

The following proposed North Dakota administration rules changes were approved at the December 5<sup>th</sup> Administrative Rules Committee meeting and are effective on January 1, 2018.

To download a copy of the 2013 FDA Model Food Code, visit the U.S Food and Drug Administration's (FDA) website at:  
<http://www.fda.gov/food/guidanceregulation/retailfoodprotection/foodcode/ucm374275.htm>.  
Click the link "Download Food Code 2013" and the link "Download Food Code 2013 Supplement" for a complete copy of the FDA 2013 Model Food Code.

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

### **Food Code**

[Repealed effective 12-31-17]

## **CHAPTER 33-33-04.1**

### **Food Code**

#### **Section**

33-33-04.1-01 Adoption of the U.S. Food and Drug Administration 2013 model food code by reference

**33-33-04.1-01. Adoption of the U.S Food and Drug Administration 2013 model food code by reference.** The provisions of the U.S. Food and Drug Administration 2013 Model Food Code and its supplement are adopted by reference into this chapter, with the following modifications:

1. Paragraph 2-102.12. Certified Food Protection Manager, for the purposes of this chapter, is excluded.
2. Paragraph 8-401.10. Establishing Inspection Interval, for the purposes of this chapter, is revised as follows:
  - a. Except as specified in paragraphs b and c of this section, the regulatory authority may, at any time during operation, inspect a food establishment. The frequency of inspection shall be determined by the department based on the level of risk categorization, complaints, and previous compliance history.
  - b. The regulatory authority may increase the interval between inspections if:
    - (1) The food establishment is fully operating under an approved and validated hazard analysis critical control point plan as specified under § 8-201.14 and paragraphs 8-103.12 (A) and (B);
    - (2) The food establishment is assigned a less frequent inspection frequency based on a written RISK-based inspection schedule that is being uniformly applied throughout the jurisdiction. The food establishment may be contacted by telephone or other means by the regulatory authority to ensure that the establishment manager and the nature of food operation are not changed; or

- (3) The establishment's operation involves only coffee service and other unpackaged or prepackaged food that is not time/temperature control for safety food such as carbonated beverages and snack food such as chips, nuts, popcorn, and pretzels.
- c. The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:
- (1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) Has inexperienced food employees.
3. Paragraph 8-405.11 Timely Correction, for the purpose of this chapter, is revised as follows:
- a. Except as specified in paragraph b of this section, a permit holder shall at the time of inspection correct a violation of a priority item or priority foundation item of this Code and implement corrective actions for a hazard analysis critical control point plan provision that is not in compliance with its critical limit.<sup>Pf</sup>
- b. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame and approve a compliance schedule.
4. Paragraph 8-406.11 Time Frame for Correction, for the purpose of this chapter, is revised as follows:
- a. Except as specified in paragraph b of this section, the permit holder shall correct core items by a date and time agreed to or specified by the regulatory authority.
- b. The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under paragraph a of this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

**History:**

**General Authority:** NDCC 23-09

**Law Implemented:** NDCC 23-09