

FOOD SAFETY
State and Federal Standards and Regulations

North Dakota

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NORTH DAKOTA

North Dakota food safety is regulated by the North Dakota Food, Drug, and Cosmetic Act.¹⁹⁶⁸ The Federal Food, Drug and Cosmetic Act will be known herein as the “Federal Act.”¹⁹⁶⁹

Prohibited Acts

North Dakota prohibits:

- ! the manufacture, sale, or delivery, holding or offering for sale of foods that have been adulterated or misbranded;
- ! the adulteration or misbranding of any food;
- ! the receipt in commerce of any food that is adulterated or misbranded;
- ! the sale, delivery for sale, holding for sale, or offering for sale of any food under an emergency permit control without a permit;
- ! false advertising;
- ! refusal to permit entry inspection or the taking of a sample;
- ! the removal or disposal of a detained or embargoed food article;
- ! the adulteration, mutilation, destruction, obliteration, or removal of any part of the label on a food if it results in the food being adulterated or misbranded; or
- ! false labeling.¹⁹⁷⁰

Penalties

If someone perpetrates a prohibited act, then the State Department of Health can apply for

¹⁹⁶⁸ N.D. CENT. CODE § 19-02.1 (1997).

¹⁹⁶⁹ § 19-02.1-01(9).

¹⁹⁷⁰ §§ 19-02.1-02, 19-02.1-11 (emergency permit conditions).

temporary or permanent injunctions in the district court of Burleigh County, North Dakota even if other remedies exist at law.¹⁹⁷¹ Violators of prohibited acts can be charged criminally.¹⁹⁷² The state department of health can also seize foods when it has probable cause to believe the foods have been adulterated, misbranded, or are dangerous. The agent of the department can then initiate proceedings to condemn the food. Once condemned, the food must be destroyed at the expense of the owner who is also responsible for court costs, fees, storage, taxes and other proper expenses.¹⁹⁷³

Adulteration

A food is adulterated if:

- (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health. A substance is not adulterated if it is an added substance in such a small quantity that it does not render the food injurious to health;
- (2) it bears or contains any added poisonous or added deleterious substance except a pesticide used in agriculture, a food additive, or a safe color additive;
- (3) it is a raw agricultural commodity containing or bearing an unsafe pesticide chemical;
- (4) it is a food additive with unsafe tolerance levels of poisonous or deleterious substances and conforms with § 19-02.1-12;

¹⁹⁷¹ § 19-02.1-03.

¹⁹⁷² § 19-02.1-04. Two exceptions are made from criminal liability. The exceptions are for a guaranty or undertaking received in a good faith purchase and the media unless the media refuses to cooperate with the department of health to ascertain who disseminated the false information.

¹⁹⁷³ § 19-02.1-05.

- (5) it consists in whole or part of a diseased, contaminated, filthy, putrid, or decomposed substance or is otherwise unfit for food;
- (6) it has been produced, prepared, packed, or held under unsanitary conditions that made it become contaminated with filth or rendered diseased, unwholesome, or injurious to health;
- (7) it comes from a diseased animal or an animal that died by some other way than slaughter or has fed upon the uncooked offal from a slaughterhouse;
- (8) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the food injurious to health;
- (9) any valuable constituent of the food has been omitted or abstracted from the food in whole or in part;
- (10) any part of the food has been substituted in whole or part;
- (11) any damage to the food or inferiority has been concealed in any manner;
- (12) it bears any color additive which is unsafe under § 19-02.1-12; or
- (13) it has been intentionally subjected to radiation which was not in conformity with a regulation or federal law.¹⁹⁷⁴

Misbranding

A food will be deemed misbranded if:

- (1) its label is false or misleading in any particular;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food as regulated by the standard of identity of the

¹⁹⁷⁴ § 19-02.1-09.

products;

- (4) its container is so made, formed, or filled as to be misleading;
- (5) in package form it is not labeled according to specific guidelines;
- (6) it is labeled in such a way as to be misunderstood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be a food that has been designated with a standard of identity unless it conforms to that standard;
- (8) it does not conform to set standards of quality or of fill of container unless it is labeled as such designated foods;
- (9) the food is not designated with a standard of identity, then it is misbranded unless labeled with the common or usual name of the food with the common or usual name of the ingredients;
- (10) it is ingredient and when used as directed it results in the final food product being adulterated or misbranded;
- (11) it is a color additive unless the label conforms to the requirements prescribed for such color additive;
- (12) it is a raw agricultural commodity that bears or contains a pesticide from the soil and does not bear a label identifying that pesticide unless the commodity is exempted due to removal from container before sale as is the custom of the trade of that commodity; or
- (13) its package or label violated the Poison Prevention Packaging Act of 1970.¹⁹⁷⁵

¹⁹⁷⁵ § 19-02.1-10.

Food Additives - Tolerances

Any poisonous or deleterious substance, food additive, pesticide chemical or color additive must be regulated in quantity, use or intended use. The state department of health has the authority to set tolerance levels for the aforementioned substances. To set the levels, the department considers, all pertinent information regarding the composition of the substance, the probable composition of any substance formed in or on a food resulting from the use of the substance, the probable consumption of the substance, safety factors determined by scientific data, availability of any need practical methods used to determine the identity or quantity of the substance and its possible impurities, and facts supporting the suggested useful purpose of the substance.¹⁹⁷⁶

Inspections

The state department of health may inspect any factory, warehouse, or establishment where food is manufactured, processed, packed, or held for introduction into commerce at all reasonable hours. The department may also enter into any vehicle being used to transport or hold such food to inspect and/or secure samples or specimens after paying or offering to pay for such samples.¹⁹⁷⁷

The state department of health may not inspect slaughterhouses, meatpacking, and meat processing plants where cattle, swine, sheep, goats, horses, or other equines are slaughtered for human food or where that meat is processed or prepared for human food if those places are inspected under the North Dakota Meat Inspection Act, or the Federal Meat Inspection Act at 21

¹⁹⁷⁶ § 19-02.1-21.

¹⁹⁷⁷ *Id.*

U.S.C. 71-91.¹⁹⁷⁸

Publication

The state department of health may publish reports summarizing all judgements, decrees, and court orders rendered under the Act. Further, the department can disseminate other information regarding food that it deems necessary in the interest of public health to protect consumers from fraud.¹⁹⁷⁹

Potatoes

While North Dakota does not specify that its regulation regarding potatoes is for safety, it does require inspections, grading and labeling of that product.¹⁹⁸⁰ Specific labeling requirements,¹⁹⁸¹ inspections¹⁹⁸² and penalties for violation including both criminal¹⁹⁸³ and civil¹⁹⁸⁴ suggest a desire upon the part of North Dakota to ensure a safe potato supply.

Milk Regulation

Representatives of the Department of Agriculture may enter a licensed dairy facility to inspect and/or investigate. The Commissioner of the Department of Agriculture may also subpoena any relative records of the licensee.¹⁹⁸⁵ An administrative process is set up to deal with

¹⁹⁷⁸ *Id.*

¹⁹⁷⁹ § 19-02.1-22.

¹⁹⁸⁰ § 4-09.01 *et seq.* (1987 & Supp 1997).

¹⁹⁸¹ § 4-10.10.

¹⁹⁸² § 4-10.06.

¹⁹⁸³ § 4-10.20.

¹⁹⁸⁴ § 4-10.18.

¹⁹⁸⁵ § 4-30-03.9.

violations.¹⁹⁸⁶ During an inspection, the Commissioner has free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting and marketing of any milk product. The Commissioner may open and inspect any suspect containers. A refusal to allow inspection may result in the suspension of the person's license.¹⁹⁸⁷

Testing of Milk

Every purchaser of milk from any dairy producer must collect a minimum sample of milk from each bulk tank of milk received. That sample must then be tested according to the Commissioner's specifications.¹⁹⁸⁸

Grading of Cream

All cream must be graded, and unlawful cream which contains dirt, filth or other extraneous matter must be colored with a harmless vegetable color and then returned to the producer.¹⁹⁸⁹

Labeling Requirements for Dairy Products

Milk and milk products must be labeled with the correct grade, weight, volume quantity or size as well as whether the product is raw, pasteurized, homogenized, reconstituted, or condensed.¹⁹⁹⁰ Mislabeling could lead to revocation of license and civil penalties.¹⁹⁹¹

¹⁹⁸⁶ § 4-30-05.

¹⁹⁸⁷ § 4-30-13.2.

¹⁹⁸⁸ § 4-30-30.20.

¹⁹⁸⁹ § 4-30-22.

¹⁹⁹⁰ § 4-30-45.

¹⁹⁹¹ § 4-30-53.

Beverages

North Dakota makes it unlawful to “sell, offer, or expose for sale, or have in possession with intent to sell” any beverage that contains any ingredient that is “injurious to health, or is adulterated, misbranded, or insufficiently or improperly labeled.”¹⁹⁹² Beverages must be labeled under the same standards of purity and quality as found in the Food, Drug and Cosmetic Act.¹⁹⁹³

Miscellaneous

Certain standards are established for vitamin and mineral levels in flour.¹⁹⁹⁴ Sampling and inspection procedures were established as well as penalties for violations including criminal charges.¹⁹⁹⁵

¹⁹⁹² § 19-08-01.

¹⁹⁹³ § 19-08-03.

¹⁹⁹⁴ § 19-17-02.

¹⁹⁹⁵ § 19-17-04, 05.