

Date: December 29, 2023

TO: Industry and Regulatory Food Safety Professionals and Food Business Owners

FROM: Food and Lodging Unit, ND Department of Health and Human Services

SUBJECT: The Adoption of the 2017 FDA Food Code – Effective January 1, 2024

The North Dakota Department of Health and Human Services, Food and Lodging Unit, recognizes the U.S. Food and Drug Administration (FDA) Food Code as the most practical, science-based guidance for ensuring that food offered at retail and in food service is safe, unadulterated and honestly presented. Effective January 1, 2024, the updated ND Food Code, N.D.A.C. § 33-33-04.1, adopts the 2017 FDA Model Food Code and its supplement by reference with modifications. A copy of the updated ND Food Code is available online at www.hhs.nd.gov/health/food-and-lodging.

To download a copy of the 2017 FDA Food Code, visit the U.S Food and Drug Administration's (FDA) website at: www.fda.gov/food/fda-food-code/food-code-2017. Click on the link "Food Code 2017" and the link "Supplement to the Food Code 2017" for a complete copy of the FDA 2017 Food Code.

The enclosed summary provides major changes to the newly adopted ND Food Code. The requirement that the Person in Charge be a Certified Food Protection Manager (paragraphs 2-102.12 and 2-102.20(B)) is excluded from the ND Food Code, N.D.A.C. § 33-33-04.1. For food establishments serving an extensive menu including complex food processes and for those serving a highly susceptible population (for example, infants, toddlers, the elderly, or the immunocompromised), the presence and supervision of a Certified Food Protection Manager is recommended by the Department as a best practice but is not required unless otherwise specified under local ordinance.

State and local health inspectors are available to answer questions about the changes to the food code requirements during onsite inspections.

For questions about the changes to ND Food or the 2017 FDA Food Code, please call the Food and Lodging Unit at 701.328.1291, email foodandlodging@nd.gov, or contact your local health unit.

Summary of ND Food Code Changes
North Dakota Administrative Code 33-33-04.1:
Adoption of the 2017 FDA Food Code

This summary provides a list of changes to the ND Food Code based on the 2017 FDA Food Code and its supplement with modifications (effective on January 1, 2024). The primary intent of this document is to provide a synopsis of the major changes to the Food Code and should not be relied upon as an absolute comparison that identifies every change.

To download the complete 2017 FDA Food Code and its supplement, visit www.hhs.nd.gov/health/food-and-lodging and the FDA's website at www.fda.gov/food/fda-food-code/food-code-2017.

For questions about the 2017 FDA Food Code, please call the Food and Lodging Unit at 701.328.1291, or contact your local health unit.

Chapter 1 Purposes and Definitions

1-201.10(B)

Added new term “**Intact Meat**”

Revised “**Vending Machine**” to be more inclusive of the diverse means of payment available.

Revised the definition of “**Mechanically Tenderized**” to be consistent with the USDA FSIS description of “mechanically tenderized” in the 2015 final rule titled Descriptive Designation of Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Product (80 FR 28153). The rule established labeling requirements for raw or partially cooked mechanically tenderized beef products and clarified that products injected with a marinade or solution are considered mechanically tenderized.

Modified the definition of “**Food Establishment**” subparagraph (3)(f) as follows: 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.

Chapter 2 Management and Personnel

2-101.11

Amended to add a new paragraph (C) to allow food establishments in limited circumstances, such as in a restricted office building or breakroom, that pose minimal risk of causing, or contributing to, foodborne illness to operate without a person in charge, as approved by the regulatory authority.

2-102.12 (Excluded from the ND Food Code NDAC 33-33-04.1)

Amended to state that the Person in Charge shall be the Certified Food Protection Manager.

2-102-20 (Excluded from the ND Food Code NDAC 33-33-04.1)

Amended to state that it is the Person in Charge who must be a Certified Food Protection Manager to comply with Section 2-102.12.

2-103.11

Amended to add new paragraph (l) to address additional duty requirement for the Person in Charge to ensure employees are routinely monitoring food temperatures during hot and cold holding.

2-201.11, 2-201.12, 2-201.13

Amended to revise the descriptors of illness Typhoid fever, caused by *Salmonella* Typhi, and *Salmonella* (nontyphoidal) to allow the use of plain language descriptors to simplify the restriction and exclusion criteria.

2-401.13

Amended to add Use of Bandages, Finger Clots or Finger Stalls and how to cover them.

2-501.11

Amended to indicate that procedures for the clean-up of vomiting and diarrheal events for employees to follow shall be written. Guidance added to Annex 3.

Chapter 3 Food

3-302.11

Added new subparagraph (A)(1)(c) to indicate separating raw animal foods during storage, preparation, holding and display from fruits and vegetables before they are washed.

3-401.11

Amended subparagraph (A)(a)(b) to include the term intact meat.

Amended subparagraph (A)(2) to reflect new cooking time in seconds for ratites, mechanically tenderized and injected meats, comminuted fish, comminuted meat, comminuted game animals commercially raised for food or under voluntary inspection, and raw eggs that are not prepared to a consumer's order from 15 seconds to 17 seconds.

Amended subparagraph (A)(3) to reflect new cooking time for poultry, baluts, wild game animals, stuffed foods or stuffing containing fish, meat, poultry, or ratites from 15 seconds to <1 second (instantaneous).

3-401.13

Amended to delete the phrase “fruits and vegetables” and replace it with the term “plant foods”.

3-501.13

Amended paragraphs (A)–(C) to re-designate from a Core Item to Priority Foundation Item.

3-501.19

Amended to add new subparagraphs (B)(2)(a), (b), (c) to amend (B)(2) to address a ready-to-eat produce or hermetically sealed food that is rendered time/temperature control for safety food upon cutting, chopping, or opening of a hermetically sealed container to begin at 21°C (70°F) or less and remain at 21°C (70°F) or less within a maximum of 4 hours.

3-502.12

Amended paragraph (C) to add in additional exception criteria for fish that is reduced oxygen packaged at retail to bear a label indicating that it is to be kept frozen until time of use.

Amended to add new subparagraphs (e)(iii) to address cook chill/sous vide products cooled to 5°C(41°F) in the sealed PACKAGE or bag as specified under §3-501.14 and subsequently cooled to 1°C (34°F) and moved to 5°C (41°F) holding temperature and held for a max of 7 days.

Chapter 4 Equipment, Utensils, and Linens

4-205.10

Amended to clarify that equipment that has been certified for conformance to an appropriate American National Standard is deemed to comply with the equipment sanitation provisions contained in Parts 4-1 and 4-2.

Part 4-3

Amended to add new subpart 4-303, Cleaning Agents and Sanitizers

Amended to add new section 4-303.11 Cleaning Agents and Sanitizers, Availability, to require that equipment and utensil cleaning agents and sanitizers be provided and readily accessible for use.

Amended 4-303.11 to add the risk designation of priority foundation item.

Chapter 5 Water, Plumbing, and Waste

5-203.11

Amended to remove the allowance for the use of chemically treated towelettes for handwashing because the means to wash hands in limited situations is readily available and handwashing has been determined to be effective.

Chapter 6 Physical Facilities – No Changes

Chapter 7 Poisonous or Toxic Materials – No Changes other than re-designating paragraphs.

Chapter 8 Compliance and Enforcement

8-103.12

Amended to include a new paragraph (A) addressing maintenance of approved variance at the food establishment.

8-201.12

Amended paragraph (C) to include the following “materials and finish schedules” at the end of the sentence.

8-201.14

Amended to clarify contents of a HACCP plan submission required under SS 8-201.13 such as provide general information for the establishment, include information required by the regulatory authority, include copies of blank records and forms with HACCP plan submission, and redesignate existing paragraphs.