

**CHAPTER 33-33-04.1**  
**FOOD CODE**

Section

33-33-04.1-01 Adoption of the United States Food and Drug Administration ~~2013~~2017 Model Food Code by Reference

**SECTION 1:** Section 33-33-04.1-01 is amended as follows:

**33-33-04.1-01. Adoption of the United States food and drug administration 20132017 Model Food Code by reference.**

The provisions of the United States food and drug administration ~~2013~~2017 Model Food Code and its supplement are adopted by reference into this chapter, with the following modifications:

1. Paragraph 1-201.10 Statement of Application for Listing of Terms. For purposes of this chapter, subparagraph (3)(f) of the food establishment definition is revised as follows:
  - (f) A kitchen in a private home, such as a self-declared child care provider or an early childhood program licensed for thirty or fewer children pursuant to North Dakota Century Code chapter 50-11.1; or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guests bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed eighteen, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority; or
2. Paragraph 2-102.12 Certified Food Protection Manager. For the purposes of this chapter, is excluded.
3. Paragraph 2-102.20(B) Food Protection Manager Certification. For the purposes of this chapter, is excluded.
- ~~2.4.~~ Paragraph 8-401.10 Establishing Inspection Interval. For the purposes of this chapter, is revised as follows:
  - a. Except as specified in subdivisions b and c of this subsection, the regulatory authority, at any time during operation, may inspect a food establishment. The department shall determine the frequency of inspection 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 section 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 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 periodically shall 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.

3.5. Paragraph 8-405.11 Timely Correction. For the purpose of this chapter, is revised as follows:

- a. Except as specified in subdivision b of this subsection, a permit holder at the time of inspection shall 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.

4.6. Paragraph 8-406.11 Time Frame for Correction. For the purpose of this chapter, is revised as follows:

- a. Except as specified in subdivision b of this subsection, the permitholder 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 subdivision a of this subsection if a written schedule of compliance is submitted by the permitholder and no health hazard exists or will result from allowing an extended schedule for compliance.

**History:** Effective January 1, 2018; amended effective January 1, 2024.

**General Authority:** NDCC 23-09

**Law Implemented:** NDCC 23-09