

The following rules are being proposed for readoption with changes as part of the Periodic Review and Expiration of Existing Rules Process.

The comment period for these rules is 9/1/16 – 10/31/16

Requesting a Public Hearing:

Any person may request a public hearing on the proposed rules by submitting a request in writing no later than 9/16/16 to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Changes:

These rules have gone through the required review process and are now begin re-adopted. These rules deal with regulatory functions within the Food and Drug and Standards divisions relating to various food programs like Good Manufacturing Practices, Canned Dog and Cat Food, Feed, adoptions by reference for the Pasteurized Milk Ordinance, Disposition of Unclean Food, Testing of Aflatoxin in Cornmeal, Bottled Water, Milk and Milk Products, Marketing of Shell Eggs, and various consumer standards programs like weights and measures, motor fuels and LP Gas. The changes to rules clean up language and bring the standards in line to federal programs, standards and guidelines. We are also updated names and references that were out of date.

The amendment to 09E .0107 updates the rule to comply with AAFCO standards. AAFCO voted on and passed increased clarification of the term dehydrated to include artificial, thermal, sun-cured and direct. The acceptance of these additional qualifiers means that not all products that have been artificially dried are now considered dehydrated. The appropriate ingredient term or definition can be located in the Official Publication of the Association of American Feed Control Officials.

To Submit a Comment:

Written comments may be directed to Tina Hlabse, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001. Tina.hlabse@ncagr.gov

1 02 NCAC 09C .0501 is proposed for readoption with substantive changes as follows:

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3 **SECTION .0500 - SMOKED AND SMOKE-FLAVORED FISH**

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5 **02 NCAC 09C .0501 GENERAL: CURRENT GOOD MANUFACTURING PRACTICES AND FISH AND**
6 **FISH AND FISHERY PRODUCTS**

7 (a) The criteria in 21 CFR Part 110 shall apply in determining whether the facilities, methods, practices, and controls used for
8 the manufacture, processing, packing, or holding of fish and seafood products are in conformance with and are operated or
9 administered in conformity with good manufacturing practices to produce, under sanitary conditions, food for human
10 consumption.

11 (b) The criteria in 21 CFR Part 123 – Fish and Fishery Products as adopted by reference in 02 NCAC 09B .0116(o)(56) shall
12 apply to facilities subject to Part 123 that engage in processing of fish and fishery products.

13 ~~(b)~~(c) The criteria in these Rules set forth additional requirements for the smoked or smoke-flavored fish industry.

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15 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*
16 *Eff. January 1, 1985.*

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1 02 NCAC 09C .0502 is proposed for reoption with substantive changes as follows:

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3 **02 NCAC 09C .0502 DEFINITIONS**

4 The following definitions apply;

5 (1) Smoked or smoke-flavored fishery products means the finished food prepared by:

6 (1) Treating fish with salt (sodium chloride), and

7 (2) Subjecting it to the direct action of smoke from burning wood, sawdust, or similar material and/ or
8 imparting to it the flavor of smoke by a means other than the direct action of smoke such as immersing
9 it in a solution of wood smoke. This definition does not alter the labeling requirements.

10 ~~"Smoked fish" means any fish that is prepared by treating it with salt (sodium chloride) and then subjecting it to the~~
11 ~~direct action of smoke from burning wood, sawdust, or similar material.~~

12 ~~(2) "Smoke-flavored fish" means any fish that is prepared by treating it with salt (sodium chloride) and then~~
13 ~~imparting to it the flavor of smoke by other than the direct action of smoke. This Paragraph does not alter~~
14 ~~the labeling requirements.~~

15 ~~(3)~~(2) "Hot process smoked or hot-process smoke-flavored fish" means the finished food prepared by subjecting
16 forms of smoked fish to heat.
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18 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

19 *Eff. January 1, 1985.*
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1 02 NCAC 09C .0506 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09C .0506 EQUIPMENT AND PROCEDURES**

4 (a) All food-contact surfaces (tanks, belts, tables, utensils, and other equipment) shall be made of readily cleanable materials.

5 (b) Metal seams shall be smoothly soldered, welded, or bonded.

6 (c) Each freezer and cold storage compartment used for the product shall be fitted with at least the following:

7 (1) An automatic control for regulating temperature;

8 (2) An indicating thermometer so installed as to show accurately the temperature within the compartment;

9 (3) A temperature recording device ~~thermometer~~ so installed as to indicate accurately at all times the
10 temperature within the compartment.

11 (d) Thermometers or other temperature-measuring devices shall have an accuracy of +2 degrees ~~fahrenheit.~~ Fahrenheit.

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13 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

14 *Eff. January 1, 1985.*

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1 02 NCAC 09C .0701 is proposed for readoption with substantive changes as follows:

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SECTION .0700 - BOTTLED WATER

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5 **02 NCAC 09C .0701 SCOPE**

6 The source approval requirements of this Section apply to bottled water sources located within the state.

7 Bottled water from sources located outside the state must comply with the source approval requirements of Title

8 21, Code of Federal Regulations, Part 129, which is adopted by reference in 02 NCAC 09B .0116(p)(16). 02

9 NCAC 09B .0116(o)(57).

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11 *History Note: Authority G.S. 106-139;*

12 *Eff. April 1, 1992;*

13 *Temporary Amendment Eff. May 13, 1996;*

14 *Amended Eff. April 1, 2003; April 1, 1997.*

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1 02 NCAC 09C .0703 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09C .0703 SOURCE APPROVAL**

4 (a) If the proposed source is from an existing approved public water supply system, proceed to Paragraph (e) of this Rule.

5 (b) If the proposed source is a well, the provisions of 15A NCAC 18C, Rules Governing Public Water Supplies, shall apply.

6 Copies are available upon request from the Public Water Supply Section.

7 (c) If the proposed source is a spring, approval requires a two step process. The first step is approval of the spring site. A
8 representative of the Department of ~~Environment, Health and Natural Resources~~ Environmental Quality shall conduct an
9 initial site investigation. Consideration shall be given to spring location, potential for surface water influence, hydrological
10 and geological features, proximity of potential sources of pollution, and site ownership and control.

11 (1) If the investigation reveals influence by surface water or other factors which render the site unsuitable for
12 development as a safe water source, the investigation shall be terminated;

13 (2) If the investigation does not reveal influence by surface waters, and all other factors as set forth in this Rule
14 are considered satisfactory for site development, proceed to Paragraph (d) of this Rule;

15 (3) If the investigation reveals factors which warrant further investigation, the Department of ~~Environment,~~
16 ~~Health, and Natural Resources~~ Environmental Quality may require, as a condition for continued
17 investigation, evaluation of the site or specific factors influencing the site by a geologist or engineer
18 licensed to practice in North Carolina. If the Department of ~~Environment, Health, and Natural Resources~~
19 Environmental Quality determines that the investigation and report illustrate that the questionable factors
20 do not hinder the suitability of the site to produce a safe water source, proceed to Paragraph (d) of this
21 Rule.

22 (d) The second step of the spring investigation requires water sampling and data collection to determine the capability of
23 source water to meet current North Carolina drinking water quality standards under the most severe anticipated environmental
24 conditions. The following requirements apply to the water sampling and data collection process:

25 (1) Sampling and data collection shall be conducted by the spring owner or his representative for the following
26 parameters:

27 (A) Flow in gallons per minute (on-site measurement);

28 (B) Precipitation in inches (on-site measurement);

29 (C) Temperature (on-site measurement);

30 (D) pH;

31 (E) Conductivity;

32 (F) Turbidity;

33 (G) Coliform bacteria;

34 (H) Microscopic analysis for organic debris, larvae, animal or insect parts, algae, diatoms, rotifers,
35 coccidia and giardia cysts;

- 36 (2) The minimum sampling and data collection period shall be six consecutive months. The period shall also
37 include a minimum of two storm events (two or more inches of rainfall in a 24-hour period). It is the
38 owner's responsibility to monitor rainfall in the vicinity of the spring site;
- 39 (3) Parameters listed as (1)(A) through (1)(F) of this Paragraph shall be monitored at least weekly on the same
40 day of the week before a storm event occurs. After a storm event occurs, parameters (1)(A) through (1)(F)
41 of this Paragraph shall be monitored within 24 hours and then twice a week for two weeks. Parameter
42 (1)(G) of this Paragraph shall be monitored at least monthly plus one sample within 24 hours after each
43 storm event. Parameter (1)(H) of this Paragraph shall be measured at least two times during the sampling
44 period. The first analysis shall be conducted during the first month of the sampling period. At least one of
45 the samples shall be collected within 24 hours of a storm event;
- 46 (4) The extent to which the spring is developed before beginning the monitoring process is at the discretion of
47 the owner. This may have a bearing on the analysis results, and some spring site improvement may be
48 advisable. Unfavorable sample results will not be discounted on the basis of inadequate spring
49 development at the time of sample collection. The owner may wish to obtain the advice of an engineer or
50 other consultant. If the owner intends to develop the spring in its final form before monitoring, he shall
51 complete the requirements of Paragraph (e) of this Rule prior to construction;
- 52 (5) These measurements and analyses shall be conducted in accordance with the recommendations of the
53 current edition of "Standard Methods for the Examination of Water and Wastewater" which is adopted by
54 reference at ~~2 NCAC 09B .0016 (n)~~ 02 NCAC 09B .0116(n) and at a laboratory certified by the State of
55 North Carolina for parameters (1)(D) through (1)(H) of this Paragraph. All measurements and sample
56 results (with attached laboratory analysis reports) shall be kept in a neat tabular form and submitted to the
57 Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality at the end of the
58 monitoring period. The spring owner may consult with the Department of ~~Environment, Health, and~~
59 ~~Natural Resources~~ Environmental Quality at any point during the monitoring period. Upon review of the
60 data and sample results, the Department of ~~Environment, Health, and Natural Resources~~ Environmental
61 Quality shall determine the capability of the source to meet current North Carolina drinking water quality
62 standards. If the water source is determined to be unsatisfactory, the investigation shall be terminated. If
63 the source is determined to be satisfactory, proceed to Paragraph (e) of this Rule.
- 64 (e) Plans and specifications for construction of the source, protective covering, piping, and storage facilities shall be
65 submitted to the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality by an engineer licensed
66 to practice in the State of North Carolina for review and approval prior to beginning construction or letting a contract. For
67 spring sources, the plans and specifications may be presented by the licensed engineer at any point during the process outlined
68 in Paragraph (d) of this Rule. Springs shall not be constructed to the final intended form until plans and specifications for the
69 spring have been approved.
- 70 (f) The bottling of water or the selling of water for bottling shall not begin until compliance with this Section has been
71 completed and the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality receives certification

72 from an engineer licensed to practice in North Carolina that the project has been constructed in accordance with the approved
73 plans and specifications.

74 *History Note: Authority G.S. 106-139;*
75 *Eff. April 1, 1992.*

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1 02 NCAC 09E .0103 is proposed for readoption with substantive changes as follows:

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02 NCAC 09E .0103 COMMODITIES DECLARED EXEMPT

The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of Section 106-284.33(4) of the North Carolina Commercial Feed Law of 1973:

- ~~(1)~~ — raw meat,
- ~~(2)~~(1) hay,
- ~~(3)~~(2) straw,
- ~~(4)~~(3) stover,
- ~~(5)~~(4) silages,
- ~~(6)~~(5) cobs,
- ~~(7)~~(6) husks,
- ~~(8)~~(7) hulls when unground and when not mixed or intermixed with other materials;

provided that these commodities are not adulterated within the meaning of Section 106-284.38(1) of the North Carolina Commercial Feed Law of 1973.

History Note: Authority G.S. 106-284.41;
Eff. February 1, 1976;
Amended Eff. October 1, 1987.

1 02 NCAC 09G .0101 is proposed for readoption with substantive changes as follows:

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3 **SUBCHAPTER 09G - MILK AND MILK PRODUCTS**

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5 **SECTION .0100 - PASTEURIZED MILK ORDINANCE**

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7 **02 NCAC 09G .0101 ADOPTION BY REFERENCE**

8 The following are adopted by reference, including subsequent amendments:

9 (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements,"
10 U.S. Department of Agriculture, Agricultural Marketing ~~Service~~. Service, Dairy Programs. A copy of
11 this document is available at no cost from the USDA, Agricultural Marketing Service, at
12 www.ams.usda.gov. A farmstead shall be exempt from all mandatory milk testing except the mastitic
13 milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk
14 or milk product production facility that uses only milk from its own animals in its product production
15 and has no other source of milk.

16 ~~(2) "General Instructions for Performing Farm Inspections According to the USDA Recommended~~
17 ~~Requirements for Milk for Manufacturing Purposes and its Production and Processing, for Adoption~~
18 ~~by State Regulatory Agencies," U.S. Department of Agriculture, Agricultural Marketing Service.~~

19 ~~(3)~~(2) "Grading and Inspection - General Specifications for Approved Dairy Plants and Standards for Grades
20 of Dairy Products," 7 C.F.R. 58. A copy of this document is available at no cost from the Government
21 Publishing Office at www.gpo.gov.

22 ~~(4) 15A NCAC 18A .1210, "Restrictions on Dispensing Raw Milk."~~

23 ~~Copies of these materials are available at no cost from the Food and Drug Protection Division.~~

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26 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

27 *Eff. February 1, 1976;*

28 *Amended Eff. August 1, 2002; December 1, 1987; January 1, 1987; January 1, 1985; August 1, 1982.*

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1 02 NCAC 09G .0103 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09G .0103 VITAMIN ASSAY OF MILK PRODUCTS**

4 Assays of vitamin content shall be made ~~when~~ as required by the Commissioner of Agriculture in a laboratory approved by
5 ~~him for such examinations, provided that periods between assays shall not exceed one year.~~ PMO. All assay costs shall be
6 paid by the milk product processor.

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8 *History Note: Authority G.S. 106-267; 106-267.3;*
9 *Eff. February 1, 1976;*
10 *Amended Eff. May 1, 1983; March 12, 1981.*

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02 NCAC 09G .2001 is proposed for readoption with substantive changes as follows:

SECTION .2000 - GRADE A MILK SANITATION

02 NCAC 09G .2001 GENERAL - ADOPTION BY REFERENCE

The 1978 Pasteurized Milk Ordinance, including all appendices and administrative procedures, recommended by the U.S. Public Health Service/Food and Drug Administration (hereinafter referred to as the "Milk Ordinance") is adopted by reference in accordance with G.S. 150B-14(c). Copies of the Milk Ordinance may be obtained from the Division of Environmental Health.

The North Carolina Board of Agriculture incorporates by reference, including subsequent amendments and editions, the Pasteurized Milk Ordinance (PMO), including all appendices, supplements, memoranda, procedures, FDA's Milk Guidance methods and administrative procedures recommended by the U.S. Public Health Service/Food and Drug Administration (hereinafter referred to as the "Pasteurized Milk Ordinance") published by the U.S. Department of Health and Human Services, Public Health Service and the Food and Drug Administration. A certified copy may be secured from the Department of Health and Human Services, Public Health Service, Food and Drug Administration, Division of Plant and Dairy Food Safety (HFS-316), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

*History Note: Authority G.S. 106-266.31;
Eff. January 1, 1985;
Amended Eff. December 1, 1990; June 1, 1988; July 1, 1986;
Transferred from 15A NCAC 18A .1201 Eff. May 1, 2012.*

1 02 NCAC 09G .2003 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09G .2003 DEFINITIONS**

4 ~~(a) The following definitions shall apply throughout this Section:~~

5 ~~(1) "Division" means the Division of Environmental Health or its delegated representative.~~

6 ~~(2) "Independent Milk Distributor" means any person who is not under the control or ownership of a milk~~
7 ~~plant and sells or offers for sale to another any Grade "A" pasteurized milk or milk products.~~

8 ~~(b) All definitions contained in the Milk Ordinance shall apply throughout this Section:~~

9 The following definitions shall apply:

10 (1) All definitions contained in the Pasteurized Milk Ordinance shall apply.

11 (2) In all locations where the Pasteurized Milk Ordinance is referenced, it is defined as the current Pasteurized
12 Milk Ordinance.

13 (3) Whenever "the of" appears in the Pasteurized Milk Ordinance, the word "State" is inserted in the
14 first blank, and the words "North Carolina" are inserted in the second blank and are to be substituted as the
15 proper legal jurisdiction.

16 (4) In all instances within the Pasteurized Milk Ordinance where the term "Regulatory Agency" appears, the
17 "Regulatory Agency" is to be defined as the North Carolina Department of Agriculture & Consumer
18 Services, Food and Drug Protection Division.

19 (5) In all instances within the Pasteurized Milk Ordinance where the term "Government Water Control
20 Authority" appears, the "Government Water Control Authority" is to be defined as the North Carolina
21 Department of Environmental Quality, Division of Water Resources.

22 (6) "Independent Milk Distributor" is defined as any person who is not under the control or ownership of a
23 milk plant and sells or offers for sale any Grade "A" pasteurized milk or milk products.

24 (7) In the Pasteurized Milk Ordinance, Introduction, Section 2, it states that:

25 "Any person who shall violate any of the provisions of this Ordinance shall be guilty of a
26 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$.....,
27 and/or such persons may be enjoined from continuing such violations. Each day upon which such a
28 violation occurs shall constitute a separate violation."

29 (8) The amount allowable (\$.....) is defined in GS § 106-124.1. Civil penalties. The Commissioner may assess a
30 civil penalty of not more than two thousand dollars (\$2,000) against any person who violates a provision of this
31 Article or any rule adopted pursuant to this Article. In determining the amount of the penalty, the Commissioner
32 shall consider the degree and extent of harm caused by the violation.

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34 *History Note: Authority G.S. 106-266.31;*

35 *Eff. January 1, 1985;*

36 *Amended Eff. December 1, 1990;*

37 *Transferred from 15A NCAC 18A .1203 Eff. May 1, 2012.*

1 02 NCAC 09G .2004 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09G .2004 PERMITS REQUIRED**

4 ~~(a) No person shall produce, process, transport, or distribute Grade "A" milk without first obtaining a permit from the~~
5 ~~Division. A person who complies with the requirements of this Section shall be issued a permit. Permits shall not be~~
6 ~~transferable with respect to persons or locations.~~

7 ~~(b) The following shall be exempt from the permit requirements of Paragraph (a) of this Rule:~~

8 ~~(1) — grocery stores;~~

9 ~~(2) — restaurants;~~

10 ~~(3) — soda fountains; and~~

11 ~~(4) — other establishments where milk or milk products are only served or sold at retail.~~

12 ~~(c) The following shall not be required to obtain a hauler's permit:~~

13 ~~(1) — milk producers who transport milk or milk products only from their own dairy farm;~~

14 ~~(2) — employees of a milk distributor or milk plant operator that has a valid permit; and~~

15 ~~(3) — employees of a milk transportation company that has a valid permit and transports milk from a milk~~
16 ~~plant, receiving station, or transfer station.~~

17 (a) It shall be unlawful for any person who does not possess a permit from the North Carolina Department of Agriculture
18 and Consumer Services, Food and Drug Protection Division to manufacture, bring into, send into or receive into the State
19 of North Carolina or its jurisdiction, for sale, to sell, or offer for sale therein or to have in storage any milk and/or milk
20 products, as defined in the current version of the *Pasteurized Milk Ordinance*.

21 (b) Permits shall not be transferable with respect to persons or locations.

22 (c) No exemptions are allowed except those defined within the current version of the *Pasteurized Milk Ordinance*.

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25 *History Note: Authority G.S. 106-266.31;*

26 *Eff. January 1, 1985;*

27 *Amended Eff. December 1, 1990;*

28 *Transferred from 15A NCAC 18A .1204 Eff. May 1, 2012.*

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1 02 NCAC 09G .2005 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09G .2005 PROCEDURE FOR ISSUANCE OF PERMIT: SAMPLING: EMBARGO PERMIT**

4 ~~(a) Milk plants shall be issued a North Carolina permit by the Division. This permit shall cover the milk plant and~~
5 ~~plant-owned distributors. The Division shall assure that a minimum of four samples of raw milk for pasteurization shall~~
6 ~~be taken and recorded from each milk plant after receipt of the milk by the plant and prior to pasteurization every~~
7 ~~consecutive six months, and shall sample Grade "A" pasteurized milk and milk products a minimum of four times every~~
8 ~~consecutive six months. Samples shall be collected from the milk plant or plant-owned distributors.~~

9 ~~(b) Independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall be issued a North~~
10 ~~Carolina permit by the Division.~~

11 ~~(c) A local health department without a milk plant or independent milk distributor located in its jurisdiction is~~
12 ~~authorized, but is not required to sample Grade "A" pasteurized milk or milk products. The local health department shall~~
13 ~~maintain a record of temperature and cleanliness in retail stores, grocery stores, milk delivery trucks, and similar~~
14 ~~establishments to determine compliance with Sections 2, 4, 9, and 10 of the Milk Ordinance.~~

15 ~~(d) Dairy farms shall be issued a North Carolina permit by the Division. Dairy farms transferring from one milk plant or~~
16 ~~bulk tank unit to another shall not be issued a new permit, but the dairy farm records shall be transferred to the~~
17 ~~appropriate Division representative maintaining the records for the new milk plant or bulk tank unit. The Division shall~~
18 ~~assure that a minimum of four samples of raw milk for pasteurization are recorded every consecutive six months.~~

19 ~~(a) Permits will be issued per the Administrative Procedures defined in Section 3. Permits of the current Pasteurized~~
20 ~~Milk Ordinance.~~

21 ~~(b) Independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall be issued a North~~
22 ~~Carolina permit by the North Carolina Department of Agriculture and Consumer Services.~~

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25 *History Note: Authority G.S. 106-266.31;*
26 *Eff. January 1, 1985;*
27 *Amended Eff. April 1, 1994; December 1, 1990;*
28 *Transferred from 15A NCAC 18A .1205 Eff. May 1, 2012.*
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1 02 NCAC 09K .0101 is proposed for readoption with substantive changes as follows:

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3 **SUBCHAPTER 9K - SAMPLING AND TESTING OF MILK AND CREAM: FROZEN DESSERTS**

4
5 **SECTION .0100 - SAMPLING AND TESTING OF MILK AND CREAM**

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7 **02 NCAC 09K .0101 DEFINITIONS**

8 ~~(a) "Babcock Test" means the test for determining the percent of butterfat in milk, cream, or other dairy products utilizing~~
9 ~~sulphuric acid and a centrifugal machine, invented by Dr. S. M. Babcock.~~

10 ~~(b) "Automated Method" means the test for determining the percent of butterfat in raw, unhomogenized milk utilizing an~~
11 ~~automated method as outlined in 2 NCAC 9B .0016, (Official Methods of Analysis of the AOAC).~~

12 ~~(c) "Tester" means a person conducting the Babcock test, Automated Method, or other methods for testing butterfat approved~~
13 ~~by the commissioner, whether such test is to be used as a basis for payment or for the purpose of an official dairy inspection.~~

14 ~~(d) "Farm Bulk Milk Hauler - Sampler" means a person who grades, samples, and measures milk in a farm bulk tank; pumps~~
15 ~~the milk from the tank; and delivers the milk to a dairy plant, receiving station, or transfer station.~~

16 ~~(e) "Producer Payment Period" means the interval between payments made to producer of milk by the buyer for milk or other~~
17 ~~dairy product.~~

18 ~~(f) "Fresh Sample" means a sample of milk representative of the quality of a single shipment of milk.~~

19 (a) "Automated Method" means the test for determining the percent of butterfat in raw, un-homogenized milk utilizing an
20 automated method as outlined in 2 NCAC 9B .0116 (a), (Official Methods of Analysis of the AOAC) or 2 NCAC 9B .0116 (j),
21 (Standard Methods for the Examination of Dairy Products).

22 (b) "Tester" means a person conducting the Babcock test, Automated Method, or other methods for testing butterfat approved
23 by the Commissioner, whether such test is to be used as a basis for payment or for the purpose of an official dairy inspection.

24 (c) "Bulk milk hauler/sampler" means any person who collects official samples and may transport raw milk from a farm
25 and/or raw milk products to or from a milk plant, receiving station or transfer station and has in their possession a permit from
26 any Regulatory Agency to sample such products.

27 (d) "Producer Payment Period" means the interval between payments made to producer of milk by the buyer for milk or other
28 dairy product.

29 (e) "Officially designated laboratory" is a commercial laboratory authorized to do official work by the Regulatory Agency, or
30 a milk industry laboratory officially designated by the Regulatory Agency for the examination of producer samples of Grade
31 "A" raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging or retort processed after packaging and
32 commingled milk tank truck samples of raw milk for drug residues and bacterial limits.

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35 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*
36 *Eff. February 1, 1982;*
37 *Amended Eff. January 1, 1985; December 31, 1983.*

1 02 NCAC 09K .0102 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0102 GENERAL SAMPLING PROCEDURES**

4 ~~(a) The sampling of raw milk for producer payment shall be as outlined in 2 NCAC 9B .0016(d)(7) (Standard Methods for~~
5 ~~the Examination of Dairy Products).~~

6 ~~(b) Multiple bulk tanks shall be sampled, measured and recorded separately.~~

7 ~~(c) Farm Bulk Milk Hauler Samplers shall follow the procedures found in Sections VI through XIX of the "Farm Bulk Milk~~
8 ~~Haulers Manual" compiled by the United States Department of Agriculture, which is hereby adopted by reference in~~
9 ~~accordance with G.S. 150B-14(c). A copy of the manual is available for inspection in the Office of the Director of the Food~~
10 ~~and Drug Protection Division and may be obtained at a cost as determined by the publisher by contacting U.S.D.A.~~
11 ~~Agricultural Marketing Service, Dairy Division, Washington, DC 20250.~~

12 ~~(d) For testing purposes, only samples obtained by the fresh sampling method will be accepted.~~

13 (a) The sampling of raw milk for producer payment shall be as outlined in 2 NCAC 9B .0116(j) (Standard Methods for
14 the Examination of Dairy Products).

15 (b) Milk sampling and hauling procedures are defined in the Pasteurized Milk Ordinance under APPENDIX B. MILK
16 SAMPLING, HAULING AND TRANSPORTATION

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19 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

20 *Eff. February 1, 1982;*

21 *Amended Eff. June 1, 1988; January 1, 1985; January 1, 1984.*

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1 02 NCAC 09K .0103 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0103 APPROVAL OF TESTING PROCEDURE USED**

4 ~~(a) A person shall request approval from the Food and Drug Protection Division, N.C.D.A., in order to use any method for~~
5 ~~determining the percent of butterfat in milk or cream other than the Babcock method.~~

6 ~~(b) Approval for use of any method other than the Babcock method shall be obtained as in (a) of this Rule, in writing, 30 days~~
7 ~~prior to its use.~~

8 (a) A person shall request approval from the North Carolina Department of Agriculture and Consumer Services, Food
9 and Drug Protection Division, in order to use any method for determining the percent of butterfat in milk or cream other
10 than methods outlined in 02 NCAC 09K. 0101 (b)

11 (b) Approval for use of any method other than those outlined in 02 NCAC 09K. 0101 (b) shall be obtained in writing 30
12 days prior to its use.

13

14 *History Note: Authority G.S. 106-267; 106-267.2;*

15 *Eff. February 1, 1982.*

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1 02 NCAC 09K .0106 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0106 TEST READING**

4 ~~The test reading of milk shall be as outlined in 2 NCAC 9B .0016 (Official Methods of Analysis of the AOAC) and/or 2~~
5 ~~NCAC 9B .0020 (Standard Methods for the Examination of Dairy Products) as adopted by reference.~~

6 The test reading of milk shall be as outlined in 2 NCAC 9B .0116(a) (Official Methods of Analysis of the AOAC) and/or
7 2 NCAC 9B .0116(j) (Standard Methods for the Examination of Dairy Products) as adopted by reference.

8

9 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

10 *Eff. February 1, 1982;*

11 *Amended Eff. January 1, 1985.*

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1 02 NCAC 09K .0107 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0107 TEST REPORTING**

4 (a) A tester shall report all tests conducted on milk or cream for each producer payment period and maintain a permanent
5 record in duplicate, of the tests.

6 ~~(b) A tester shall, immediately upon completing each test or retest, record the test results with ink or indelible pencil on a
7 form supplied or approved by the Commissioner of Agriculture.~~

8 ~~(c) A tester shall, immediately upon completing the tests covering a producer payment period, mail a duplicate record of the
9 results, as provided in (b) of this Rule, to the Food and Drug Protection Division, N.C.D.A.~~

10 ~~(d) A tester shall authenticate each page of test reports with his signature.~~

11 ~~(e) A tester shall use fractional parts in calculating the average butterfat content in milk or cream for all tests.~~

12 ~~(f) If daily milk or cream weight tickets are not used, the tester shall report the itemized weights of each daily delivery for
13 each producer payment period.~~

14 (b) A tester shall supply both individual sample butterfat test results and monthly average butter fat results to the parties
15 responsible for making butter fat premium payments to each individual producer.

16 (c) The payee of the butterfat premium payments to each individual milk producer is responsible to submit the monthly
17 averages for each individual milk producer to the North Carolina Department of Agriculture and Consumer Services,
18 Food and Drug Protection Division. This is due by the fifteenth day of the following month.

19
20 *History Note: Authority G.S. 106-267; 106-267.2;*
21 *Eff. February 1, 1982.*
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02 NCAC 09K .0109 is proposed for reoption with substantive changes as follows:

02 NCAC 09K .0109 SAMPLING AND TESTING FOR FRESH MILK SAMPLES

- (a) The fresh sampling method shall be utilized as the exclusive method for sampling milk and cream.
- (b) Samples shall be collected from every producer's shipment of milk and delivered to the buyer.
- ~~(c)~~ Fresh samples shall be selected at irregular intervals for testing and tested a minimum of four times a month.
- ~~(d)~~(c) Fresh samples shall be tested within 48 hours after collected.
- ~~(e)~~(d) Fresh samples shall be at least two ounces in volume.
- ~~(f)~~(e) Fresh samples shall be held for 24 hours after testing.

History Note: *Authority G.S. 106-267; 106-267.2;*
 Eff. February 1, 1982;
 Amended Eff. June 1, 1984; December 31, 1983.

1 02 NCAC 09K .0113 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0113 PROCEDURE FOR TESTING CREAM**

4 ~~The testing of cream shall be as outlined in 2 NCAC 9B .0016 (Official Methods of Analysis of the AOAC) and/or 2 NCAC~~
5 ~~9B .0020 (Standard Methods for the Examination of Dairy Products) as adopted by reference.~~

6 The testing of cream shall be as outlined in 02 NCAC 9B .0116(a) (Official Methods of Analysis of the AOAC) and/or
7 02 NCAC 9B .0116(j) (Standard Methods for the Examination of Dairy Products) as adopted by reference.

8

9 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*

10 *Eff. February 1, 1982;*

11 *Amended Eff. January 1, 1985; August 1, 1982.*

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1 02 NCAC 09K .0114 is proposed for readoption with substantive changes as follows:

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02 NCAC 09K .0114 REFERENCE METHOD

~~The Babcock test shall be used as the reference method to maintain the calibration of the Automated method. Other methods may be used as a reference upon approval by the Commissioner of Agriculture. Written notification of the reference method shall be sent to the Commissioner of Agriculture prior to the installation or the first use of an automated tester. A subsequent change in the reference method used shall be made only with specific approval from the Commissioner.~~

The calibration of the Automated method shall follow the procedure as outlined in in 02 NCAC 9B .0116(a) (Official Methods of Analysis of the AOAC) and/or 02 NCAC 9B .0116(j) (Standard Methods for the Examination of Dairy Products) as adopted by reference. Other methods may be used as a reference upon approval by the Commissioner of Agriculture. Written notification of the reference method shall be sent to the Commissioner of Agriculture prior to the installation or the first use of an automated tester. A subsequent change in the reference method used shall be made only with specific approval from the Commissioner.

*History Note: Authority G.S. 106-267; 106-267.2;
Eff. February 1, 1982;
Amended Eff. April 1, 1985; January 1, 1985.*

1 02 NCAC 09K .0201 is proposed for readoption with substantive changes as follows:

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SECTION .0200 - FROZEN DESSERTS

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02 NCAC 09K .0201 SPECIFIC REQUIREMENTS

6 The requirements in the following rules of 2 NCAC 9K .0200 shall be in addition to those set out in Title 21, Code of Federal
7 Regulations, parts of 110 and 135 as ~~adopted~~ adopted by reference in 02 NCAC 09B .0116(o)(49) and (61).

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9 *History Note: Authority G.S. 106-253; 106-267;*

10 *Eff. February 1, 1982.*

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1 02 NCAC 09K .0206 is proposed for readoption with substantive changes as follows:

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02 NCAC 09K .0206 FROZEN DESSERT MIX/STANDARDS FOR USE

- (a) A person shall not use rerun in any retail frozen dessert dispenser.
- (b) A person shall reconstitute a dry frozen dessert mix with potable water ~~and~~ or a pasteurized Grade A product and cool the resulting product to a temperature of between 33 degrees F. and 45 degrees F. within four hours of reconstitution.
- (c) A person shall store a liquid frozen dessert mix at a temperature between 33 degrees F. and 45 degrees F.
- (d) Frozen dessert mixes may be frozen at the point of manufacture. Prior to transferring a frozen mix to a retail outlet, the distributor must thaw the frozen mix under refrigeration temperatures of 35 degrees F. to 40 degrees F. Nothing herein shall be deemed to prohibit the department from considering a retail outlet to be a distributor if such outlet has sufficient and adequate refrigeration equipment to properly thaw the frozen mixes as required by this Section.

*History Note: Authority G.S. 106-248; 106-253; 106-267;
Eff. February 1, 1982;
Amended Eff. April 1, 1987; May 1, 1986.*

1 02 NCAC 09K .0211 is proposed for reoption with substantive changes as follows:

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3 **02 NCAC 09K .0211 IMITATION FROZEN DESSERT STANDARDS**

4 (a) A person who sells or offers for sale any imitation frozen dessert at the retail level, shall make this fact clear to the public
5 by posting a sign near the ~~product as follows: "Imitation frozen desserts sold here."~~ product.

6 (b) A person shall display all signs and notices required in (a) of this Rule in a manner conspicuous to the public and in letters
7 easily read under normal conditions of purchase.

8 (c) A person shall not sell any imitation frozen dessert by dipping or scooping the imitation frozen dessert from packages or
9 containers.

10 (d) A person shall not sell or offer for sale any frozen dessert containing any ingredient(s) not generally recognized as safe by
11 the Federal Food and Drug Administration.

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13 *History Note: Authority G.S. 106-248; 106-253; 106-267;*

14 *Eff. February 1, 1982.*

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1 02 NCAC 09K .0214 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 09K .0214 STANDARDS OF IDENTITY FOR FROZEN YOGURT**

4 Frozen yogurt is the food which is prepared by freezing while stirring, a pasteurized mix consisting of the ingredients
5 provided for in ice cream and which may contain other ingredients permitted under the Federal Food, Drug, and Cosmetic Act
6 (21 USC 321 et seq.). All dairy ingredients are cultured after pasteurization by one or more strains of *Lactobacillus*
7 *bulgaricus* and *Streptococcus thermophilus*, provided, however, fruits, nuts, or other flavoring materials may be added before
8 or after the mix is pasteurized or cultured. Frozen yogurt, exclusive of any flavoring, contains not less than 3.25 percent milk
9 fat, not less than 8.25 percent milk solids not fat, except that when bulky characterizing ingredients are used the percentage of
10 milk fat is not less than 2.5 percent. The finished frozen yogurt shall weigh not less than five pounds per gallon. The
11 titratable acidity of frozen yogurt is not less than 0.5 percent, calculated as lactic acid, except if the frozen yogurt primary
12 flavor is a non-fruit characterizing ingredient(s). This characteristic acidity is developed by the bacterial activity and no heat
13 or bacteriostatic treatment, other than refrigeration, which may result in destruction or partial destruction of the organisms,
14 shall be applied to the product after culturing. The product, when in package form, shall be labeled according to applicable
15 Sections of ~~2 NCAC 09B .0016(f)(2)~~ 02 NCAC 09B .0116(o)(41) (21 CFR Part 101).

16
17 *History Note: Authority G.S. 106-128; 106-253; 106-267;*
18 *Eff. December 1, 1985;*
19 *Amended Eff. July 1, 2000.*
20

02 NCAC 09O .0101 is proposed for readoption with substantive changes as follows:

SUBCHAPTER 09O - MARKETING OF SHELL EGGS

SECTION .0100 - DEFINITIONS AND STANDARDS

02 NCAC 09O .0101 DEFINITIONS

Words used in this Section in the singular form shall be deemed to impart the plural, and vice versa as the case may demand:

- (1) "Inedible Eggs" means black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring stage) and any eggs that are adulterated as such term is defined pursuant to the Federal Food, Drug and Cosmetic Act. "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).
- (2) "Leaker" means eggs that have a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell. "Leaker" means an individual egg that has a crack or break in the shell.
- (3) "Loss Eggs" means eggs that are inedible, cooked, frozen, contaminated or containing bloody whites, blood spots, meat spots, or other foreign material. "Loss" means an egg that is inedible, cooked, frozen, contaminated, musty, or moldy, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, sour eggs, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material, or an egg that is adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.
- (4) "Ungraded Eggs" means eggs as collected from the production unit and placed into retail channels without being graded or segregated for quality, soundness of shell, or size; except that checks, dirties, or other obvious defects may be removed at time of collection.
- (5) "Baluts" means eggs that are fertile and incubated beyond the blood ring stage.
- (6) "Fertile" means an egg capable of developing into an embryo.
- (7) "Organic" means eggs produced in accordance with applicable Federal or State standards for organic product.
- (8) "Free Range" (or labeling of similar import) means eggs produced from laying chickens that are "cage free" or have access to a suitable outdoors environment.

*History Note: Authority G.S. 106-245.16; 106-245.21;
Eff. August 1, 1982;
Amended Eff. July 1, 1998; December 1, 1987;*

1 02 NCAC 090 .0103 is proposed for readoption with substantive changes as follows:

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3 **02 NCAC 090 .0103 STANDARDS FOR SHELL EGGS**

4 ~~(a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing~~
5 ~~Service of the United States Department of Agriculture as AMS-56, are incorporated by reference, including~~
6 ~~subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in~~
7 ~~this State except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S.~~
8 ~~106-245.15. Copies of this document may be obtained at no cost from the Division of Marketing, North Carolina~~
9 ~~Department of Agriculture and Consumer Services. Copies can also be found on the USDA AMS website at~~
10 ~~[http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateR&navID=EducationalMaterials](http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateR&navID=EducationalMaterials&rightNav1=EducationalMaterials&topNav=&leftNav=&page=PYEducationalandInformationalMaterials&resultType=&acet=pgeninfo)~~
11 ~~&rightNav1=EducationalMaterials&topNav=&leftNav=&page=PYEducationalandInformationalMaterials&resultTy~~
12 ~~pe=&acet=pgeninfo.~~

13 ~~(b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by~~
14 ~~reference, including subsequent amendments and editions. Copies may be obtained at no cost from the United~~
15 ~~States Government Printing Office website at <http://www.gpoaccess.gov/cfr/index.html>.~~

16 ~~(c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use,~~
17 ~~except an "institutional consumer," as defined in G.S. 106-245.14. Said sales shall be made only at the premises of~~
18 ~~production or processing.~~

19 ~~(d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further~~
20 ~~processing.~~

21 ~~(e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except~~
22 ~~as permitted by 02 NCAC 090 .0101(4) and Paragraph (a) of this Rule.~~

23 ~~(f) Except when sold directly by the producer to the consumer, it shall be unlawful to offer for sale any repackaged~~
24 ~~eggs at any retail outlet.~~

25 (a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing
26 Service of the United States Department of Agriculture as AMS-56, are incorporated by reference, including
27 subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in
28 this State except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S.
29 106-245.15. Copies can also be found on the USDA AMS website at [https://www.ams.usda.gov/grades-](https://www.ams.usda.gov/grades-standards/shell-egg-grades-and-standards)
30 standards/shell-egg-grades-and-standards

31 (b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by
32 reference, including subsequent amendments and editions.

33 (c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use,
34 except an "institutional consumer," as defined in G.S. 106-245.14. Said sales shall be made only at the premises of
35 production or processing.

36 (d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further
37 processing.

38 (e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except
39 as permitted by 02 NCAC 09O .0101(4) and Paragraph (a) of this Rule.

40 (f) Except when sold directly by the producer to the consumer, it shall be unlawful to offer for sale any repackaged
41 eggs at any retail outlet.

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43 *History Note: Authority G.S. 106-245.16; 106-245.21;*

44 *Eff. August 1, 1982;*

45 *Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987;*

46 *Transferred from 02 NCAC 43H .0103 Eff. May 1, 2012;*

47 *Amended Eff. January 1, 2015.*

48

1 02 NCAC 090 .0104 is proposed for readoption with substantive changes as follows:

2
3 **02 NCAC 090 .0104 SANITATION AND MATERIALS**

4 (a) ~~The sanitation requirements of G.S. 106-245.22 shall be deemed to be met when facilities conform to the~~
5 ~~requirements of 7 C.F.R. Section 56.76 (1987) which is hereby adopted by reference in accordance with G.S.~~
6 ~~150B-14(e). The sanitation requirements of G.S. 106-245.22 shall be deemed to be met when facilities conform to the~~
7 ~~requirements of 7 C.F.R. Section 56.76~~

8 (b) Eggs shall be deemed to be held in a proper environment, as specified in G.S. 106-245.22, when gathered promptly,
9 and placed in a refrigerated cooling room with an ambient temperature of ~~60~~ 45 degrees F. or lower, until graded and
10 packed. After grading and packing, eggs shall be held or transported at a refrigerated ambient temperature of 45 degrees
11 F. or less without freezing, until sold to the consumer or used in food preparation.

12
13 *History Note: Authority G.S. 106-245.16; 106-245.21; 106-245.22;*
14 *Eff. August 1, 1982;*
15 *Amended Eff. December 1, 1991; December 1, 1987;*
16 *Transferred from 02 NCAC 43H .0104 Eff. May 1, 2012.*
17

1 02 NCAC 38 .0201 is proposed for readoption with substantive changes as follows:

2
3 **SECTION .0200 - APPROVAL OF WEIGHING AND MEASURING DEVICES**

4
5 **02 NCAC 38 .0201 ADOPTION BY REFERENCE**

6 The board hereby adopts by reference in accordance with G.S. 150B-14(c) ~~the National Institute of Standards and~~
7 ~~Technology, NIST Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and~~
8 ~~Measuring Devices"~~ except as otherwise indicated in this Chapter.

9 Copies of the above are available for inspection in the Office of the Director of the Standards Division and may be obtained at
10 ~~a cost as determined by the publisher by contacting Superintendent of Documents, U.S. Government Printing Office,~~
11 ~~Washington, D.C. 20402.~~ for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

12
13 *History Note: Authority G.S. 81A-2; 150B-14;*

14 *Eff. May 1, 1983;*

15 *Amended Eff. January 1, 1990; June 1, 1988; April 1, 1987; May 1, 1986.*

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1 02 NCAC 38 .0401 is proposed for readoption with substantive changes as follows:

2
3 **SECTION .0400 - METHOD OF SALE OF COMMODITIES**

4
5 **02 NCAC 38 .0401 ADOPTION BY REFERENCE**

6 The Board hereby adopts by reference including subsequent amendments and editions the ~~National Institute of Standards and~~
7 ~~Technology~~, NIST Handbook 130, "Method of Sale of Commodities Regulation" with the following additions and exceptions:

8 (1) ~~Delete Section 1.2., "Bread", since this is addressed in G.S. 81A-41.~~

9 (2)(1) The preferred method for measuring fireplace and stove wood is by the cord or fractional parts of a cord,
10 however, nothing in Section ~~2.3, 2.4~~, "Fireplace and Stove Wood", shall be construed as preventing the
11 purchaser and seller of fireplace or stove wood from agreeing on a quantity other than a cord or fractional
12 parts of a cord.

13 (3)(2) ~~Sections 2.20., 4., and 5. Re deleted. Section 2.20, "Gasoline-Oxygenate Blends" is deleted.~~

14 (4)(3) Section 2.19. applies only to kerosene sold in a container or kerosene sold through a retail device. In
15 addition, a container or a device shall clearly and conspicuously indicate for 1-K kerosene "SUITABLE
16 FOR USE IN UNVENTED HEATERS" and for 2-K kerosene "MAY NOT BE SUITABLE FOR USE IN
17 UNVENTED HEATERS".

18 (5)(4) In Section 2.21., the temperature compensation requirements are not mandatory. However, if a company
19 elects to sell liquefied petroleum gas on a temperature compensated basis, then all meters in the truck fleet
20 must be equipped with an activated automatic temperature compensator which will remain in continuous
21 operation for a period of not less than one year.

22 (6)(5) The price for propane dispensed into containers of less than 240 pounds water capacity may be on a
23 minimum price basis provided the seller clearly and conspicuously displays the minimum price at the point
24 of container fill and point of sale. This Rule does not apply to propane container exchange sales where an
25 empty or partially empty container is exchanged for a full one.

26 Copies of ~~National Institute of Standards and Technology~~, NIST Handbook 130, "Method of Sale of Commodities
27 Regulation" are available for inspection in the Office of the Director of the Standards Division and may be obtained ~~at a cost~~
28 ~~of thirteen dollars (\$13.00) from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C.~~
29 ~~20402--for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.~~

30
31 *History Note: Authority G.S. 81A-4; 150B-21.6;*

32 *Eff. May 1, 1983;*

33 *Amended Eff. June 1, 1994; January 1, 1990; December 1, 1988; June 1, 1988.*

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1 02 NCAC 38 .0601 is proposed for readoption with substantive changes as follows:

2
3 **SECTION .0600 - SALE OF PETROLEUM PRODUCTS**

4
5 **02 NCAC 38 .0601 RETAIL MOTOR FUEL DISPENSERS/HALF-PRICING**

6 (a) All retail motor fuel dispensing outlets shall sell motor fuel by the full price per-gallon method, ~~except as provided in~~
7 ~~(b) of this Rule per unit as stated in NIST Handbook 130 method for that fuel type.~~

8 (b) ~~Until Effective~~ January 1, 2011, retail motor fuel dispensing outlets which sell 600,000 gallons of motor fuel or less
9 ~~per each 12 month period may no longer~~ sell motor fuel by the half-price per gallon method, ~~(except as provided in 2~~
10 ~~NCAC 38 .0603).~~ method.

11 ~~(c) All motor fuel dispensers using the half pricing method shall bear the following statements on each dial face:~~

12 (1) ~~-----~~ "CAUTION: DUE TO A SHORTAGE OF COMPUTER PARTS THIS DISPENSER INDICATES
13 ONLY 1/2 THE TOTAL SALE PRICE." This statement must be composed of one-fourth inch letters
14 and must be located above or to the side of the sale price indicator;

15 (2) ~~-----~~ "1/2 TOTAL SALE." This statement must be composed of three-fourths inch letters and must be
16 affixed to cover the total sale or total price identification statement of the dial face;

17 (3) ~~-----~~ "GALLONS." No change;

18 (4) ~~-----~~ "CENTS PER 1/2 GALLON INCLUDING TAX." This statement must be composed of three eighths
19 inch letters and must be affixed to cover the cents or price per gallon statement on the dial face;

20 (5) ~~-----~~ "\$ ___ PER GALLON." This statement must contain three eighths inch letters and must be located
21 directly beneath the statement described in (4) of this Paragraph and must have the full price per gallon
22 written in the blank space.

23 (d) The sale of motor fuel through those dispensers as described in (c) of this Rule shall be priced in even tenths of a cent
24 (example: \$1.002, \$1.004, etc.).

25 (e) ~~Advertised pricing shall be by the price per gallon.~~

26
27 *History Note: Authority G.S. 81A-2;*

28 *Eff. May 1, 1983;*

29 *Amended Eff. February 1, 2009.*

30

1 02 NCAC 38 .0604 is proposed for reoption with substantive changes as follows:

2
3 **02 NCAC 38 .0604 PRICE POSTING/CASH DISCOUNTS FOR RETAIL MOTOR FUEL SALES**

4 (a) If any condition or qualification is required to purchase fuel at the posted price, that condition or qualification shall
5 be posted conspicuously in conjunction with the advertised price.

6 (b) At those locations where separate dispensers or islands are established for credit card and cash sales, the dispensers
7 or islands shall be conspicuously identified to avoid customer confusion.

8 (c) At those locations where the same dispenser is used for cash and credit card sales, the following apply:

9 (1) If the dispenser is capable of computing only one price, then the dispenser shall be set at the ~~cash~~
10 highest unit price and the ~~credit surcharge~~ unit discount rate (either per gallon, percentage, or per
11 gallon credit price) shall be conspicuously ~~displayed;~~ displayed. A receipt shall contain the total
12 volume of the deliver, the unit price, the total computed price, an itemization of the discounts to the
13 unit price and the final total price;

14 (2) If the dispenser is capable of computing both cash and credit sales, either the credit surcharge rate
15 (either per gallon, percentage, or per gallon credit price) or the cash discount rate (either per gallon,
16 percentage, or per gallon price) shall be conspicuously displayed.

17 (3) The location must indicate how they consider "debit" transactions, either as cash or credit. Labels
18 such as "cash/debit," "debit=cash," or "credit/debit" are acceptable.

19
20 *History Note: Authority G.S. 81A-2; 81A-23;*
21 *Eff. May 1, 1983;*
22 *Amended Eff. October 1, 2011; December 1, 1987.*
23

1 02 NCAC 38 .0701 is proposed for re Adoption with substantive changes as follows:

2
3 **SECTION .0700 - STANDARDS FOR STORAGE, HANDLING AND INSTALLATION OF LP GAS**

4
5 **02 NCAC 38 .0701 ADOPTION BY REFERENCE**

6 The following are incorporated by reference, including subsequent amendments, as standards for storage, handling and
7 installation of liquefied petroleum gas:

- 8 (1) National Fire Protection Association, document NFPA 58 "Liquefied Petroleum Gas Code," with the
9 following additions and exceptions:
- 10 (a) ~~All cut-off valves and regulating equipment exposed to rain, sleet, or snow shall be protected~~
11 ~~against such elements either by design or by a hood;~~
 - 12 (b)(a) "Firm Foundation" means that the foundation material has a level top surface, rests on solid
13 ground, is constructed of a masonry material or wood treated to prevent decay by moisture
14 rot and will not settle, careen or deteriorate;
 - 15 (c) ~~"Concrete pads" as used in section 6.6.3.1(G) (2011 Edition) means a foundation of solid~~
16 ~~concrete blocks, placed concrete pad, or poured concrete foundation sufficient to support the~~
17 ~~container or container pump assembly mounted on a common base without breaking or~~
18 ~~settling that is detrimental to the integrity or safe operation of the installation.~~
 - 19 (d)(b) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air
20 in spray guns or other pressure operated equipment;
 - 21 (e)(c) Piping, tubing or regulators are considered well supported when they are rigidly fastened in
22 their intended position;
 - 23 (f)(d) At bulk storage installations, the bulkhead and the plant piping on the hose side of the
24 bulkhead shall be designed and constructed so that an application of force from the hose side
25 will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the
26 bulkhead shall incorporate a means, for instance, mechanical or pneumatic, to automatically
27 close emergency valves in the event of a pull away;
 - 28 (g)(e) As an alternative to the requirement for a fire safety analysis the owner, or his designee, of an
29 LP-gas facility which utilizes individual storage containers in excess of 4,000 gallons water
30 capacity, storage containers interconnected through the liquid withdrawal outlets of the
31 containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers
32 interconnected through the vapor withdrawal outlets of the containers with an aggregate
33 capacity in excess of 6,000 gallons, shall, for all installations of containers of such capacity
34 or for additions to an existing LP-gas facility which result in containers of such capacity,
35 meet with fire officials for the jurisdiction in which the facility is located in order to:
 - 36 (i) review potential exposure to fire hazards to or from real property which is adjacent
37 to such facility;
 - 38 (ii) identify emergency access routes to such facility; and
 - 39 (iii) review the equipment and emergency shut-down procedures for the facility.The owner of such facility or his designee shall document in writing the time, date and place
40 of such meeting(s), the participants in the meeting, and the discussions at the meeting in order
41 to provide a written record. This documentation shall be made available to the Department
42 not later than 60 days after installation of the new or additional containers. Compliance with
43 the availability requirement shall be met by having a copy of the documentation kept on site
44 or at the owner's office and immediately available for review by NCDA&CS inspection
45 personnel. This meeting, review, and documentation shall be repeated when NCDA&CS
46 determines that the plant design has changed or that potential exposures have significantly
47 changed, so as to increase the likelihood of injury.
 - 48 (h)(f) An LP-gas facility which utilizes storage containers that are interconnected through the vapor
49 withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000
50 gallons, but not in excess of 6,000 gallons, is exempt from the requirements of a fire safety
51 analysis; and
- 52

53 (i)(g) A fire safety analysis as described in NFPA 58 may be prepared by the owner of an LP-Gas
54 facility, or by an employee of such owner in the course of the employee's employment, and
55 the Department shall not require that it be prepared, approved or sealed by a professional
56 engineer. Note: This is in keeping with a formal interpretation (F.I. No.: 58-01-2) by the
57 technical committee for Liquefied Petroleum Gases issued by the National Fire Protection
58 Association on November 7, 2001, with an effective date of November 27, 2001. However,
59 the North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of
60 engineering, and has taken the position that the preparation of a fire safety analysis
61 constitutes the practice of engineering.

62 (2) National Fire Protection Association, document NFPA 54, "National Fuel Gas Code," with the addition
63 that underground service piping shall rise above ground immediately (within six inches of wall) before
64 entering a building.

65 (3) National Fire Protection Association, document NFPA 30A, "Code for Motor Fuel Dispensing
66 Facilities and Repair Garages," Chapter 12 (in 2008 Edition) as it applies to LP-Gas dispensers for
67 motor vehicle fuel along with dispensers for other motor vehicle fuels.

68 Copies of NFPA 54, NFPA 58 and NFPA 30A are available for inspection in the Office of the Standards
69 Division. They may be obtained at a cost of ~~forty-eight dollars and fifty cents (\$48.50)~~ fifty-four dollars and fifty cents
70 (\$54.50) each for NFPA 54 and NFPA 58 and for ~~thirty-seven dollars and fifty cents (\$37.50)~~ forty-two dollars (\$42.00)
71 for NFPA 30A (~~February 2011~~ March 2014 prices), plus shipping, by contacting National Fire Protection Association,
72 Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, by calling them at 617-770-3000 or 800-344-3555, or by
73 accessing them on the Internet at ~~www.nfpacatalog.org~~; www.nfpa.org/catalog.

74
75
76 *History Note: Authority G.S. 119-55;*
77 *Eff. May 1, 1983;*
78 *Amended Eff. November 1, 2011; April 1, 2009; September 1, 2002; August 1, 2002; January 1,*
79 *1994; June 1, 1993; December 1, 1988; December 1, 1987.*

02 NCAC 09G .2002 is proposed for readoption as a repeal as follows:

02 NCAC 09G .2002 MODIFICATIONS OF THE ADOPTION BY REFERENCE

History Note: *Authority G.S. 106-266.31;*

Eff. January 1, 1985;

Amended Eff. January 1, 1999; September 1, 1991; December 1, 1990; July 1, 1985;

Transferred from 15A NCAC 18A .1202 Eff. May 1, 2012.

1 02 NCAC 09G .2006 is proposed for readoption as a repeal as follows:

2

3 **02 NCAC 09G .2006 PERMIT SUSPENSION AND REVOCATION**

4

5 *History Note: Authority G.S. 106-266.31;*

6 *Eff. January 1, 1985;*

7 *Amended Eff. September 1, 1991; December 1, 1990; October 1, 1985;*

8 *Transferred from 15A NCAC 18A .1206 Eff. May 1, 2012.*

9

1 02 NCAC 09G .2007 is proposed for readoption as a repeal as follows:

2

3 **02 NCAC 09G .2007 ENFORCEMENT AND PENALTIES**

4

5 *History Note: Authority G.S. 106-266.31;*

6 *Eff. January 1, 1985;*

7 *Transferred from 15A NCAC 18A .1207 Eff. May 1, 2012.*

8

1 02 NCAC 09G .2010 is proposed for readoption as a repeal as follows:

2

3 **02 NCAC 09G .2010 RESTRICTIONS ON DISPENSING RAW MILK**

4

5 *History Note: Authority G.S. 106-266.31;*

6 *Temporary Adoption Eff. April 2, 2001;*

7 *Temporary Adoption Expired January 11, 2002;*

8 *Temporary Adoption Eff. June 1, 2003;*

9 *Eff. February 1, 2004;*

10 *Transferred from 15A NCAC 18A .1210 Eff. May 1, 2012.*

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