maximum of six persons or the immediate family members shall be permitted on each designated single campsite except with the permission of the park manager.
5. Children under the age of eighteen must be accompanied by an adult in order to occupy a campsite in a state park, unless written permission is granted by the park manager.
6. No camping unit may be left unattended for more than twenty-four hours without written permission from the park manager.

History: Effective September 1, 1987; amended effective October 1, 1988.

General Authority: NDCC 55-08-03, 55-08-05

Law Implemented: NDCC 55-08-03, 55-08-04, 55-08-05

TITLE 69
Public Service Commission

OCTOBER 1988

69-10-03-01. National bureau of standards handbook 44. The Except as modified in this article, the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, as adopted by the national conference on weights and measures, and published in National Bureau of Standards Handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices in North Dakota, except as modified or amended in this chapter in North Dakota shall conform to the requirements of the 1988 edition of the National Bureau of Standards Handbook 44, issued September 1987, which is adopted by reference.

History: Amended effective October 1, 1988.

General Authority: NDCC 64-02-03

Law Implemented: NDCC 64-02-07

TITLE 73
Securities Commissioner

JULY 1988

STAFF COMMENT: Section 73-03-01-01 contains all new material but is not underscored so as to improve readability.

ARTICLE 73-03

FRANCHISE INVESTMENT LAW

Chapter
73-03-01 General Provisions

CHAPTER 73-03-01
GENERAL PROVISIONS

Section
73-03-01-01 Exemptions

73-03-01-01. Exemptions. Any offer to sell or sale of a franchise organized and existing under the laws of any state as a nonprofit corporation for the exclusive use and benefit of its own members which satisfies the following conditions is exempt from the registration requirements imposed by North Dakota Century Code section 51-19-03, provided the governing board of the corporation certifies to the securities commissioner by resolution that such conditions are being met:

1. Control and ownership of each member is substantially equal;

2. Membership is limited to those who avail themselves of the services furnished by the organization;
3. Transfer of ownership interest is prohibited or limited;
4. Capital investment receives no return;
5. Members are not personally liable for obligations of the corporation in the absence of a direct undertaking or authorization by them;
6. Services provided to the membership are furnished primarily for the use of the members;
7. Each member and prospective member is provided with the most recent audited financial statements, bylaws, articles of incorporation, rules and regulations, and agreement; and
8. The corporation has had at least twenty-five franchises conducting business at all times during the five-year period immediately preceding the proposed offer or sale of a franchise, or has conducted business which is the subject of the franchise continuously for not less than five years preceding the proposed offer or sale of a franchise.

Any entity which has certified to the securities commissioner that the conditions listed in this section have been met, and which subsequently modifies its structure resulting in one or more of the conditions becoming nonapplicable, shall immediately notify the commissioner of such modification.

This rule does not exempt any individual or entity from the antifraud provisions contained in North Dakota Century Code section 51-19-11.

History: Effective July 1, 1988.
General Authority: NDCC 51-19-17
Law Implemented: NDCC 51-19-04

TITLE 89
Water Commission

OCTOBER 1988

STAFF COMMENT: Chapters 89-02-02 through 89-02-05 contain all new material but are not underscored so as to improve readability.

CHAPTER 89-02-02
RULES FOR DRAINAGE OF WETLANDS

Section	
89-02-02-01	Scope of Chapter
89-02-02-02	Definitions
89-02-02-03	Circumstances Requiring a Drainage Permit
89-02-02-04	Area Covered by Permit
89-02-02-05	Agencies not Required to Obtain Permits
89-02-02-06	Determination of Watershed Area
89-02-02-07	Applications
89-02-02-08	Review by State Engineer and Transmittal to Appropriate Board
89-02-02-09	Board Procedure for Processing Applications to Drain Other Than Temporary Wetlands
89-02-02-10	Board Procedure for Processing Permits When a Hearing is Not Required
89-02-02-11	Time for Determination by Board
89-02-02-12	Determination of Statewide or Interdistrict Significance
89-02-02-13	Notice of State Engineer's Determination of Statewide or Interdistrict Significance
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89-02-02-15	Evaluation of Applications of Statewide or Interdistrict Significance - Information to be Used
89-02-02-16	Procedure, Availability, and Contents of Notice of State Engineer's Decision to Grant or Deny Application of Statewide or Interdistrict Significance
89-02-02-17	Request for State Engineer's Hearing

89-02-02-18	Notice of State Engineer's Hearing
89-02-02-19	Evidentiary Standard at State Engineer's Hearing
89-02-02-20	Time for Determination by the State Engineer - Copies of Decision
89-02-02-21	Consideration of Evidence not Contained in the State Engineer's Record
89-02-02-22	Conditions to Permits
89-02-02-23	Commencement of Construction
89-02-02-24	Time Within Which to Begin Construction of Drain
89-02-02-25	Notice of Drainage Application Denials to Commissioner of Agriculture

89-02-02-01. Scope of chapter. This chapter establishes rules for review and disposition of permit applications, made on or after January 1, 1987, to drain water from a wetland or any series thereof, as required by North Dakota Century Code section 61-32-03. This chapter does not apply to permit applications made after January 1, 1987, if the final administrative action by the board and the state engineer was completed on or before July 21, 1987.

This chapter does not apply to permit applications made after July 20, 1987, and before the effective date of these rules. In such case, chapter 89-02-01 shall govern to the extent it does not conflict with North Dakota Century Code chapter 61-32, which shall govern in the event of a conflict.

A permit is not required pursuant to this chapter if the application to drain was submitted to the state engineer prior to January 1, 1987. In that event, chapter 89-02-01 governs.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-02. Definitions. In this chapter unless the context otherwise requires, the following definitions apply:

1. "Assessment drain" is any drain fitting the definition set forth in subsection 2 of North Dakota Century Code section 61-16.1-02.
2. "Board" means the managers of the water resource district in which the majority of the watershed of a project is located.
3. "District" means water resource district.
4. "Drain" is any structure or construction which changes the water surface area of a wetland.

5. "Land not normally subject to standing water" means land which is inundated, on the average, not more than once in five years.
6. "Lateral drain" means a drain constructed after the establishment and construction of the original drain or drainage system which the permit previously obtained did not contemplate and which allows water to flow into such original drain or drainage system.
7. "Party of record" means any person who submits oral or written testimony or evidence for the record at the state engineer's hearing.
8. "Permanent wetland" means a well-defined basin which characteristically holds water throughout the year. Permanent wetlands go dry only after successive years of below normal runoff and precipitation. Freshwater permanent wetlands typically have a border of aquatic vegetation and a predominant open water area in the interior. Saline permanent wetlands are typically devoid of emergent vegetation and exhibit a white, salt encrusted shoreline. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for permanent wetlands.
9. "Project" means the proposed activity contained in a drainage application under consideration by the board for a permit, or, when considered by the state engineer, the activity approved by the board.
10. "Seasonal (shallow) wetland" means a depression which holds water in normal years from spring runoff until mid-July. In years of normal runoff and precipitation, seasonal wetlands may not be tilled but can be used for hayland or pasture. In low runoff, dry years, these areas may be tilled for crop production, but commonly relood with frequent or heavy summer or fall rains. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for seasonal wetlands.
11. "Semipermanent (intermittent) wetland" means a well-defined depression or basin which holds water in normal years throughout the summer. Semipermanent wetlands generally go dry only in years of below normal runoff and precipitation. Freshwater semipermanent wetlands, commonly referred to as cattail sloughs, are characterized by a predominance of cattail and bulrush vegetation with scattered open water areas. Saline semipermanent wetlands are characterized by a predominance of alkali bulrush and scattered open water areas. This classification is the uniform classification adopted by the state engineer and the game and fish commissioner for semipermanent wetlands.

12. "Supplemental hearing" means a hearing held to review evidence not contained in the record of the state engineer's hearing.
13. "Temporary wetland" means a shallow depressional area which holds water or is waterlogged from spring runoff until early June. In years of normal runoff and precipitation, temporary wetland areas may be tilled for crop production. In years of high runoff or heavy spring rain, these areas may not dry out until mid-July and would not be tilled but may be used for hayland or pasture. Temporary wetlands frequently reflood during heavy summer and fall rains. Sheetwater, as defined in North Dakota Century Code section 61-32-02, is not a temporary wetland. This definition is the uniform classification adopted by the state engineer and the game and fish commissioner for temporary wetlands.
14. "Watercourse" is as defined by North Dakota Century Code section 61-01-06.
15. "Watershed" is the area draining into a wetland or series of wetlands. A series of wetlands is a group of two or more wetlands which are hydrologically linked naturally or by man's efforts.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-03. Circumstances requiring a drainage permit. Pursuant to this chapter, a permit is required before any person may drain waters from a wetland, or series thereof, with a watershed of eighty acres [32.37 hectares] or more.

For purposes of this section, the term "drain" means any process used to decrease the water surface area of a wetland. A drainage permit is not required for the use of water from a wetland for beneficial purposes pursuant to North Dakota Century Code chapter 61-04.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-04. Area covered by permit. Each wetland in the area identified in the permit will be permitted unless specifically identified as being undrained in the permit application. The drain must be designed to accommodate the drainage of all wetlands in the permit area which are not identified as being undrained.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-05. Agencies not required to obtain permits. In the event replacement of wetland acre loss is required by federal law, the following agencies are deemed by the state engineer capable of providing supervision and analyzing downstream impacts and are exempt from obtaining a permit:

1. The United States department of agriculture soil conservation service for projects constructed pursuant to the Watershed Protection and Flood Prevention Act [Pub. L. 83-566; 16 U.S.C. 1001].
2. The United States bureau of reclamation for drainage which is a part of the originally authorized Garrison Diversion Unit authorized in 1965.
3. The state highway department for federal aid projects.

However, these agencies shall notify the state engineer of any proposed drainage projects during the planning stages.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-06. Determination of watershed area. Seven and one-half minute topographic maps must be used by the state engineer to determine the area of a watershed for a wetland, or series of wetlands. This information may be supplemented by aerial photos or a survey conducted under the supervision of a registered land surveyor. An onsite investigation may be conducted by the state engineer if, in his judgment, it is deemed necessary.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-07. Applications. Applications for a permit to drain must be filed with the state engineer on the state engineer's application form. The application must provide the following:

1. Description of the drain.
2. United States department of agriculture soil conservation service photos of the project area with the wetlands which are not to be drained specifically identified thereon.
3. An estimate of the number of wetland acres to be drained.

The application may be mailed or delivered to:

Office of the State Engineer

900 East Boulevard
Bismarck, ND 58505

Insufficient or incomplete applications will be returned to the applicant by the state engineer.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-08. Review by state engineer and transmittal to appropriate board. Upon receipt of a properly completed application, the state engineer shall review the wetlands to be drained in the project area and determine whether all wetlands to be drained are temporary wetlands. If all wetlands are determined to be temporary wetlands, that fact must be noted on the permit application. If a project is proposing to drain only temporary wetlands, the state engineer shall also determine whether the project is of statewide or interdistrict significance using the factors set out in section 89-02-02-12. The state engineer shall note the determination in that regard upon the application. If the project will drain other than temporary wetlands, the state engineer may not determine whether the project is of statewide or interdistrict significance until after the board has considered and approved the project.

In any event, the permit application must then be forwarded to the board in which a majority of the watershed of the proposed project is located.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-09. Board procedure for processing applications to drain other than temporary wetlands. A board shall follow this procedure in processing a drainage permit application when the project will drain permanent, semipermanent, or seasonal wetlands, or if it has been determined to be of statewide or interdistrict significance, or if the board determines a board hearing should be held:

1. Upon receipt of an application to drain from the state engineer, the board shall set the date, time, and place for a meeting at which it will receive information concerning the merits of, as well as any testimony or information pertinent to the application. At the applicant's expense, the board shall also give notice by mail not less than twenty days from the date set for consideration of the drainage application to:
 - a. All record title owners of real estate or holders of a contract for deed whose property would be crossed by the proposed drain.

- b. All downstream riparian landowners on the watercourse into which water will be drained within two miles [3.22 kilometers] from the outlet of the drain as determined by the board.
 - c. Any water resource board which would be substantially affected by the water to be drained.
 - d. The state game and fish department.
 - e. The state department of health and consolidated laboratories.
 - f. The state highway commissioner for any proposed drainage that will affect or cross the right of way of any public highway or road.
 - g. The state engineer.
 - h. Any person who has made a written request for notification of that project and has advanced the cost of providing that notification. Such advance may not exceed ten dollars.
2. Notice must also be published in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. Final notice must be published not more than fifteen days nor less than five days from the date set for the hearing.
 3. The notice must give the essential facts of the proposed drain including, but not limited to: name and address of applicant; legal description of the area to be drained; purpose of the drainage; watercourse into which the water will be drained; legal description of the confluence of the drain and watercourse into which the water will be drained; the time, date, and place of the board's consideration of the application; and the location and date of availability of information regarding the project.
 4. Fourteen days prior to the date set by the board for its meeting to receive information on the application, the applicant shall submit to the board all documentary information the applicant intends to present at the board's meeting. The board shall immediately place such information in the board's office if the office is open for public access at least twenty hours each week, or if the board offices are not open to the public twenty hours each week, in custody of the auditor of the county in which the majority of the watershed of the drain is to be built. The information must be available for public review. The board shall notify the applicant of this requirement upon its receipt of an application to drain. If the information is placed in the

auditor's office, the auditor shall return the information to the board one working day prior to the board's meeting.

5. The board shall allow submission of all relevant evidence, oral or written. If the board does not make its decision to approve or disapprove the application at the meeting, it shall provide written notice of its decision to all persons requesting such notice and to all persons identified in subsection 1.
6. The meeting at which the board receives information concerning the application must be recorded either stenographically or by electronic recording. If the board approves the permit application, this record and all documentary information received by the board must be transferred to the state engineer. The cost of providing a transcript must be borne by the applicant.
7. At the conclusion of the meeting at which the board receives information about the proposed drain, the board shall announce that:
 - a. The board's denial of a permit constitutes final denial of the permit. Appeals of a denial must be taken to the district court within thirty days.
 - b. A board approved application will be forwarded to the state engineer who will determine whether the project is of statewide or interdistrict significance and whether the wetlands to be drained will be replaced.
 - c. Those who wish to be notified of the board's decision approving an application or of a decision by the state engineer of statewide or interdistrict significance shall so notify the board and shall provide their name and address at the end of the meeting. Notice will then be provided as set forth in section 89-02-02-13.
8. Applications considered by the board will be evaluated by the factors considered for drains of statewide or interdistrict significance. Those factors are set forth in section 89-02-02-14.
9. If the board denies the application, it shall return the application to the applicant along with a copy of the board's determination and rationale. A copy of the board's denial and rationale must also be sent to the state engineer.
10. If the board approves the application, the board's approval must be noted on the application and a copy of the determination sent to the applicant. The application, a copy of the determination, and all information reviewed by the board in considering the application must be forwarded to the

state engineer for review within twenty days of the determination. The board's decision approving the application must contain a determination of the location and size, in surface acres, of wetlands to be drained by the proposed drain. A seven and one-half minute topographic map indicating the location and size of the wetlands approved for drainage must be attached to the determination.

11. The board's notice to an applicant must state that the board's approval of the application is not a permit to drain until the state engineer has:
 - a. In the case of a drain determined to be of statewide or interdistrict significance, also approved the application and found the wetland acres drained would be replaced by an equal number of replacement acres; or
 - b. In the case of a drain determined not to be of statewide or interdistrict significance, found the wetland acres drained would be replaced by an equal number of replacement acres.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-10. Board procedure for processing permits when a hearing is not required. Upon referral from the state engineer of a permit which is not of statewide or interdistrict significance and will not drain permanent, semipermanent, or seasonal wetlands, the board shall follow this procedure:

1. The board shall review the permit application and any supporting documentation and determine whether protection of public and private interests would be better served by a specific public meeting to consider the project. If it is determined a specific public meeting is necessary to protect public and private interests, the board shall process the permit application in accordance with the provisions of section 89-02-02-09.
2. If the board determines a specific public meeting is unnecessary, the board shall consider the project pursuant to the criteria set forth in section 89-02-02-14 and shall deny or grant the application with or without modifications or conditions based upon those criteria. If the application is granted, it shall be forwarded to the state engineer for his determination of the necessary replacement wetlands. In either case, written notice of the board's decision must be provided to all participants in the board's decision and to the state engineer. The notice must state that the board's approval does not constitute a final approval until the state

engineer finds the wetland acres to be drained will be replaced by an equal number of replacement acres.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-11. Time for determination by board. Within sixty days after receipt from the state engineer of an application to drain, the board shall make a determination on the application. This time limit may be extended only with the written consent of the state engineer. A request for an extension of time under this section must be in writing to the state engineer and must set forth the reason for requesting the time extension.

In applications involving assessment drains, the sixty-day time period does not commence until the date the assessment board is finally established and is no longer subject to appeal to a court of law or the state engineer.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-12. Determination of statewide or interdistrict significance. Upon receipt of a board approved application, or in the case of an application draining only temporary wetlands, the state engineer shall determine whether the proposed drain is of statewide or interdistrict significance. The state engineer may, in his discretion, determine any proposed drain as having statewide or interdistrict significance. However, the state engineer shall determine a drain is of statewide or interdistrict significance if:

1. Publicly owned property will be substantially affected; or
2. The proposed drain will have a substantial impact upon property in another district.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-13. Notice of state engineer's determination of statewide or interdistrict significance. Upon a determination by the state engineer that a project is of statewide or interdistrict significance, the state engineer shall notify the following of that determination by mail:

1. The state game and fish department.
2. The state department of health and consolidated laboratories.

3. The state highway department.
4. Any district which may sustain a substantial impact from the project.
5. Any political subdivision which owns land which would be affected.
6. The district in which the majority of the project watershed is located.
7. All persons who have, in writing, notified the state engineer that they wished to be notified of a state engineer's determination that a project was of statewide or interdistrict significance.
8. The applicant.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-14. Evaluation of application of statewide or interdistrict significance - Factors considered. Applications of statewide or interdistrict significance will be evaluated by giving consideration to the following factors:

1. The volume of water proposed to be drained and the impact of the flow or quantity of this water upon the watercourse into which the water will be drained.
2. Adverse effects which may occur to the lands of lower proprietors. This factor is limited to the project's hydrologic effects such as erosion, duration of floods, impact of sustained flows, and impact on the operation of downstream water control devices.
3. The engineering design and other physical aspects of the drain.
4. The water resources policy as expressed in North Dakota Century Code section 61-01-26. Because the water resources policy was adopted for purposes of protecting North Dakota's right to use water in the state, the consideration to be given under this policy to evaluate a drainage application is confined to how the project will affect future or present water appropriations and whether the project conflicts with any state, regional, or local water resources plan as adopted pursuant to subsection 4 of North Dakota Century Code section 61-01-26 or subsection 3 of North Dakota Century Code section 61-16.1-10.

5. The wetlands policy as expressed in North Dakota Century Code section 61-32-01, including:
 - a. The project's impact upon the area's erosion potential.
 - b. The project's impact upon agricultural productivity in the project watershed.
 - c. The value of the wetlands in their undrained and drained conditions for flood control, wildlife, water purification, ground water recharge, agriculture, water development, and water management, and whether those values will be adequately protected if the wetlands are replaced.
6. The project's impact upon flooding problems in the project watershed.
7. Reasonable features that could be included in the drainage project to protect downstream water quality.
8. Other factors unique to the project not previously considered pursuant to subsections 1 through 7.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-01-26, 61-16.1-10(3), 61-32-01, 61-32-03

89-02-02-15. Evaluation of applications of statewide or interdistrict significance - Information to be used. In the state engineer's evaluation of an application of statewide or interdistrict significance, the state engineer shall use all relevant documentary information submitted and oral testimony given for the board's consideration at its meeting. The state engineer may also use any information in the files and records retained by his office or, engineering information developed or obtained through investigation of the project area by his staff.

The state engineer may also seek information and comment from independent sources. However, the state engineer is not required to delay his decision on an application for more than thirty days from the date of request while waiting for comment from these sources.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-06, 61-32-01, 61-32-03

89-02-02-16. Procedure, availability, and contents of notice of state engineer's decision to grant or deny application of statewide or interdistrict significance.

1. If the state engineer determines an application should be denied, the state engineer shall provide a copy of the determination to the appropriate board and the permit applicant. If the state engineer determines an application should be granted, with or without conditions, the state engineer shall provide a copy of the determination to the appropriate board, the permit applicant, the state game and fish department, the state department of health and consolidated laboratories, the state highway commissioner, and all parties to the board's meeting. Other members of the public may view the record at the office of the State Engineer, 900 East Boulevard, Bismarck, during normal business hours.
2. One copy of the determination to grant or deny a permit may be provided to persons not provided copies pursuant to subsection 1 upon written request. Additional copies will be provided upon payment for necessary copying, handling, and postage.
3. Copies of the notice of the state engineer's determination must be provided to persons who made a written request for notice of that project not more than two months, or later than one day, prior to the date of the state engineer's decision.
4. The notice of decision must include: the name of the drain; the applicant's name; whether the application was granted or denied and the date of the decision; the availability of the full text of the decision; and the fact that within thirty days of the date of the state engineer's decision a hearing may be requested on the project. The notice must also state that a valid request for a hearing must be in writing; must specifically state facts from which it is evident the hearing applicant is factually aggrieved by the state engineer's decision; and must state what material facts, or conclusions, are believed to be erroneous and why they are believed to be erroneous.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-03

89-02-02-17. Request for state engineer's hearing. All requests for a formal hearing on a project must be made in writing to the state engineer. To be valid a request must be made within thirty days of the date of the state engineer's decision. The request must be in writing and must specifically state facts from which it is evident the hearing applicant is factually aggrieved by the state engineer's decision; and must state which material facts, or conclusions, are believed to be erroneous and why they are believed to be erroneous.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 61-32-03

89-02-02-18. Notice of state engineer's hearing. Upon receipt of a valid request for a hearing on an application of statewide or interdistrict significance, the state engineer shall set a date for a hearing and publish notice in the official newspaper of the county within which a majority of the drainage basin is located. Publication must be once a week for two consecutive weeks. Final publication must be no less than seven days before the hearing date. The person requesting the hearing shall give notice by certified mail to the state department of health and consolidated laboratories, the state game and fish department, the state highway department, and all parties to the board's hearing at least twenty-one days before the date of the hearing. If such notice is not provided, the hearing may not be held. The notice must give essential information about the proposed drainage application including the date, time, and location of the hearing. All hearings will be held in Bismarck.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 28-32-04

89-02-02-19. Evidentiary standard at state engineer's hearing. The formal rules of evidence do not apply at the state engineer's hearing. However, all evidence, both oral and written, must be relevant and confined to the matters put in issue by any valid request of hearing described in section 89-02-02-17.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 28-32-06, 61-32-03

89-02-02-20. Time for determination by the state engineer - Copies of decision. Unless the state engineer determines the matters put in issue by the request for a hearing raise complex or unique issues, the state engineer's decision will be rendered within thirty days of the close of the state engineer's hearing. A copy of the decision will be given to all parties of record at the state engineer's hearing either personally or by certified mail.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-03-13, 61-32-04
Law Implemented: NDCC 28-32-13

89-02-02-21. Consideration of evidence not contained in the state engineer's record. The record of the state engineer's hearing must be closed at the conclusion of the state engineer's formal hearing. It is in the state engineer's discretion to receive testimony and evidence

that is not contained in the record. However, the state engineer, before considering any evidence not contained in the record, will transmit the evidence to the parties of record for their examination and comment. The costs of reproducing and transmitting the evidence must be paid in advance by the party offering the evidence. Written comment or a request for a supplemental hearing must be submitted to the state engineer within ten days after transmittal of the additional evidence. Any request for a supplemental hearing must provide sufficient information to allow the state engineer to determine if a supplemental hearing is warranted. If a supplemental hearing is warranted, ten days' notice by certified mail must be afforded the parties of record to inform them of the date, time, place, and nature of the hearing. All supplemental hearings must be held in Bismarck.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-07

89-02-02-22. Conditions to permits. Unless otherwise specifically stated, all permits of statewide or interdistrict significance must include the following conditions:

1. All highly erodible drainage channels will be seeded to a sod forming grass and the vegetative cover be adequately maintained for the life of the project or control structures will be installed, or a combination of these two criteria.
2. The project and the rights granted under the permit are subject to modification to protect the public health, safety, and welfare.
3. All permits must be conditioned that construction commence within two years from the date of final approval except as provided by section 89-02-02-23.
4. After July 1, 1989, all permits must be conditional that replacement of the appropriate number of wetland acres, as determined by the evaluation team under chapter 89-02-03, must be met before construction may commence.

The state engineer may attach other conditions to an approved permit if deemed necessary.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-15-08, 61-32-03

89-02-02-23. Commencement of construction. Construction of a project permitted pursuant to this chapter may not commence until the law concerning replacement of wetlands is satisfied.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-03

89-02-02-24. Time within which to begin construction of drain.

The recipient of a permit to drain under this chapter shall commence actual construction within two years of the date the state engineer's decision granting the permit is final. The two-year period does not begin until any appeal of the state engineer's decision or board's decision is completed, nor does it run during the course of any other legal action brought to challenge the state engineer's decision or board's decision or halt or modify the project.

Once construction has been commenced the permit recipient shall make good faith efforts and satisfactory progress, as determined jointly by the state engineer and the water resource board, toward completion of the project.

If the two-year period runs before construction is commenced, the permit recipient may make a written request for a one-year extension which must be granted by both the state engineer and the water resource board. All requests for extensions must be made at least sixty days prior to the end of the two-year period and must specifically state why construction has not commenced. Upon expiration of any extension, the permit recipient may request a further extension.

In the event the two-year period passes without the commencement of construction, an extension of the period as provided in this section, or legal process staying construction, the permit is void.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-13, 61-32-03

89-02-02-25. Notice of drainage application denials to commissioner of agriculture. The board or, in the case of projects of statewide or interdistrict significance, the state engineer shall notify the commissioner of agriculture of any drainage application which was denied. The notification must identify wetlands that may be eligible for inclusion in the state's waterbank program and must be sent to the commissioner by certified mail not later than ten days after the decision.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-01

**CHAPTER 89-02-03
WETLANDS BANK**

Section	
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89-02-03-01. Scope of chapter. This chapter contains rules by which the state game and fish department and the state engineer jointly determine the number of wetlands acres to be drained and find those wetland acres will be replaced by an equal acreage of replacement wetlands. This chapter includes rules governing the wetlands bank.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-02. Definitions. In this chapter, unless the context otherwise requires, the following definitions apply:

1. "Applicant" means a person requesting a drainage permit.
2. "Application" means an application for a permit to drain made pursuant to North Dakota Century Code section 61-32-03.
3. "Appropriate replacement acres" means fifty percent of the wetland acres required within the same county or contiguous counties as the wetland being drained. However, if less than fifty percent are available in that county or a contiguous county, wetlands in the same biotic area are considered appropriate replacement wetlands.
4. "Biotic area" means one of the four biotic areas which are designated: (a) Agassiz Lake Plain, (b) Southern Drift Plain, Northeastern Drift Plain, Northwestern Drift Plain, Turtle Mountain, (c) Missouri Coteau, Coteau Slope, and (d) Missouri Slope, Little Missouri Slope.

5. "Board" means the managers of the water resource district in which the wetland to be drained is located.
6. "Drain" is any structure or construction which changes the water surface area of a wetland.
7. "Evaluation team" consists of one staff member from each of the state engineer's and commissioner's staff. Their duties include determining the number of wetland acres to be drained, whether replacement acres are available in the wetlands bank, and whether manmade wetlands not in the wetlands bank have material wildlife values.
8. "Manmade wetland" is a wetland with material wildlife values which results from man's activities whether inadvertent or not.
9. "Normal water level" is the level arrived at by evaluating a wetland under the criteria set forth in section 89-02-03-04.
10. "Replacement wetland" includes both restored natural wetlands and manmade wetlands with material wildlife values.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-01, 61-32-03, 61-32-04, 61-32-05

89-02-03-03. Selection and membership of evaluation team. Upon receipt of an application to drain which has been processed and approved by the board, the state engineer shall inform the commissioner. The state engineer and commissioner shall appoint one member from each of their staffs to determine the wetland acreage to be drained, the availability of replacement wetland in the wetland bank, and the wildlife values of any manmade wetlands created after December 31, 1986, not contained in the wetlands bank but which an applicant wishes to use for replacement wetlands. In the event the evaluation team cannot agree, they shall each state their position in writing and present it to both the commissioner and the state engineer who shall together resolve the issue.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-02, 61-32-03, 61-32-04, 61-32-05

89-02-03-04. Evaluation of wetland acres. In evaluating the acreage of wetlands to be debited, the evaluation team shall first determine the normal water level for each wetland. This determination will be made by using one or more of the following data sources:

1. Aerial photos from various years, and when available, precipitation data of the area for a period of at least twelve months prior to the date of any photos used.
2. United States geological survey seven and one-half minute topographic maps.
3. Where determined necessary by the evaluation team after consultation with both the state engineer and the commissioner, an actual onsite investigation.
4. United States fish and wildlife service's national wetland inventory.
5. United States department of agriculture soil conservation service wetland determinations made to implement swampbuster.
6. Any historical cropping records which are documented and applicable to the situation.
7. Underlying soil type.
8. Any information considered important by the evaluation team.

When any photos, documents or governmental determinations of the presence or absence of a wetland is provided by the applicant with the board approved permit, the evaluation team will consider that information in making its determination.

The evaluation team shall coordinate its decision with the state engineer's decision on a permit application of statewide or interdistrict significance.

The sum of the area of land within the normal water level for each wetland to be drained will be the acreage of wetlands to be drained.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-05. Notification of acres to be replaced and sources for replacement. Once a determination of the number of wetland acres to be drained has been made, and in the case of an application of statewide or interdistrict significance after the state engineer's approval of a drainage permit pursuant to chapter 89-02-02, the evaluation team shall report its findings to the state engineer and the commissioner. The state engineer shall then notify the applicant and the board by certified mail of:

1. The number of wetland acres required to replace the acres to be drained.

2. Whether sufficient appropriate replacement acres are available in the wetlands bank including: the number of acres in that county or contiguous counties, or if less than fifty percent of the required acreage is available in the account for that county or contiguous counties, the availability of replacement wetlands within the same biotic area, and the availability of replacement wetlands in other areas of the state.
3. The average cost of replacement acres in the wetlands bank at the time of the notice.
4. That the applicant's desire to use wetlands from the wetlands bank must be expressed in writing by personally delivering it to the state engineer's office, or by mailing it by certified or regular mail to the state engineer, within thirty days of the date the notice of availability is received by the applicant or his agent. If the applicant chooses to mail the notice by regular mail, the date of receipt by the state engineer tolls the thirty-day time period.

The notice to the landowner must include a notice of intent form for the landowner's use.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-06. Notice of intent - Payment. Within thirty days of the receipt of notice of the acreage to be replaced and the availability of replacement acres, the applicant shall provide written notice of intent to use wetlands from the wetlands bank to the state engineer by personal delivery or by certified or regular mail on the notice of intent form. The state engineer will notify the commissioner upon receipt of the notice.

The form must include:

1. Name and address of the applicant.
2. The drain permit application number.
3. Whether applicant will use replacement acreage from the wetlands bank.
4. Other information deemed pertinent by the state engineer.

For purposes of this section, the average cost of replacement acres is determined on the day the notice of intent is received in the office of the state engineer if the notice is delivered personally, the date the notice of intent is mailed if sent by certified mail, or the date of receipt by the state engineer if mailed by regular mail. The state engineer shall notify the applicant by certified mail of the

amount due to defray ten percent of the average cost of replacement. Within ten days of the state engineer's sending of this notice, the landowner shall give a cashier's or certified check for at least that amount to the state engineer. The check must be payable to the wetlands replacement fund.

Upon receipt, as determined above, of a notice of intent from an applicant whose permit has received the necessary approval from the board and the state engineer, the acreage to be replaced shall become a debit to the wetlands bank.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-07. Priority. Except in cases where a governmental agency or a coal mining operation has created or restored a wetland for the purposes of an identified project, priority in time gives the superior right to use credits in the wetlands bank. However, in no event may a governmental agency or a coal mining operation hold a priority for the same credit for more than two years unless an application to drain and use that credit has been made. A priority dates from the conditional approval by the board of an application to drain. Provided, if any notice of intent or certified or cashier's check is not received within the time period allowed under section 89-02-03-05, the priority date is the date of receipt by the state engineer of the certified or cashier's check. Regardless, the notice of intent must be in writing on the form prescribed by the state engineer and must be personally delivered to the office of the state engineer or mailed by certified or regular mail.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-08. Credits to wetlands bank - Qualification. To qualify as a credit to the wetlands bank, a manmade wetland must have material wildlife values. Any natural wetland which is restored in whole or in part shall qualify as a credit to the wetlands bank unless the drainage of the wetland was not authorized by state law and no debit was made pursuant to section 89-02-03-15.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-09. Wetlands bank - What is credited. All previously drained natural wetlands, which are or were restored, or manmade wetlands with material wildlife values, which are or were created, by any person after December 31, 1986, must be credited to the wetlands

bank unless their restoration or creation is required as mitigation of a federal aid project. Each acre credited must be identified on a map by the state engineer.

The acreage credited to the wetlands bank must be determined using the method for evaluating acreages to be drained. Unauthorized drainage constructed after July 1, 1975, and closed pursuant to final action under North Dakota Century Code section 61-32-07 may not be a credit to the wetlands bank.

For purposes of this section, a federal aid project is one where mitigation is required by federal statute or rule.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-10. Cost of wetland in wetlands bank. The cost of acquisition, easement, lease, and construction of replacement wetlands is the actual cost of acquisition plus either the construction cost to restore a natural wetland or the cost to construct a manmade wetland. The average cost of a wetland acre is calculated by summing the cost of each of the total wetland acres ever placed in the bank and dividing the sum by the total number of acres ever placed in the bank. If wetlands are donated to the wetland bank, the state engineer and commissioner shall determine the probable cost of acquisition and restoration or construction and that amount must be factored into the average cost of wetlands in the bank.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-04, 61-32-05

89-02-03-11. Determination of material wildlife values. In determining whether a manmade wetland has material wildlife values, the evaluation team shall consider:

1. Underlying soil type and its suitability for wetlands as determined by soil survey data.
2. Water depth and duration of inundation.
3. Adjacent land use.
4. The existence of a buffer suitable for wildlife habitat.
5. If the replacement wetland will compliment existing wildlife resources.
6. The potential for use by wildlife.

7. The likelihood desirable wetland vegetation will establish itself in and around the wetland.
8. Other factors pertinent to the wetland under consideration.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-02(5), 61-32-05

89-02-03-12. **Records of wetlands bank.** The state engineer shall maintain an accounting of credits and debits in the wetlands bank. Credits and debits will be separately identified by county and biotic area.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-05

89-02-03-13. **Deposit of funds.** The commissioner shall deposit all moneys paid under section 89-02-03-06 into the wetlands replacement fund.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-09

89-02-03-14. **Debits.** Debits to the wetlands bank must be accounted for in the order of priority set forth in section 89-02-03-07. At least fifty percent of the wetlands to be drained shall become a debit or be replaced from the wetlands bank in this order:

1. Wetlands located in the same county.
2. Wetlands located in a contiguous county.
3. Wetlands located in the same biotic area.

If the drainage project is conducted by a government agency or pursuant to a coal mining operation, wetlands may be replaced from credits created by that agency or operation for that project if the project was identified when the wetlands were credited to the bank, if the state engineer was informed at the time of crediting of the intended use of

the wetlands, and if the order for replacing the wetlands acres set forth in this section is complied with.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04.

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-05

89-02-03-15. **Wetland bank - What is debited.** All wetlands drained after January 1, 1987, except for those projects for which permits were requested prior to January 1, 1987, must be charged as a debit against acreage credit balances. The acreage of the wetlands debited must be determined in accordance with section 89-02-03-04 and must include both authorized and unauthorized drainage. A drainage permit may not be granted if the project will result in a debit balance to the wetlands bank exceeding two thousand five hundred acres [1011.70 hectares].

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-03, 61-32-04, 61-32-07, 61-32-08

CHAPTER 89-02-04 DRAINAGE COMPLAINT APPEALS

Section

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89-02-04-23	Decision of State Engineer on Record of Hearing

89-02-04-01. Scope of chapter. This chapter contains the procedure for appealing the decision of a water resource board on a complaint of drainage constructed without proper approval after January 1, 1987.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-02. Definitions. Unless the context otherwise provides, the following definitions apply:

1. "Affected landowner" means a person with any property interest, including a lease in land on which the drain complained of is located or land which is affected by the drain complained of.
2. "Aggrieved party" means any individual or entity who participated in the state engineer's or board's consideration of an appeal and who is actually damaged by the board's or state engineer's decision.
3. "Appeal" means an appeal from the decision of a board concerning a drain constructed after January 1, 1987.
4. "Board" means the board of the water resource district in which the complaint is brought.
5. "Complaint" is a document which alleges drainage has been conducted without proper authorization. It is filed on a form supplied to the water resource board by the state engineer.
6. "Party" includes the petitioner and any respondent, the board from which the decision is appealed, and any entity or individual which participated in the complaint process in front of the board. The designation as a party does not bestow standing to appeal a decision of the board to the state engineer or the decision of the state engineer to a court of law.
7. "Petitioner" means any aggrieved party who files a timely and proper appeal, or an affected landowner who files a timely and proper demand for hearing with the state engineer.
8. "Respondent" is a person who, within twenty days of notice of an appeal of a board's decision on a drainage complaint, files a notice with the state engineer of the person's intent to participate in the appeal. The person who filed the complaint, and the person against whom the complaint was filed, must be either a respondent or a petitioner. These persons and the board must be allowed to participate whether

or not any notice of participation is filed with the state engineer. A person may not be a respondent to an appeal of a board's decision unless the person participated by providing information to the board for its consideration.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-08

89-02-04-03. Filing of complaint. All complaints are filed with the water resource board in the county in which the drainage is located. Complaints filed with the state engineer will be forwarded to the board, unless the complaint is filed because of the board's inaction on a complaint.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-08

89-02-04-04. Complaint to state engineer - State engineer's action when board fails to act. If a board does not make a decision upon a drainage complaint within one hundred twenty days of its filing with the board, the person filing the complaint with the board may file a request for state engineer action with the state engineer. The request must include a copy of the complaint filed with the board and any documentation the landowner wishes the state engineer to consider. The state engineer shall then determine whether to commence action against the board or conduct the investigation himself.

History: Effective October 1, 1988.
General Authority: NDCC 28-32-02, 61-32-04
Law Implemented: NDCC 61-32-08

89-02-04-05. Form of appeal. If a board makes a decision on a drainage complaint, any appeal to the state engineer must be in writing on the form prescribed by the state engineer and must include:

1. The identity of all parties to the complaint.
2. Petitioner's interest in the water resource board's decision, including a statement of the impact the decision will have upon the petitioner.
3. The relief petitioner seeks.
4. A statement identifying the errors in the water resource board's decision which entitle the petitioner to the relief sought.

5. All facts presented to the water resource board which support the petitioner's position.
6. A legal description of the drainage area involved.
7. A map depicting the drainage area and identifying the drainage complained of.
8. A certified or cashier's check to cover the cost of preparing a transcript of the proceedings before the board.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-06. State engineer's review of board's decision. Upon receipt of a written appeal by an aggrieved party from a decision of a water resource district pursuant to North Dakota Century Code section 61-32-07, the state engineer shall review the board's decision. In the review the state engineer will consider only:

1. Ownership of the land on which the drain is located.
2. Topographic maps and aerial photographs of the area.
3. Any existing surveys of the area.
4. The documentation and testimony given to the board for its consideration.
5. Any pertinent rules of the appropriate board.
6. The board's decision.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-07. Sufficiency of information on appeal.

1. Once the state engineer's review under section 89-02-04-06 is complete, the state engineer will determine whether the information reviewed is sufficient to make a sound decision.
2. If the information is not sufficient, the state engineer will either conduct further investigations himself or return the record to the board for its further investigation.
3. If the information is sufficient, the state engineer shall determine whether a drain, lateral drain, or ditch has been opened or established contrary to North Dakota Century Code

title 61 or any rules adopted by the state engineer or the board. If so, the state engineer will take one of the three actions set forth in North Dakota Century Code section 61-32-08. If the drain has not been opened contrary to North Dakota Century Code title 61 or a drainage rule, the complaint must be dismissed. In either case the state engineer will notify all parties of his decision by certified mail. The notice of decision will include the names and addresses of all parties.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-08. State engineer's independent investigation. After reviewing the board's decision and the items identified in section 89-02-04-06, the state engineer may conduct his own investigation if the information is insufficient. The investigation may include an onsite inspection and survey of the property involved and other activities deemed appropriate by the state engineer. Any investigation the state engineer undertakes in response to a complaint filed with the state engineer because a board has not acted will be conducted pursuant to this rule.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-09. Demand for hearing by affected landowner. Hearings demanded pursuant to North Dakota Century Code section 61-32-08 by an affected landowner must be made by certified mail within fifteen days of the state engineer's decision. The affected landowner shall also notify all parties by certified mail of the landowner's demand for hearing within fifteen days of the state engineer's decision. Hearings will be conducted as set forth in sections 89-02-04-11 through 89-02-04-23. The demand must state the issues to be addressed at the hearing.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-10. Request for hearing by others than affected landowners. Any aggrieved party may request a hearing on the state engineer's decision. A request for a hearing must specifically state the reason for the request, and a copy of the request must be sent by certified mail to the state engineer and to each party within fifteen days after notice of the state engineer's decision has been mailed. If granted, the hearing must be conducted as set forth in sections 89-02-04-11 through 89-02-04-23.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-11. Appointment of hearing officer. Upon receipt of an appeal or demand for a hearing, the state engineer will appoint a hearing officer to:

1. Determine if the appeal is timely and proper.
2. Preside over the hearing.
3. Administer the prehearing activities.
3. Prepare a recommended decision.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-12. Purpose of hearing. If the hearing officer determines a hearing should be held, one will be conducted to:

1. Obtain further testimony from the parties.
2. Allow the state engineer to examine other witnesses and evidence.
3. Provide the parties with an opportunity to cross-examine witnesses called by the state engineer.
4. Allow the parties to call other witnesses to present evidence.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-13. Qualifications of witnesses at state engineer's hearings. Unless agreed to by both petitioner and respondent and allowed by the hearing officer, no persons who failed to participate in the water resource board's determination under North Dakota Century Code section 61-32-07 may be called to present evidence or testimony for consideration. However, the state engineer may call witnesses on the state engineer's own motion without the agreement of any party if the state engineer feels information known by the person will assist the hearing officer in making his recommended decision.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-14. Notice of hearing. When the hearing officer determines a date for a hearing, the hearing officer will notify the water resource board, the petitioner, and the respondent of the time and date of the hearing. In the case of a demand by an affected landowner pursuant to section 89-02-04-09, the hearing officer shall give the notice of the hearing date within fifteen days of the demand. The notice must be given by certified mail not less than thirty days prior to the date set for the hearing. All hearings will be held in Bismarck, North Dakota.

The notice must state that parties may present testimony at the hearing, petitioner and respondent may call witnesses at the hearing, and of the hearing officer's appointment as hearing officer. The notice must also state that each party shall identify the position it is urging the state engineer to adopt. Those urging the state engineer's decision should be affirmed must be designated respondents. Those urging reversal or modification of the state engineer's decision must be designated petitioners.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-15. Issues limited to those contained in notice. The notice of hearing will identify the issues to be addressed and identified in the demand or the request for a hearing. Evidence and testimony at the hearing will be limited to the issues set forth in the notice of hearing.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-08, 61-03-22, 61-32-08

89-02-04-16. Notice of witnesses at hearing - Time frame. At least thirty days prior to the date set for the hearing, the petitioner shall notify other parties, the board, the state engineer, and the hearing officer by certified mail of all witnesses the petitioner will call and the content of their testimony. At least thirty days prior to the date set for the hearing, the respondent shall notify other parties, the board, the state engineer, and the hearing officer by certified mail of witnesses to be called by the respondent and the content of their testimony. Within twenty days of the date of the hearing, the petitioner shall notify the parties, the board, the state engineer, and the hearing officer by certified mail of any rebuttal witnesses to be called and the content of their testimony. The state engineer shall notify the parties, the board, and the hearing officer of any witnesses the state engineer intends to call in the notice of hearing. However, if testimony or evidence not provided to the board and not considered in the state engineer's determination will be presented by others, the failure of the state engineer to identify a witness should not preclude

the state engineer from providing other testimony and evidence of a technical nature.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-17. Subpoena of witnesses. If any party desires the hearing officer to subpoena any witness for attendance at the hearing, the hearing officer must be notified of the intent to subpoena the witness at least seven days prior to the date of the hearing. The hearing officer may not subpoena a witness unless the request for a subpoena:

1. Is written.
2. States the subject matter of the testimony to be given.
3. States the time and date upon which the witness is to appear.
4. Is accompanied by a certified check for the fees allowed by law for one day for such witness. The fees allowed by law include, but are not limited to, mileage to and from the hearing, per diem, and in the case of the state engineer's staff, the salary for that individual.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-05(13), 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-09, 61-03-05, 61-32-08

89-02-04-18. Prehearing conference. A prehearing conference to clarify issues, resolve any conflicts, and stipulate to any matter will be held at least seven days prior to the date of the hearing. At the conference the parties shall provide sufficient copies of exhibits to be presented to all parties, the board, the state engineer, and the hearing officer. The hearing officer may allow the prehearing conference to be held by telephone if exhibits are provided to all parties, the board, the state engineer, and the hearing officer at least three days prior to the prehearing conference.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-19. Order of presentation at hearing. At the hearing the petitioner shall present the petitioner's case first. The respondent then presents the respondent's case, followed by the board and the state engineer. After all participants have presented their case, a participant may present other evidence or testimony to rebut that presented by another participant.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-20. Cross-examination. Oral cross-examination of adverse witnesses must be allowed by the petitioner and the respondent. Each side, petitioner and respondent, shall designate one individual to cross-examine witnesses which that side did not call. In addition, the state engineer and the board may cross-examine any witnesses which they did not call. However, if a party demonstrates to the hearing officer

that the party's position is not adequately represented by any other party it may be allowed to cross-examine witnesses on the party's own.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-03-22, 61-32-08

89-02-04-21. Record of hearing - Consideration by hearing officer. After the hearing is over the record will be closed. The hearing officer will consider only material contained in the record and will not accept and consider any information after the hearing unless the evidence was not provided at the hearing because of circumstances beyond the control of the party presenting the evidence. Information submitted after the hearing may be considered by the state engineer in making the state engineer's decision, but only in accordance with North Dakota Century Code section 28-32-07.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-07, 61-32-08

89-02-04-22. Recommendation of hearing officer. After the hearing officer completes the consideration required under section 89-02-04-20, a written recommendation must be made to the state engineer.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 61-32-08

89-02-04-23. Decision of state engineer on record of hearing. The state engineer will review the record, the hearing officer's recommendation, and any additional evidence received pursuant to North Dakota Century Code section 28-32-07, and make a final determination. If the conclusion is the drain, lateral drain, or ditch was constructed contrary to a board rule or title 61, the state engineer will take one of the actions prescribed by North Dakota Century Code section 61-32-08.

If the report concludes the drain, lateral drain, or ditch was lawfully constructed, the complaint will be dismissed.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-04

Law Implemented: NDCC 28-32-07, 61-32-08

CHAPTER 89-02-05 LICENSES FOR EMERGENCY DRAINAGE

Section

89-02-05-01	Scope of Chapter
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89-02-05-04	Emergency Defined
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89-02-05-08	Requirement for Permanent Drainage Application
89-02-05-09	Closure of Temporary Drain
89-02-05-10	License Does not Absolve Liability for Damages

89-02-05-01. Scope of chapter. This chapter contains rules concerning temporary emergency drainage licenses.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-02. Definitions. Unless the context otherwise provides, the following definitions apply:

1. "Application" means an application for a license for an emergency drain.
2. "Board" means the board of the water resource district in which the emergency drainage license is sought.
3. "Drain" means any structure or construction which changes the water surface area of a wetland.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-03. Emergency drain - License to be temporary. A license received under this chapter shall have a duration of not more than six months unless extended as provided in this chapter.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-04. Emergency defined. An emergency for purposes of this chapter is a situation which if not addressed immediately will cause significant damage to property which would not occur under normal circumstances. An emergency may exist as a result of an extremely wet cycle. However, damages caused by deliberate acts of man do not constitute an emergency under this chapter unless the damage can be alleviated without harm to other persons or property.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-05. Form of application for an emergency drain. Applications for an emergency drainage license must be written and must contain the following information:

1. Landowner's name and address.
2. Legal description of land on which emergency drain will be located.
3. A map showing the location of the drain.
4. An estimate of the surface acreage of the wetland and the volume of water to be drained by the emergency drain.
5. A list of all landowners whose land is adjacent to the course the water drained will take for a distance of one mile [1.61 kilometers] downstream, along with the addresses and telephone numbers of these landowners.
6. Copies of any written permissions received from downstream landowners.
7. A compilation of any refusals to give permission, written or oral, from downstream landowners.
8. A description of the emergency.
9. Written permission allowing the state engineer and board to inspect the drain.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-06. Procedure for consideration of emergency drain application. An application for an emergency drain must be sent to the board and the state engineer simultaneously. The application will be reviewed by the board and the state engineer for completeness. The board and state engineer shall also make a preliminary determination as to the existence of an emergency. As soon as possible, a conference call or an onsite meeting among the board, the state engineer, and other affected parties, as determined by the state engineer, must be held. The applicant may make a statement concerning the emergency drainage application during the conference call or onsite meeting. The conference call and onsite meeting must be electronically recorded by both the state engineer and the board. During the call or meeting, but after all parties have been given an opportunity to present their views, the board shall make a recommendation to the state engineer whether the license should be granted or not.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-07. Decision on emergency license application - Conditions. After completion of the conference call, the state engineer shall consider the written information received, the matters discussed during the conference call or onsite meeting, and the recommendation of the board. Based upon this information, the state engineer shall decide whether the emergency license should be granted. If the license is granted, the state engineer may place any condition upon it which the state engineer deems necessary to protect public or private interests. A condition may include a requirement for a bond. The license must contain a condition limiting the duration of the license to a time frame of not greater than six months.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-08. Requirement for permanent drainage application. If the drain is to be permanent, the applicant shall submit a drainage permit application to the state engineer in accordance with chapter 89-02-02. The application must be submitted within thirty days of the date the emergency permit is granted.

Once a permanent drainage permit application is properly submitted, the board shall process the application within the time frames provided under chapter 89-02-02. The fact a drainage permit application is made within thirty days of the date the emergency permit is granted extends the term of the emergency license until final action on the drainage permit application has been taken.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-09. Closure of temporary drain. If an application for a permanent drainage permit is not submitted within thirty days of the date the emergency license is granted, the applicant shall immediately make preparations for closure of the drain unless the applicant has applied in writing for an extension from the state engineer and that extension has been granted. Preparations must include entering any necessary contracts for earthmoving work to be performed by other individuals, obtaining any permission necessary from other landowners, and obtaining any other necessary permits or authorizations. Closure of the drain must be completed on or before the license expiration date. The applicant shall keep the board and the state engineer informed of the applicant's progress in closing the drain.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

89-02-05-10. License does not absolve liability for damages. The receipt of a license for emergency drainage does not relieve an applicant from liability for damages resulting from any activity conducted pursuant to the license.

History: Effective October 1, 1988.

General Authority: NDCC 28-32-02, 61-03-13, 61-32-03

Law Implemented: NDCC 61-32-04

TITLE 92
Workers Compensation Bureau

AUGUST 1983

92-01-02-12. Mileage and per diem for travel to and from medical treatment. The North Dakota workers compensation bureau recognizes payment for travel to and from medical treatment as an implied benefit of reasonable and necessary medical expenses, pursuant to the terms of North Dakota Century Code section 65-05-07.

The North Dakota workers compensation bureau shall pay mileage for travel to and from medical treatment at the rate set by the legislative assembly for state employees, as provided in North Dakota Century Code section 54-06-09. Mileage must be measured from city limit to city limit. In order to foster efficiency and to administer the provisions of this rule, no payment for mileage may be paid when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month.

The North Dakota workers compensation bureau shall pay the costs of necessary lodging and per diem when the claimant must be away from home as a result of necessary medical treatment at the rate set by the legislative assembly for state employees, as provided in North Dakota Century Code section 44-08-04, except that out-of-state lodging may not exceed one hundred twenty-five percent of the allowance for in-state lodging. However, the bureau may pay no more than actual cost of meals and lodging, with receipt required.

History: Effective August 1, 1988.

General Authority: NDCC 65-02-08

Law Implemented: NDCC 44-08-04, 54-06-09, 65-02-08, 65-05-07

