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The **NORTH CAROLINA REGISTER**

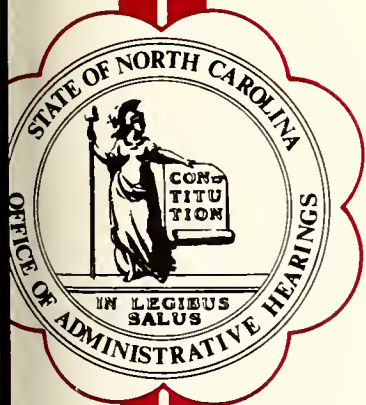
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ISSUE DATE: JULY 15, 1986

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INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately one hundred pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of ninety-five dollars (\$95.00) for 12 issues.

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: Subscriptions.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include a reference to the Statutory Authority for the action; the time and place of the public hearing and a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Following publication of the proposal in the *North Carolina Register*, at least 60 days must elapse before the agency may take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule, cannot become effective earlier than the first day of the second calendar month after the adoption is filed.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in effect for the period specified in the rule or 120 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) In looseleaf pages at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars (\$40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a "List of Rules Affected" which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the *North Carolina Register*.

Requests for looseleaf pages of rules or the NCAC on microfiche should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(April 1986 - March 1987)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Earliest Effective Date
04/15/86	03/25/86	04/01/86	05/15/86	06/14/86	08/01/86
05/15/86	04/24/86	05/01/86	06/14/86	07/14/86	09/01/86
06/16/86	05/27/86	06/03/86	07/16/86	08/15/86	10/01/86
07/15/86	06/25/86	07/02/86	08/14/86	09/13/86	11/01/86
08/15/86	07/28/86	08/04/86	09/14/86	10/14/86	12/01/86
09/15/86	08/26/86	09/02/86	10/15/86	11/14/86	01/01/87
10/15/86	09/25/86	10/02/86	11/14/86	12/14/86	02/01/87
11/14/86	10/23/86	10/30/86	12/14/86	01/13/87	03/01/87
12/15/86	11/25/86	12/02/86	01/14/87	02/13/87	04/01/87
01/15/87	12/29/86	01/05/87	02/14/87	03/16/87	05/01/87
02/16/87	01/26/87	02/02/87	03/18/87	04/17/87	06/01/87
03/16/87	02/23/87	03/02/87	04/15/87	05/15/87	07/01/87

STATEMENT OF ORGANIZATION

NORTH CAROLINA STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

The North Carolina State Board of Certified Public Accountant Examiners is an independent agency. It is one of the thirty-eight occupational licensing boards and is authorized by Chapter 93 of the General Statutes.

The board has these primary responsibilities:

- (1) to grant certificates of qualification as certified public accountants to those persons who have met legal requirements including age, citizenship, education, experience and good moral character;
- (2) to register certified public accounting firms;
- (3) to annually renew certificates and firm registrations;
- (4) to administer semi-annually the Uniform Certified Public Accountant Examination;
- (5) to administer the continuing professional education compliance program;
- (6) to adopt rules of professional ethics and conduct to be observed by certified public accountants in this state; and
- (7) to administer any and all other provisions of G.S. 93.

The board is composed of five persons who are holders of valid and unrevoked certified public accountant certificates issued under the provisions of G.S. 93 and two persons who are not certified public accountants who shall represent the public at large. The senior staff officer is the Executive Director.

The office has three divisions reporting to a Deputy Director: Licensing; Examinations; and Administrative Services. The Licensing Division processes initial and renewal applications for CPA certificates and firm registrations. The Examinations Division administers the semi-annual Uniform Certified Public Accountant Examination. The Administrative Services Division is concerned solely with the internal operation and management of the office. The Executive Director and support staff supervise rule-making and administrative hearing matters,

and such other activities as the board may direct.

The public may obtain information about and make submissions or requests to the North Carolina State Board of Certified Public Accountant Examiners in person at 1101 Oberlin Road, Suite 104, Raleigh, North Carolina; by mail at Post Office Box 12827, Raleigh, NC, 27605; and by telephone at (919) 821-2443.

NORTH CAROLINA DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

The North Carolina Department of Natural Resources and Community Development is a principal State department in the executive branch of North Carolina government authorized by Article III, Section II of the North Carolina Constitution.

The N.C. Department of Natural Resources and Community Development has three primary duties:

- (1) To provide for the management and protection of the States natural resources and environment;
- (2) To promote and assist in the orderly development of North Carolina counties and communities; and
- (3) To provide job training and promote employment for economically disadvantaged persons.

The head of the Department is the Secretary who is appointed by the Governor and serves at the pleasure of the Governor.

The Department is organized into twelve divisions as follows:

- (1) environmental management;
- (2) marine fisheries;
- (3) parks & recreation;
- (4) forest resources;
- (5) land resources;
- (6) community assistance;
- (7) economic opportunity;
- (8) employment & training;
- (9) soil & water;
- (10) N.C. Zoological Park;
- (11) water resources; and
- (12) coastal management.

The Wildlife Resources Commission and its staff are responsible to the Department for coordinating and reporting purposes.

The public may obtain

information about and make
submissions or requests to the
Department of Natural Resources
and Community Development in

person at 512 N. Salisbury
Street, Raleigh, North Carolina
27611, and by telephone at (919)
733-4984.

PROPOSED RULES

NORTH CAROLINA MILK COMMISSION

Notice is hereby given in accordance with G.S. 150B-12 that the N. C. Milk Commission intends to amend regulations cited as 4 NCAC 7 .0302, .0303, .0501, .0503, .0504; repeal .0505; amend .0506 and .0507; adopt new rules .0508, .0509, .0510, .0511 and .0512 and renumber .0508 as .0513; .0509 as .0514; .0510 as .0515; .0511 as .0516; .0512 as .0517; .0513 as .0518 and .0514 as .0519. Amend .0513, .0514, .0515, .0516 and .0517. The purpose of the proposed regulations is to establish a statewide pooling arrangement for North Carolina baseholding producers.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 106-266 et. seq.

The public hearing will be conducted at 10:00 a.m. on August 18, 1986 and continuing 9:00 a.m. August 19, 1986 should it be necessary to do so at Jane S. McKimmon Center, N. C. State University, Raleigh, N.C., (corner of Western Blvd. and Gorman Street).

Comment Procedures: Data, opinions and arguments concerning these amendments, adoptions and repeal must be submitted by September 13, 1986, to the N. C. Milk Commission, 430 N. Salisbury Street, Raleigh, N. C. 27611, Attn: Grady Cooper, Jr., Executive Secretary.

TITLE 4 - COMMERCE

CHAPTER 7 - MILK COMMISSION

SECTION .0300 - PETITIONS: HEARINGS: EMERGENCY RULES: DECLARATORY RULINGS: CONTESTED CASES

.0302 RULE-MAKING HEARINGS

(3) Notice of a rule-making hearing shall be made by the commission at least 10 days prior to the date such hearing is to be held. The notice shall set forth the matters to be heard and the time and place of the hearing. Notice shall be given those persons likely to be affected by any commission action arising from the hearing, and to

those persons who have requested in writing, notice of commission hearings in the particular subject area. Notice of hearing on matters of general or widespread interest shall be made by publication of the hearing notice in one or more daily newspapers of general circulation the North Carolina Register.

.0303 EMERGENCY TEMPORARY RULES

The Milk Commission shall have the power to issue emergency rules when required by reason of imminent peril to the public health, safety and welfare. Without notice or fewer than 20 days notice after stating in writing the reasons therefor, the commission may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule which may be effective for a period of no longer than 120 days.

The Milk Commission shall have the power to issue temporary rules when it determines in writing that adherence to the notice and hearing requirements of G.S. 150B would be contrary to the public interest; and that the immediate adoption, amendment, or repeal of a rule is necessitated by and related to: a threat to public health, safety or welfare, the effective date of a recent act of the General Assembly or the United States Congress, a federal regulation, or a court order. The agency may adopt, amend, or repeal the rule without prior notice of hearing or upon any abbreviated notice or hearing the agency finds practicable. Temporary rules shall be effective for a period of no longer than 120 days.

.0501 DEFINITIONS

For the purpose of the marketing regulations, the following terms or words shall mean:

(1) "Act" means Article 20B, Chapter 106 of the General Statutes of North Carolina, relating to the North Carolina Milk Commission.

(2) "Marketing area" means the area designated by the commission, including all the

- territory within the counties designated for the area.
- (3) "Classification" means the classifying of milk and fluid milk products into classes according to utilization for a designated delivery period.
- (4) "Delivery period" means the calendar month or approved accounting period.
- (5) "Breed milk" means milk produced by a herd of registered cattle and/or grade cattle of a specified nationally recognized breed, which is labeled, advertised and sold by a distributor as breed milk for a premium price of not less than one cent (\$0.01) per quart.
- (6) "Base" for a producer means the average deliveries of a producer for a designated period that is established on an equitable basis with all other producers, for allocating classes of milk.
- (7) The following terms as defined in Article 28B, Chapter 106-266-6 of the General Statutes of North Carolina shall apply:
- | | |
|-----------------------|----------------------|
| "affiliate," | "books and records," |
| "distributor," | "commission," |
| "health authorities," | "licensee," |
| "market," | "milk," |
| "producer," | "person," |
| "subdistributor," | "sanitary," |
| "subsidiary," | |
- (8) "Milk." For the purpose of classification, wherever the word "milk" is used, it shall be construed to include all whole milk, cream, chocolate milk, plain buttermilk, creamed buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, milk shake mix, half and half, eggnog and other milk-cream mixtures, regardless of grade or fat content and:
- (a) "Lowfat Fresh White Milk." Lowfat fresh white milk is fresh milk from which a sufficient portion of milkfat has been removed to reduce its milkfat content to not less than 0.50 percent and not more than 2.0 percent.
- (b) "Lowfat White Reconstituted or Recombined Milk." Lowfat white reconstituted or recombined milk shall mean milk which is a result of the mixing of

milk solids and water with any of, or combination of, fresh whole milk, fresh skim milk, milkfat, which results in a product containing not less than 0.50 percent and not more than 2.0 percent milkfat.

(c) "Lowfat Flavored Fresh Milk." Lowfat flavored fresh milk is fresh milk from which a sufficient portion of milkfat has been removed to reduce its milkfat content to not less than 0.50 percent and not more than 2.0 percent and to which has been added a flavor or sweetener.

(d) "Lowfat Flavored Reconstituted or Recombined Milk." Lowfat flavored reconstituted or recombined milk shall mean milk which is a result of the mixing of milk solids and water to which has been added a flavor or sweetener with any of, or combination of, fresh whole milk, fresh skim milk, milkfat, which results in a flavored or sweetened product containing not less than 0.50 percent and not more than 2.0 percent milkfat.

(e) "Ultra High Temperature Milk." Ultra high temperature milk is milk which is aseptically processed and hermetically sealed in a container so as to render the product free of microorganisms capable of reproducing in the product under normal non refrigerated conditions of storage and distribution. Reference to this product will be UHT milk.

(f) "Ultra Pasteurized Milk." Ultra pasteurized milk is milk which has been thermally processed at or above 200 degrees F. (130 degrees C.) for at least two seconds so as to produce a product which has an extended shelf life under refrigerated conditions.

For the purpose of the marketing regulations, the following terms or words shall mean:

(1) "Act" means Article 28B, Chapter 106 of the General Statutes of North Carolina, relating to the North Carolina Milk Commission.

(2) "North Carolina Marketing Area." The "North Carolina marketing area", hereinafter called the marketing area,

means all the territory within the boundaries of the state of North Carolina including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

(3) "Classification" means the classifying of milk and fluid milk products into classes according to utilization for a calendar month.

(4) "Delivery period" means the calendar month.

(5) "Base" for a producer means the average deliveries of a producer for a designated period that is established on an equitable basis with all other producers, for allocating classes of milk.

(6) The following terms as defined in Article 28B, Chapter 106-266.6 of the General Statutes of North Carolina shall apply: "affiliate", "books and records", "commission", "distributor", "health authorities", "licensee", "market", "milk", "person", "producer", "sanitary", "subdistributor", "subsidiary".

(7) "Milk." For the purpose of classification, wherever the word "milk" is used, it shall be construed to include all whole milk, lowfat milk, cream, chocolate or flavored milk, chocolate or flavored lowfat milk, plain buttermilk, creamed buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, any recombined milk, filled milk (milk portion), dietary modified milk, milk shake mix, half and half, eggnog and other milk-cream mixtures, regardless of grade or fat content.

(8) "Filled Milk." Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid product, and

contains less than 6 percent nonmilk fat (or oil).

(9) "Ultra High Temperature Milk." Ultra high temperature milk is milk which is aseptically processed and hermetically sealed in a container so as to render the product free of microorganisms capable of reproducing in the product under normal non-refrigerated conditions of storage and distribution. Reference to this product will be UHT milk.

(10) "Ultra Pasteurized Milk." Ultra pasteurized milk is milk which has been thermally processed at or above 280 degrees F. (138 degrees C.) for at least 2 seconds so as to produce a product which has an extended shelf life under refrigerated conditions.

(11) "Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

(12) "Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without stationary storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another or separate facilities used only as a distribution point for storing packaged fluid milk products in transit for route disposition shall not be a plant under this definition.

(13) "Regulated Plant" means a licensed handler which operates a fluid milk plant located in North Carolina and which is also a pool plant.

(14) "Pool Plant" except as provided in paragraph (b) of this subsection, "pool plant" means:

(a) A plant located within a marketing area that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which during the

month the total quantity of fluid milk products, except the non-milk ingredients of filled milk, disposed of in Class I is not less than 70 percent in each of the months of September through November and January and 50 percent in each of the other months, of the total quantity of base holding producers milk, except the non-milk ingredients of filled milk, physically or constructively received, as provided in subsection (18) of this rule, at such plant, or diverted therefrom pursuant to subsection (20)(d) of this Rule; provided a plant may disqualify milk as permitted under subsection (21) of this rule in order to remain a pool plant.

(b) The term "pool plant" shall not apply to the following plants:

- (i) A producer-handler plant;
- (ii) A governmental agency plant; or,
- (iii) A plant located outside the State of North Carolina.

(15) "Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other Federal Order plant" means a plant located outside the State of North Carolina that is fully subject to the pricing and pooling provisions of a Federal Milk Marketing Order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.).

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in subsection (17) of this rule.

(c) "Unregulated plant" means a nonpool plant that is not a producer-handler plant, a governmental agency plant or any other Federal Order plant and from which fluid milk products are shipped to a pool plant.

(d) "Governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in

the marketing area. Such plant shall be exempt from all pooling provisions of these rules and regulations.

(e) "Regulated non pool plant" means a licensed handler which operates a fluid milk plant located in North Carolina and which is subject to the classification and pricing requirements of the Rules but is not a pool plant since it does not meet the minimum Class I percentage requirements.

(16) "Handler" means:

- (a) Any person in his capacity as the operator of one or more pool plants;
- (b) A cooperative association with respect to milk of producers diverted to nonpool plants for the account of such association pursuant to subsection (20) of this Rule, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this subsection;
- (c) Any cooperative association with respect to milk, excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this subsection, that is received for its account from the farm of a producer for delivery to a pool plant of another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the Milk Commission prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined from the measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;
- (d) Any person who operates an unregulated plant; and
- (e) A producer-handler.

(17) "Producer-handler"

means any person:

- (a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;
- (b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other Federal order plants;
- (c) Whose receipts of fluid milk products from pool plants and other Federal order plants do not exceed a daily average of 1,500 pounds during the month;
- (d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and.
- (e) Who provides proof satisfactory to the Milk Commission that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

(18) "Constructively Received" is defined as occurring when North Carolina baseholder milk which by contractual obligation would ordinarily be received at one plant but which by mutual agreement of the parties in order to result in a savings of hauling or other charges is not physically received at that plant but is, diverted directly to and actually received by another plant which is a party to said agreement. Under this definition, the milk thus shipped would be deemed to be constructively received by the first plant although physically received by the second plant.

(19) "Baseholding Producer".

- (a) Except as provided in paragraph (b) of this subsection, "baseholding producer" means a producer who holds a North Carolina Milk Commission base that has been established or acquired in accordance with Rule .0514 and who produces milk approved by a duly constituted regulatory agency for fluid consumption, whose milk is:
 - (i) Received at a pool

plant directly from such person;

- (ii) Received by a handler described in subsection (16) of this Rule; or,
- (iii) Diverted from a pool plant in accordance with subsection (20) of this Rule.
- (b) "Baseholding Producer" shall not include:
 - (i) A producer-handler as described in subsection (17) of this Rule;
 - (ii) A governmental agency operating a plant exempt pursuant to subsection (15)(d) of this Rule; or,
 - (iii) A producer whose milk qualifies for pooling in another pool.
- (20) "Qualifying Baseholding Producer Milk" means the skim milk and butterfat contained in milk of North Carolina baseholding producers eligible to participate in the North Carolina pool that is:
 - (a) Received at a pool plant directly from such producer by the operator of the plant, excluding such milk that is diverted from another pool plant;
 - (b) Received by a handler described in subsection (16) of this Rule;
 - (c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;
 - (d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in subsection (16) of this Rule subject to the following conditions:
 - (i) A baseholding producer's milk shall be eligible for diversion to a nonpool plant during any month in which such producer milk is physically or constructively received at a pool plant as follows:
 - (A) In any month of August through February, six days' production; and,
 - (B) In any month of March through July, two days' production.
 - (ii) During each of the months of August through November and January and February, the total quantity of milk diverted by a cooperative association shall not exceed one-fourth of the

baseholding producer milk that such cooperative caused that month to be delivered to or diverted from pool plants;

(iii) A handler described in subsection (16) of this Rule, that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of August through November and January and February.

(21) "Non-Qualifying baseholding producer milk" means the skim milk and butterfat contained in the milk of North Carolina baseholding producers that is not eligible to participate in the North Carolina pool for the following reasons:

(a) Any milk diverted in excess of the limits prescribed in paragraph (20)(d)(ii) or (iii) of this Rule shall not be pool baseholding producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be pool baseholding producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be pool producer baseholding milk;

(b) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association shall not be baseholding producer milk;

(c) The cooperative association shall designate the dairy farmer deliveries that are not baseholding producer milk pursuant to paragraph (2) of this subsection. If the diverting handler fails to make such designation, no milk diverted by such handler shall be baseholding producer milk.

(d) Any milk produced by a baseholding producer that qualifies for pooling in another pool shall not be

included in the North Carolina pool.

(22) "Other source milk"

means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in Rule .0504 from any source other than producers, handlers described in subsection (16) of this Rule, or pool plants;

(b) Receipts in packaged form from other plants of products specified in Rule .0504;

(c) Products (other than fluid milk products, products specified in Rule .0504, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and,

(d) Receipts of any milk products (other than a fluid milk product or a product specified in Rule .0504) for which the handler fails to establish disposition.

(23) "Cooperative association" means any cooperative association of producers which the Milk Commission determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and,

(b) To have and to be exercising full authority in the sale of milk of its members.

.0503 DISTRIBUTOR (HANDLER) LICENSES

(a) No distributor (handler), subdistributor or any other person shall sell or offer for sale or otherwise distribute milk in any county located in any marketing area until a license has been obtained from the Milk Commission.

(b) The principal distributor or processing plant (handler) shall be charged with the responsibility of obtaining a license for his plant and his subdistributor before beginning distribution of milk in any county of a controlled area.

(c) A new applicant for a distributor (handler) or subdistributor license shall make application and receive a

license before handling, distributing, or offering for sale milk and/or milk products in fluid form for fluid consumption or use in any county of any marketing area.

(d) The commission may decline to grant a license to a new applicant or a now existing distributor (handler) or may suspend or revoke a license already granted, upon due notice to the licensee or applicant and after a hearing in accordance with the authority granted the commission by Article 28B, Chapter 106, of the General Statutes.

(e) The Milk Commission shall give at least 10 days notice to the licensee or applicant and state the reason for the hearing before refusing to grant a license or suspending or revoking a license already granted.

(f) The following procedure will be used by the commission when considering a request from a new applicant or for additional territory from an existing distributor:

(1) At least 10 days prior to consideration of an application for license by the commission, all distributors licensed to distribute milk in the county or marketing area shall be notified of the application and given an opportunity to file a statement regarding the application.

(2) The applicant or his representative shall be given an opportunity to file statements or appear before the commission in support of his application.

(3) On the basis of information presented to the commission by licensed distributors (handlers), by the applicant or by the commission staff, the commission may approve the license or may postpone action on the application pending a hearing. At this hearing, interested parties shall be given an opportunity to show cause why the license should not be granted.

(4) Licenses approved by the commission shall be issued to become effective on a date set by the commission; however, the effective date shall be at least 10 days following the date of final approval.

(g) Licenses issued by the

commission shall be classified as follows:

(1) General Distributor (Handler). A person or firm engaged in receiving, pasteurizing, processing, and packaging raw milk into fluid form for distribution to the retail and wholesale trade and who may purchase part of its products packaged under their own label from another general distributor shall be licensed as a general distributor (handler) and must hold a license for each county or specified territory in which distribution is to be made or any areas or territory in which a subdistributor will distribute their products.

(2) Restricted General Distributor (Handler). A person or firm engaged in receiving, pasteurizing, processing, and packaging raw milk into fluid form for distribution only to company owned or affiliated stores, and who may purchase part of its products packaged under their own label from a general distributor (handler), shall be licensed as a restricted general distributor (handler) and must hold a license for each county or specified territory in which distribution is to be made.

(3) Non-processing General Distributor (Handler). A person or firm whose principal business is the distribution, to the retail and wholesale trade, milk which is processed by a general distributor (handler) under the label of the non-processing general distributor (handler).

(4) Subdistributor. A person or firm whose principal business is selling on retail and wholesale routes milk which is received, pasteurized, processed, and packaged by a licensed general distributor (handler); or a person or firm who holds a general distributor's (handler's) license and also distributes fluid milk products which are processed by another general distributor (handler), as a second brand, shall be licensed as a subdistributor for the county or territory in which distribution of the products

of the general distributor (handler) will be made.

(5) Limited Subdistributor. A person or firm who has an agreement or arrangement to purchase from a specified general distributor (handler) either at such general distributor's (handler's) platform, or on the basis of a drop shipment to a central location or warehouse, fluid milk products for distribution to its company owned or affiliated outlets shall be licensed as a limited subdistributor for each county or territory in which distribution is to be made; provided, however, the general distributor is not required to hold a general distributor's license for such county or territory. The commission may consider the issuance of more than one limited subdistributor license for the same general distributor in a given territory.

(6) Processor-Distributor (Handler) of UHT Milk. A person of firm engaged in the processing of ultra high temperature milk as defined in Rule .0501(9) for sale to other milk distributors (handlers), wholesalers, brokers, or retail outlets for distribution to consumers. A milk distributor (handler), wholesaler, broker, or retail outlet shall not be required to obtain a license to distribute this product when this product is purchased from a processor licensed under the provisions of this Subsection. A milk distributor (handler), wholesaler, broker, or retail outlet purchasing the product for redistribution may be required to file a report with the commission and the processor-distributor (handler) from whom the purchases are made when it is necessary in order to identify the volume sold in North Carolina.

(7) Processor-Distributor (Handler) of Ultra Pasteurized milk. A person or firm engaged in the processing of ultra pasteurized milk, as defined in Rule .0501(10), for sale to other milk distributors (handlers),

wholesalers, brokers, or retail outlets for distribution to consumers. A milk distributor (handler), wholesaler, broker, or retail outlet shall not be required to obtain a license to distribute this product when this product is purchased from a processor licensed under the provisions of this Subsection. A milk distributor (handler), wholesaler, broker, or retail outlet purchasing the product for redistribution may be required to file a report with the commission and the processor-distributor (handler) from whom the purchases are made when it is necessary in order to identify the volume sold in North Carolina.

.0504 CLASSIFICATION OF MILK

(a) Class I- Class I shall include the product weight of all fluid milk, fluid milk products, (including products sweetened or flavored), all skim milk and butterfat which is sold or disposed of for consumption or use as processed fluid milk products under any trade name (regardless of grade), except milk shake mix, heavy cream, medium cream, half and half, one-half ounce coffee creamers, eggnog, and any other cream items which are classified in a lower class and military sales approved for Class IA. The following provisions are also applicable to Class I-

(1) Class I includes, but is not limited to, the following type milk products: pasteurized milk, homogenized milk, raw milk, whole lactic milk, buttermilk, plain and flake buttermilk, lowfat flavored fresh milk, lowfat flavored reconstituted or recombined milk, lowfat white reconstituted or recombined milk, skim milk, fortified skim milk with added solids, chocolate or flavored milks or milk drinks, dietary modified milk, sterile milk, reconstituted milk and concentrated milk.

(2) Class I shall also include any volume of fluid loss or shrinkage in excess of three percent of each month's reconciliation as computed in accordance with .0506(c) of this Section.

Any excessive loss computed which is to be paid as Class I to producers shall be paid in the producer payroll for the month following the month in which such loss occurred.

(3) All fluid milk sold to military installations shall be classified as Class I except for such classification and class prices for specified periods as may be approved by the Milk Commission.

(4) Class I shall also include UHT milk and ultra pasteurized milk as defined in Rule .0501(8)(e) and (f).

(b) Class IA: Class IA shall include all bulk milk sold to other distributors or transferred between branches or plants of the same company for fluid use as defined in .0504(a) of this Rule including transfers for military usage for which a different producer price may apply. Also, Class IA shall include the sales of milk made directly to military installations for which a producer price different from the Class I price may apply.

(c) Class IB may include all fresh skim milk and fresh milkfat which is sold or disposed of for consumption as lowfat fresh white milk as defined in these regulations.

(d) Class II: Class II includes all milk received and not accounted for in Class I and Class IA, including plant loss or shrinkage volume not in excess of three percent of the total weight to account for as determined by the provisions of .0506(e)(1) of this Section. Class II utilization must be supported by complete and accurate records being maintained by the distributor which will account for the disposition and use of all milk and milk products received including the allowable shrinkage or plant loss.

(a) Class I. Class I shall include the product weight of all fluid milk, fluid milk products, (including products sweetened or flavored), all skim milk and butterfat which is sold or disposed of for consumption or use as processed fluid milk products under any trade name (regardless of grade), except milk shake mix, heavy cream, medium cream, half and half, one-half ounce coffee creamers, eggnog, and any other cream items which are classified in a lower class and military sales

approved for Class IA. The following provisions are also applicable to Class I:

(1) Class I includes, but is not limited to, the following type milk products: pasteurized milk, homogenized milk, lowfat milk, raw milk, whole lactic milk, buttermilk, plain and flake buttermilk, skim milk, fortified skim milk with added solids, chocolate or flavored milks, dietary modified milk, sterile milk, filled milk (milk portion only), reconstituted milk, concentrated milk, UHT milk and ultra pasteurized milk.

(2) Class I shall also include any volume of fluid milk loss or shrinkage in excess of three percent of each month's reconciliation as computed in accordance with Rule .0507. Any excessive loss computed which is to be paid in Class I shall be paid in the pool computation for the month following the month in which such loss occurred.

(3) All fluid milk sold to military installations shall be classified as Class I except for such classification and class prices for specified periods as may be approved by the Milk Commission.

(b) Class IA. Class IA shall include all bulk milk sold to North Carolina distributors for fluid use as defined in (a) of this Rule including transfers for military usage for which a different producer price may apply. Also, Class IA shall include the sales of milk made directly to military installations for which a producer price different from the Class I price may apply.

(c) Class II. Class II includes all milk received and not accounted for in Class I and Class IA, including plant loss or shrinkage volume not in excess of three percent of the total weight to account for as determined by the provisions of Rule .0508(a)(1). Class II utilization must be supported by complete and accurate records being maintained by the distributor which will account for the disposition and use of all milk and milk products received including the allowable shrinkage or plant loss.

(d) Classification of Transferred or Diverted Bulk Milk and Transfer of Packaged Milk.

(1) Transfer or diversion of bulk milk from the producers of a pool plant or pool cooperative to another pool plant shall be classified according to the classification usage of the receiving plant at North Carolina minimum prices. Hauling and handling charges incurred by a pool plant or cooperative in shipping such milk may be deducted from producers after the notification of classification of producer milk is received from the pool and shall be deducted in accordance with Rule .0513(f). The classified use of the milk shall be reported to the shipper by the fifth working day of the following month and payment made by the 10th working day of the following month.

(2) Transfers or diversion of bulk milk from producers or associations of producers from a pool plant to a non-pool plant shall be accounted for to the pool at the Class II price. Handling and hauling charges are permitted after the notification of classification of producer milk is received from the pool in accordance with Rule .0513(f) of this section.

(3) Transfers of packaged milk from a pool plant to another pool plant or non-pool shall be classified and priced by the packaging distributor according to the commission announced price in effect for the state or federal order in which it is sold as outlined in Rule .0507(b) of this section.

(e) Reclassification of Inventory. When producer or other source milk on hand in inventory at the end of a month is later utilized in a higher class, an adjustment shall be made to reclassify this volume of milk by accounting to the pool based upon the reclassification. This provision shall apply when the Class I and IA sales of a plant exceed the Class I and IA accounting to the pool and other sources: and when it is determined that the excess Class I and IA sales over receipts were derived from inventory.

.0505 RULES OF CLASSIFICATION (REPEAL)

.0506 COMPUTATION OF MILK

IN EACH CLASS -WEIGHT FACTORS

(a) All distributors in the marketing area shall compute the total pounds of milk in each class and apply to regular producer deliveries (including distributor-owned herds) for each delivery period. All classified settlements with producers under the base plan shall be made in accordance with the uniform method of allocating classes of milk to producers which is as follows:

Producer	Base	Delivered
1	15,000	18,000
2	8,000	9,000
3	5,000	6,000
4	5,000	3,000
	33,000	36,000
	(20,000)	

Class I	Class IA	Class II
15,536	1,071	1,393
8,286	572	142
5,170	357	465
3,000	-	-
32,000	2,000	2,000
(29,000)		
96.97%		
+103.57%		

To obtain the Class I usage percent, divide total Class I sales by total base. Example: 32,000 divided by 33,000 = 96.97%

This percent should be applied to each producer's base; however, we find that producer #4 did not deliver 96.97% of his base... (4,848 pounds) which he is entitled to in Class I. Therefore, producer #4 is given all of his milk at Class I and a new percentage must be obtained so that the 1,848 pounds (4,848 - 3,000 = 1,848) of Class I milk may be divided between the other producers. This is obtained by subtracting the pounds #4 is given in Class I from the total Class I sales. The base of #4 is subtracted from the total bases (Example: 33,000 - 5,000 = 28,000).

A new percentage is obtained by dividing the new Class I total by the new base total (Example: 29,000 divided by 28,000 = 103.57%). This percent will then apply to each producer's base (except those eliminated, as was producer #4).

The quantity obtained for each producer will then be his Class I milk and the total of all will account for the total Class I sales. Example:

1 15,000 x 103.57% = 15,536 pounds
 2 8,000 x 103.57% = 8,286 pounds
 3 5,000 x 103.57% = 5,178 pounds
 4 5,000 x determined 3,000 pounds

Total Class I 32,000 pounds

Class IA sales or use is applied to producer's bases by the same procedure; that is, divide the last aggregate bases obtained for Class I into the total Class IA sales or use (Example: 2,000 divided by 28,000 = 7.14%). Each producer's base is multiplied by this percent to obtain his quantity of Class IA milk except those eliminated as was producer #4.

1 15,000 x 7.14% = 1,071 pounds
 2 8,000 x 7.14% = 572 pounds
 3 5,000 x 7.14% = 357 pounds
 4 - - - - -

Total Class IA 2,000 pounds

The Class II milk is determined by subtracting the Class I and Class IA milk from the total deliveries of each producer.

(b) To compute the weight of product pounds to be classified in each class, multiply the respective units by the proper weight factor determined on the basis of the following weights per quart:

Product
 Milk
 Creamed Buttermilk (whole)
 Flavored Milk/Milk Drink (net)
 Skim Milk
 Buttermilk

Weight Per Quart	Product	Weight Per Quart
2.15	Cream (10 17%)	2.13
2.15	Cream (10 21%)	2.11
2.08	Cream (29 32%)	2.09
2.16	Cream (33 39%)	2.08
2.16	Cream (40 42%)	2.06

To compute the product pounds of egg nog, sour cream dips, and milk shake mix, multiply the units by the respective weight for each product; provided, however, the weight of any non-milk ingredient solids may be deducted from the total weight of the computed product pounds to arrive at the pounds to be classified to producers.

(c) The total pounds of breed milk sold by each distributor may be allocated in a uniform manner to producers of breed milk (including

distributor-owned herds) and the remaining amount of milk delivered by breed producers (if any) shall be classified in Class II of the regular pool. If breed milk sales are classified in the regular pool, the minimum premium of twenty cents (\$0.20) per hundredweight for breed milk sales should be prorated to breed producers as a percentage of their established base.

(d) In the months of July and January of each year, qualified breed producers may select the breed milk pool or the regular pool in which they will participate for the following six-month period beginning August 1 and February 1. (No changes will be permitted between pools for breed producers except in the months of August and February as provided in this Paragraph.) A copy of the agreement must be filed with the plant and Milk Commission and such agreement shall be in writing and signed by each breed producer affected.

(e) To compute the plant loss or shrinkage for each month or accounting period, the following procedure shall be followed:

(1) Add the weight of all milk and cream products containing butterfat or milk solids in any form received from producers or other sources, and the weight for any volume of milk reconstituted.

Deduct from the resulting total weight computed in accordance with the above, the weight of any cream, powder or condense received which is transferred directly for use in the manufacture of by-products such as ice cream and cottage cheese to determine a sub-total — Net receipts to account for.

Add to this sub-total the beginning bulk and package inventories to determine the total weight of the milk and milk products to account for.

(2) Add the weight of all milk, cream, and milk products containing butterfat and skim milk ingredients used and disposed of in the following manner:

Packaged and bulk sales and transfers (do not include animal feed sales); ending inventories; milk

solids in reconstitution; the weight of any unusual loss which is allowable as provided for in .0505(f) of this Section; transfers to the manufacturing of by-products such as ice cream and cottage cheese less the weight of ingredients deducted in accordance with (e)(1) of this Rule, which were purchased for direct use in manufacturing by-products. The transfer weights to manufacturing must be supported by complete and adequate records. Such manufacturing records must be made available for inspection and audit purposes.

- (3) Determine the allowable loss or shrinkage by multiplying the total weight of the milk and milk products to account for in (e)(1) of this Rule, by three percent.
- (4) Determine the actual loss or shrinkage or gain by subtracting the total weights accounted for in (e)(2) of this Rule from the total weight to account for in (e)(1) of this Rule.
- (5) When the actual loss or shrinkage exceeds the three percent amount determined in (e)(3) of this Rule, the excess loss or shrinkage must be added to Class I to producers, except that the excess loss or shrinkage may be prorated based on the source of net receipts as computed in the net sub-total in (e)(1) of this Rule. When the net receipts to account for in (e)(1) of this Rule include receipts of ingredients from sources other than producers or from reconstitution, determine the percent that producer receipts are to the sub-total — net receipts to account for. Apply this percent to any excessive loss or shrinkage to determine the weight adjustment to be added to Class I. Such adjustment shall be paid in the producer payroll for the month following the month in which such loss occurs, provided however, if enough Class II milk is not available then the amount not adjusted shall be paid in the next subsequent month or months until the full adjustment is paid.

(a) After each handler in the marketing area receives notification from the commission of the total pounds of milk in each class due for that group of producers, all handlers shall compute the total pounds of milk in each class and apply to qualifying baseholding producer deliveries (including distributor (handler)-owned herds) for each delivery period. All classified settlements with producers under the base plan shall be made in accordance with the uniform method of allocating classes of milk to producers which is as follows:

Producer	Base	Delivered
1	15,000	18,000
2	8,000	9,000
3	5,000	6,000
4	5,000	3,000
-----	-----	-----
	33,000	36,000
	(28,000)	

Class I	Class II
15,536	2,464
8,286	714
5,178	822
3,000	-
-----	-----
32,000	4,000
(29,000)	
96.97%	
103.57%	

To obtain the Class I usage percent, divide total Class I sales by total base. $32,000$ divided by $33,000 = 96.97\%$. This percentage shall be applied to each producer's base; however, producer number 4 did not deliver 96.97% of his base. Therefore, producer number 4 is given all of his milk at Class I and a new percentage must be obtained so that the 1,848 pounds ($4,848 - 3,000 = 1,848$) of Class I milk will be reallocated to other producers. This is obtained by subtracting the pounds number 4 is given in Class I from the total Class I sales. The base of number 4 is subtracted from the total bases (Example: $33,000 - 5,000 = 28,000$).

A new percentage is obtained by dividing the new Class I total by the new base total (Example: $29,000$ divided by $28,000 = 103.57\%$). This percent will then be applied to each producer's base (except those eliminated, as was producer number 4).

The quantity obtained for each producer will then be his Class I milk and the total

of all will account for the total Class I sales. Example:
 1 15,000 x 103.57% = 15,536 lbs.
 2 8,000 x 103.57% = 8,285 lbs.
 3 5,000 x 103.57% = 5,178 lbs.
 4 5,000 x determined = 3,000 lbs.
Total Class I 32,000 lbs.

The Class II milk is determined by subtracting the Class I from the total deliveries of each producer.

(b) To compute the weight of product pounds to be classified in each class, multiply the respective units by the proper weight factor determined on the basis of the following weights per quart:

Product

Whole Milk
 Low Fat Milk
 Low Fat Milk
 Skim Milk
 Buttermilk
 Flavored Milk(Choc./Eggnog)
 Flavored Milk(Choc./Eggnog)
 Milk Shake Mix(net)
 Eggnog(net)
 Cream
 Cream
 Cream
 Cream
 Cream

<u>Butterfat</u>	<u>Weight</u>
<u>Content</u>	<u>Per Quart</u>
(3.25% min.)	2.15
(1-2%)	2.155
(.5-1%)	2.16
(0.99%)	2.16
(0.99%)	2.16
(3.25%)	2.00
(1.2%)	2.00
(4.0%)	2.00
(6% and above)	1.95
(10-17%)	2.13
(18-28%)	2.11
(29-32%)	2.09
(33-39%)	2.08
(40-49%)	2.06

To compute the product weight of eggnog, sour cream, dip and milk shake mix, a different weight factor may be used due to a difference in the non-milk ingredients provided the difference is substantiated by filing an attachment to the report.

.0507 MINIMUM CLASS PRICES AND BUTTERFAT DIFFERENTIALS

(a) Class I price for North Carolina Sales. Effective May 3, 1986, the minimum Class I price to be used for pool computations for all milk which is processed in North Carolina and sold or disposed of for consumption or use as processed fluid milk products in North Carolina and classified as Class

I, shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to a 3.5% butterfat basis as reported by the U. S. Department of Agriculture for the second preceding month plus four dollars (\$4.00) per hundredweight. The price generated under this procedure shall be adjusted according to the procedures outlined in subparagraphs (a)(1) and (a)(2) of this Rule and the resulting price shall be announced in accordance with the procedure outlined in paragraph (a)(3) of this Rule.

(1) The price computed in (a) of this Rule shall be adjusted downward when the prevailing price for raw milk offered for sale or quoted to processors handlers or distributors located outside North Carolina for sales to be made into North Carolina, as defined in this subparagraph, is below the price computed in (a) of this Rule.

The prevailing price shall be defined as the most frequently utilized, most common, or predominant price offered or quoted by producers or associations of producers to processors handlers or distributors located outside North Carolina for Class I fluid milk which is to be sold or disposed of for consumption or use as processed fluid milk products in North Carolina. The Class I fluid milk price offered or quoted by any cooperative or federation of cooperatives for at least 51% of the volume of Class I fluid milk sales shipped into North Carolina by processors handlers or distributors located outside North Carolina shall be considered to be the prevailing price.

(2) Should the Commission determine that processors handlers located outside North Carolina will be paying various Class I prices for milk for sale into North Carolina and that a prevailing price, as defined in (a)(1) of this Rule cannot be determined, the Commission may adjust the price computed under the provisions of (a) of this Rule downward to a Class I price which it considers

fairly representative of the various prices to be paid to producers or associations of producers by processors handlers or distributors located outside North Carolina for Class I sales made into North Carolina.

(3) The Class I price determined for any month shall be announced on or about the fifth and before the tenth of the month preceding such month and the price so announced shall be the price in effect for such month.

(4) The Milk Commission reserves the right to suspend, in accordance with the procedures applicable for filing temporary rules as provided in the Administrative Procedures Act and rules, any price movement indicated by the procedures outlined in this Rule when the Commission deems it advisable.

(b) Class I price for sales outside North Carolina.

(1) Definitions. For purposes of this regulation, the following definitions shall apply:

(A) "Sales outside North Carolina" shall be defined as sales of Class I fluid milk which is processed in North Carolina and sold or disposed of for consumption or use as processed fluid milk products into other states. If the point of such consumption or use cannot be reasonably determined by the Commission, then such sales shall be considered to be a sale where the handler is located.

(B) "Prevailing Price" shall be defined as the most frequently utilized, most common, or predominant price for Class I fluid milk paid to producers or associations of producers by processors handlers located in such area for milk which is sold or disposed of for consumption or use as processed fluid milk products in those areas. The Class I fluid milk price of any cooperative or federation of cooperatives having at least 51% of the Class I fluid milk sales in a given area shall be considered to be the

prevailing price for that area.

(2) The price to be paid producers used for pool computations for the product pounds classified as Class I and sold outside North Carolina shall be as follows:

(A) Virginia. For sales in Virginia the price shall be the actual price established in Virginia Milk Commission for milk containing three and one-half percent (3.5%) butterfat or the prevailing price whichever is higher.

(B) Federal Order Areas and South Carolina.

(i) For sales into all federal order areas and South Carolina, the minimum price to be paid to producers or associations of producers shall be the prevailing price being paid to producers or associations of producers by processors handlers located in such areas for milk containing three and one-half percent (3.5%) butterfat which is sold or disposed of for consumption or use as processed fluid milk products in those areas.

Prior to announcing the prevailing price, the Commission shall:

(I) provide all North

Carolina processors handlers (and their supplying producer cooperatives) which have Class I sales outside North Carolina with a reasonable opportunity for input to the Commission as to the price or prices being paid for raw milk for the areas into which they sell; and

(II) contact processors handlers outside North Carolina which have sales into such areas in an attempt to gather probative information as to the price or prices being paid for raw milk.

(ii) Should the Commission determine that processors handlers are paying various Class I prices and that a "prevailing price" as

defined for a state or federal order area cannot be conclusively determined, the Commission may:

- (I) announce the "prevailing price" for regions, geographic territories or locales within such state or federal order area; or
- (II) announce as the price for an entire state or entire federal order area a price which it considers to be fairly representative of the various prices in effect in each state or federal order area by computing the weighted average of the Class I prices in effect for an appropriate area based upon documented invoice prices or Class I payrolls for non-members; or
- (III) announce as the price a weighted average price as near as it can be determined of the varying Class I prices.

(3) Deductions or credits.

When the price is announced for sales outside of North Carolina, the Commission shall also announce a maximum deduction or credit which may be allowed from this price after considering the service charges in effect in such state or federal order area.

- (4) Announcement. The prices for milk sold in other states or markets shall be announced and a notice mailed to all licensed distributors handlers at least ten days prior to the effective date of such prices.

(c) Class IA Price.

The price to be paid North Carolina producers or North Carolina associations of producers used for pool computations for the product pounds classified as Class IA shall be the weighted average price on a three and one-half percent butterfat basis for sales or transfers of milk computed in accordance with the provisions as outlined in

0505(d) Rule .0504(b) of this section. Further, the Executive Secretary is authorized to announce the minimum prices to

be paid producers used for pool computations for milk used to supply general issue and commissary contracts for military installations. The minimum prices announced shall be applicable to the bids made during a specified period and remain in effect for the duration of the contract. After all handler utilization reports are received by the commission, Class IA product pounds shall be pooled with Class I, and when payment notification is returned to the producer, Class IA payment will be combined with Class I.

(d) Class IB Price. The minimum price to be paid producers for the product pounds classified as Class IB in the designated marketing areas shall be as follows:

Milk Marketing Areas I, II, III, IV, V, VI, VII, VIII, IX, and X the Class I price generated by the procedure as outlined in (a) of this Rule and announced by the commission for milk containing three and one-half percent butterfat.

(e) (d) Class II Price. The price to be accounted to the pool for product pounds classified as Class II shall be the announced Class II price of the commission. The announced Class II price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to 3.5% butterfat basis as reported by the U.S. Department of Agriculture for the second preceding month.

(f) (e) Butterfat Differentials.

For Class I, Class IA, and Class II milk, each distributor handler shall pay producers the minimum butterfat differential per hundredweight as announced by the commission on or about the fifth of the month to apply to all deliveries made during that month or accounting period. The minimum differential for each month or accounting period shall be determined by multiplying the average Chicago 92 score butter price for the previous month, as reported by the U. S. Department of Agriculture, Crop Reporting Board, by 0.10 and rounded to the nearest one-tenth cent (\$0.0001) (0.0005 shall be rounded to the next 1/10 cent).

In making payment to each producer, a distributor handler shall add the minimum of the applicable butterfat differential per

hundredweight for each 1/10 of one percent that each producer's milk is above three and one-half percent butterfat and shall not deduct more than the minimum of the applicable butterfat differential per hundredweight for each 1/10 of one percent that each producer's milk is below three and one-half percent butterfat.

(g) (f) Premium for Breed Milk Sales. Each handler shall pay breed producers a minimum of twenty cents (\$.20) per hundredweight for all breed milk (sold by the distributor handler as breed milk at a premium price) in addition to the established Class I price.

(h) (a) Minimum Price to be Paid by a Distributor Handler for Class IA Milk. The minimum price to be paid by the purchasing distributor handler to other distributors handlers for Class IA milk shall not be less than the class-use minimum producer prices established for the marketing area in which the purchasing distributor handler is located.

(i) (h) Minimum Price for Milk Sold in Established Marketing Areas. Each distributor handler located in an uncontrolled area in North Carolina, who distributes milk in other established marketing areas in North Carolina, shall pay producers not less than the minimum producer price established for that part of his total sales that are sold in other established marketing areas in North Carolina.

.0508 PLANT SHRINKAGE

(a) To compute the total loss or shrinkage for each month or accounting period, the following procedure shall be followed:

(1) Add the weight of all milk and cream products containing butterfat or milk solids in any form received from producers or other sources, and the weight for any volume of milk reconstituted.

Deduct from the resulting total weight computed in accordance with the above, the weight of any cream, powder or condense received which is transferred directly for use in the manufacture of by-products such as ice cream and cottage cheese to determine a sub-total -- Net receipts to account for.

Add to this sub-total

the beginning bulk and package inventories to determine the total weight of the milk and milk products to account for.

(2) Add the weight of all milk, cream, and milk products containing butterfat and skim milk ingredients used and disposed of in the following manner:

Packaged and bulk sales and transfers (do not include animal feed sales); ending inventories; milk solids in reconstitution; the weight of any unusual loss which is allowable as provided for in subsection (b) of this Rule; transfers to the manufacturing of by-products such as ice cream and cottage cheese less the weight of ingredients deducted in accordance with (a)(1) of this Rule, which were purchased for direct use in manufacturing by-products. The transfer weights to manufacturing must be supported by complete and adequate records. Such manufacturing records must be made available for inspection and audit purposes.

(3) Determine the allowable loss or shrinkage by multiplying the total weight of the milk and milk products to account for in (a)(1) of this Rule, by three percent.

(4) Determine the actual loss or shrinkage or gain by subtracting the total weights accounted for in (a)(2) of this Rule from the total weight to account for in (a)(1) of this Rule.

(5) When the actual loss or shrinkage exceeds the three percent amount determined in (a)(3) of this Rule, the excess loss or shrinkage must be added to the Class I volume for pool computations, except that the excess loss or shrinkage may be prorated based on the source of net receipts as computed in the net sub-total in (a)(1) of this Rule. When the net receipts to account for in (a)(1) of this Rule include receipts of ingredients from sources other than producers or from reconstitution, determine the percent that producer receipts are to the sub-total -- net receipts to

account for. Apply this percent to any excessive loss or shrinkage to determine the weight adjustment to be added to Class I. Such adjustment shall be classified as Class I in the month following the month in which such loss occurs.

(b) Unusual Loss of Milk.

When an unusual loss in bulk, processed, or packaged milk is experienced from an act or condition over which the handler has no control, the Milk Commission will consider administrative relief if such request is made as soon as possible by telephone to the commission office, and such telephone call is immediately confirmed by a written certification from such handler. The written certification must be submitted jointly by the plant superintendent and the highest other executive of the plant where the loss occurred. On any such request, if approved, a written waiver will be furnished to the handler and such waiver must be attached to the report for the month in which such loss occurred. Upon receipt of a waiver, a handler must maintain all related records for audit examination.

.0509 PRODUCER SETTLEMENT FUND

The Milk Commission shall establish and maintain a separate fund known as the "producer settlement fund" into which the commission shall deposit all payments made by handlers pursuant to Rules .0511, .0512 and .0513 of this section from which the commission shall make all payments pursuant to Rules .0511, .0512 and .0513 of this section. Any payments due a handler or association of producers shall be offset by any payments due from such handler or association of producers.

.0510 HANDLER AND PRODUCER PAYROLL REPORTS

(a) On or before the fifth working day following the end of each month, each handler shall report to the Milk Commission on forms furnished by the Milk Commission as follows:

(1) Receipts of all

North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handler.

(2) Receipts of packaged

milk from other handlers, receipts from reconstitution, and any or all other fluid milk products and bulk milk and cream products.

(3) The utilization and disposition of all milk, filled milk, reconstituted milk, and milk products reported pursuant to (a)(1) and (a)(2) of this Rule.

(4) Inventories at the beginning and end of the month of all fluid milk products and other products specified in this Rule.

(5) The transfer and diversion of all milk and milk products not covered in subsections (a)(3) and (a)(4) of this Rule.

(b) On or before the fifth working day following the end of the month, each producer association shall report to the Commission on the forms furnished by the Commission, the following information:

(1) Receipts of all

North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handler.

(2) Transfer and disposition or diversion of all milk received from producer sources and other sources to any Grade A or manufacturing outlet wherever located.

(c) On or before the fourth working day of the following month, the purchaser of bulk milk shall furnish the seller a record by classes as to the use of all milk received. Payment shall be made by the ninth working day of the following month.

(d) On or before the seventeenth working day following the end of each month each handler and cooperative shall file with the Commission on forms furnished by the Commission, a complete report of all receipts, sales, and utilization and a producer payroll showing the allocation and gross payment to each producer.

.0511 UNIFORM CLASS I AND CLASS II PRICES AND POOL OBLIGATION

(a) After receiving the preliminary utilization reports filed by the handlers and associations of producers under the provisions of .0510 of this section, the commission shall determine uniform prices for Class I and Class II milk

containing 3.5 percent butterfat as follows:

- (1) Determine the value of Class I milk utilized by each handler and association of producers.
- (2) Determine the value of Class II milk utilized by each handler and association of producers.
- (3) For any handler plant which is also fully regulated under a federal milk marketing order, adjust the Class I value computed for such handler either by:
 - (A) subtracting an amount equal to the amount of any payment remitted to a producer settlement fund of such federal milk marketing order for the previous settlement period, or by
 - (B) adding an amount equal to the amount of any payment received from the producer settlement fund of such federal milk marketing order for the previous settlement period.
- (4) Add or deduct from the respective class any amount owed to, or credit due from the North Carolina pool for previous months resulting from corrections or adjustments.
- (5) Combine the values in subsections (a)(1) through (a)(4) of this Rule to determine the Class I value, the Class II value and the total pool obligation for each handler.
- (6) Aggregate the values for Class I and Class II for all pool handlers to determine the total pool value for the Class I and Class II milk.
- (7) To the resulting total pool values for Class I and Class II milk, add one-half of the reserve balance in the producer settlement fund for the previous month, prorated between Class I and Class II on the basis of the percentage of utilization in each class.
- (8) Divide the value determined for Class I and Class II milk for all handlers by the total volume of Class I and Class II milk respectively; the results being the average price per hundredweight for Class I and Class II milk respectively.
- (9) Subtract not less

than four cents (\$0.04) per hundredweight but not more than five cents (\$0.05) per hundredweight from the average price per hundredweight for Class I and Class II milk determined in subsection (a)(8) of this Rule as a reserve for the producer settlement fund.

(b) The results of the computations in (a) of this Rule shall be the uniform prices for Class I and Class II milk and shall be the prices applicable to the volume of each handler's Class I and Class II milk as allocated and determined in accordance with the procedures outlined in Rules .0512 and .0513 of this section.

.0512 COMPUTATION OF SETTLEMENT FUND AMOUNTS

(a) After determining volumes utilized in Class I and Class II milk from all handlers based upon the procedure outlined in Rule .0511 of this section, the Class I and Class II volumes utilized shall be allocated among all handler groups of producers using the following procedure:

- (1) Aggregate the total monthly bases of all active producers.
- (2) Should the total bases of any handler group exceed production for the month, adjust the total bases to equal the total production for that handler for such month.
- (3) Combine the total bases for each handler to determine the total base for the pool to be used in the allocation of Class I and Class II milk for each handler.
- (4) Calculate the percentage of volume utilized in Class I to the total base for the pool and use this percentage to determine the volume to allocate to each handler in the pool as Class I.
- (5) Subtract the Class I volume from the total volume purchased by each handler to determine the Class II volume.
- (b) After determining the allocation of Class I and Class II milk due each handler group, apply the Class I and Class II uniform prices determined in .0510(b) of this section to these values to determine the value of milk due each group from the producer pool.
- (c) The value of milk of

each handler group as determined in (b) of this Rule shall be compared to the value of milk due to the pool as computed in .0511(a)(5) of this section to determine if a payment is to be made to the pool or if funds are to be drawn from the pool. If payment is due the pool, the commission shall notify each handler or handler group by the eighth of the month. Such payment shall be made to the commission by the tenth of the month.

.0508 METHOD OF SETTLEMENT

(a) Final Settlement.

Each distributor in the marketing area shall make full and complete payment to producers on or before the 15th day following the close of each calendar month or approved accounting period at not less than the minimum class prices as specified in .0507 of this Section.

(b) Partial Payments.

Upon request, a partial payment shall be paid to a producer not later than the last day of the delivery period for milk received during the first half of such delivery period. A producer's request for a partial payment shall be honored for an amount up to 40 percent of his previous month's net utilization value computed to the nearest one hundred dollars (\$100.00); provided, a sufficient volume of milk has been delivered for the first half of the month or pay period to justify such payment. Further, in determining the amount of the partial payment to be made, the distributor may take into account assignments and such other deductions as are authorized by the producer.

A producer may request that a partial payment be made on a regular basis or may request a single or limited number of partial payments. In addition to the procedure outlined, a distributor may make partial payments to a producer at such time or times and in such amounts as may be agreed upon between the two parties.

(c) Each distributor shall make such deductions from funds owed to a producer as authorized by the producer.

(d) Each distributor shall make the necessary adjustments to correct any error in classification or payments to producers for past delivery periods.

(e) Statement to Producers.

Each distributor shall furnish to each producer or association of producers for each delivery period a statement in writing which may be retained by the producer, showing the following:

- (1) the identity of the distributor;
- (2) the delivery period;
- (3) producer base for period;
- (4) butterfat test;
- (5) pounds of milk in each class;
- (6) class prices;
- (7) gross amount for each class;
- (8) each deduction made by the distributor;
- (9) net amount paid.

(f) An association of producers may reimburse processors to whom they sell milk, or a processor may make a deduction from an individual producer from whom milk is purchased, for the following services and cost savings at the rates listed:

- (1) field services: four cents (\$0.04) per hundredweight;
- (2) testing for butterfat, bacteria and antibiotics: three cents (\$0.03) per hundredweight;
- (3) preparing and compiling receipts, payrolls, filing reports and preparing checks: three cents (\$0.03) per hundredweight;
- (4) cost savings to an association or an individual producer resulting from the receiving of milk on the basis of producer weights and tests: nine cents (\$0.09) per hundredweight;
- (5) cost savings to an association or an individual producer resulting from receiving milk on a uniform basis: three cents (\$0.03) per hundred weight.

Prior to receiving a reimbursement from an association of producers, a written agreement between the processor and the association of producers must be on file with the processor identifying those services and cost savings which will be performed by the processor to whom such association sells.

Prior to making a deduction from an individual producer, a processor must have a written authorization from such producer identifying the services and cost savings which will be performed by the

processor to whom such producer sells.

The commission shall verify that the specific services and cost savings are performed for the reimbursement made by an association of producers or for the deduction made from an individual producer.

For purposes of this Subsection, the cost savings resulting from receiving milk on the basis of producer weights and butterfat tests shall mean the processor shall accept the farm tank weight tickets for individual producers and the butterfat tests resulting from the sample drawn at the time of pickup. Cost savings resulting from receiving milk on a uniform basis shall mean that the processor shall accept milk on a regular basis at agreed times of delivery seven days per week, provided, shipments from individual producers may be on an every other day delivery basis.

**.0509 FINANCIAL RESPONSIBILITY
FOR MILK RECEIVED
BY BULK TANKER**

A licensed milk distributor shall be financially responsible, as determined by such distributor's monthly utilization, for each producer's milk received from a farm bulk tank by the distributor or its agent or employee. In the absence of a written contract or agreement between the hauler and the producer (copy of which must be on file with the commission), a contract hauler or an independent hauler shall be deemed to be the agent of the distributor; provided, that any distributor, within 20 days after the promulgation of this Regulation (or within 10 days after any contract is hereafter made with a hauler), may petition the commission for a hearing to determine whether the hauler is in fact the agent of the distributor. Nothing herein contained shall prevent the distributor from requiring the hauler (1) to obtain insurance, (2) to post bond, or (3) to agree to save the distributor harmless from any loss in connection with the handling of said milk; but no such agreement shall relieve the distributor from its liability to the producer in the event the hauler or his insurer fails to pay the producer for said loss.

Where milk is received from a producer's farm tank and transported to market by a

producer cooperative association which is not a licensed milk distributor, the association shall be financially responsible to the producer for said milk until the milk is received by a licensed milk distributor.

**.0510 ESTABLISHMENT OF
PRODUCER'S BASES**

(a) Producer bases shall be established each year in accordance with the following rules:

(1) Base Building Period:

The base building period shall be September through December each year, except for any group of producers for whom a different base building period has been approved by the Milk Commission. The commission will, however, give consideration to a different base building period proposed by any group of producers provided such request is received by the commission at least 10 months prior to the effective date of such proposed period.

(2) Determination of Average Daily Bases: To compute the average daily bases, divide the total pounds of milk received by a distributor from each producer for the base forming periods in effect by the number of days (from the first day of delivery during such base building period to the last day inclusive) but not less than 91 days. This 91-day requirement does not apply to a new producer establishing a base under the provisions set forth for new producers but applies only to established base holding producers who are off the market for a period of time during the base building period.

The base for a producer who delivers on an every other day delivery schedule shall be computed by using the total number of days in the period calculated from the first day of delivery of such producer but not less than 91 days.

(3) Determination of Base and Establishing Use of Three-Year Average: The base for 1982 shall be computed in accordance with the rules in effect at the time of computation. Effective with the computation of bases for

1983 and for subsequent years, the average daily base for each producer shall be the simple average of the daily base earned or the daily average allocated to a producer in accordance with the provisions outlined in this Subsection for the three base building periods immediately preceding.

In any year, the maximum amount of commission base which can be earned in a given year by a producer under the three year moving plan is 15 percent unless a plant obtains approval from the commission to announce a higher percentage after showing that more milk is needed for its plant. Such request must be filed not later than March 1 for the following fall base building period, otherwise the above maximum will prevail.

When the computation of base for a producer results in a base for the next year which exceeds 15 percent or the specified percentage of the base for the previous year, the base history for all three years shall be adjusted to 15 percent or the specified percentage of the base for the previous year.

(4) Exception. This method of establishing bases shall apply uniformly to all producers except such groups of producers for which a special base plan or method of establishing bases has been approved by the commission.

(5) Transfer of Established Bases between Plants. A producer transferring from one plant to another shall have the right to transfer the base currently in effect for his herd although the base building periods may vary between the two plants. Immediately upon transfer, the base building period in effect for the plant to which a producer transfers shall be the base building period for such producer.

(6) Filing of Bases with Commission and Notice to Individual Producers. On or before the 25th day of the month following the end of the base building period each year, every distributor shall file with the Milk Commission a complete record of the name and address of each producer and the base

established in accordance with the provisions as outlined. At the time of the first payment under the new base or prior thereto, each distributor shall notify each producer of the daily base established.

(b) Establishment of a Base for a New Producer. The establishment of a base for a new producer who enters or has entered the market after June 1, 1961, and who meets the qualifications outlined in this Subsection shall be calculated under the following plan:

First Month

No Base

Second Month

25% of first month deliveries

Third Month

50% of first and second month deliveries

Fourth Month

75% of first, second and third month deliveries

Fifth Month

100% of first four months deliveries

A daily average shall be computed by dividing the deliveries by the number of days in the period. Apply to this computed daily base the above percent which is applicable in order to arrive at the daily base which will apply for a particular month. Provided, however, a base established in accordance with the above plan shall not exceed 3,000 pounds per day for producers who commence building base under this Rule after June 7, 1976.

The base established for a new producer under this Rule shall be considered the base for such producer until he has made further deliveries under the following circumstances:

(1) For a producer

establishing base under the three year moving average, the base built under the new producer rule shall be considered the first year history. After making this computation, if a producer delivers 91 days or more during the regular base building period the deliveries thus made shall be used to compute a second year history which will be averaged with the history established for the first year and such base shall remain in effect until the producer has delivered

through a full base making period. After a producer has delivered through the next full base making period, the deliveries shall be used to determine the third year history which will be averaged with the prior two histories to determine the next base for such producer. All subsequent bases shall be computed in accordance with the provisions in effect for all other producers.

(2) For a producer shipping to a plant under a special base plan, the base computed under the new producer provision shall be considered the first year history for such producer and shall remain in effect until such producer ships 91 days or more during a regular base building period, after having made the computation for the first base. The next base for a producer under a special base plan shall be determined in accordance with the provisions of such plan.

(3) To qualify to build base under this provision, a producer must petition the commission in writing at least 30 days prior to the date he desires to commence building base and provide information which will show that such producer has not been a base holder or active pool participant on any market for a period of 36 months and that such producer during this 36 month period had less than one percent ownership, either directly or indirectly, nor has been an officer or director of a corporation, nor has had a debtor or creditor relationship in any other dairy operation and must further certify that the proposed new operation is not in cooperation with a previous base holder who could not certify to the same circumstances and is not in anyway tied to a present Grade A dairy operation.

Should it be determined that a producer knowingly furnished incorrect or fraudulent information in order to obtain approval to build base, then the commission after review may revoke the base established

under this provision and disqualify such producer from holding base under this Rule.

After a producer has been approved to build base under this provision, a producer shall have the option of designating the first full month his shipments are to be considered for base building purposes.

Should a producer who is building base under the new producer rule purchase base, the base earned under the new producer rule at the time such base is purchased shall be computed and become the base earned under the new producer rule to which the purchased base may be combined. The portion of the base earned shall be subject to the 36 month limitation as specified in (f)(4) of this Rule.

(c) Transfer of Base Holding Producers from Other States. The commission will recognize the transfer of base for a producer in another state who will become an active shipper to a North Carolina plant, provided, the state in which his farm is located has a reciprocal agreement to accept the base of an existing North Carolina base holder who desires to ship to a plant in that state.

(d) Use of Base Plan or Exceptions. The producer base plan as defined in this Rule shall be used by all distributors and producer groups in established marketing areas except where approval has been granted by the Milk Commission after formal request by producers or a producer group to establish and use a different base plan or a fall premium plan. (An application for use of a different base plan or the fall premium plan must include a complete copy of the plan agreed upon by the producers or producer groups.)

(e) Application of Producer Bases. The following rules shall apply to the base established for each producer for all base plans.

(1) Use of Average Daily

Base for Payment Purposes. All plants shall use the daily average in effect for individual producers, multiplying this average times the number of days in a monthly payment period to determine the base to be

used for each producer for the allocation of classes during such payment period.

(2) Adjustment of Base during Payment Period. When a producer is off the market during a period, the base for such producer shall be reduced by the number of days such producer is off the market in order to determine the base which will be used for this producer for such payment period.

(3) A producer who has established a base in any marketing area in accordance with the foregoing paragraphs of this Rule shall have the right to retain such base when his daily deliveries of milk are transferred to another distributor within any marketing area. A producer who transfers from one distributor to another distributor during a base forming period shall have his base computed from his total deliveries to both, or all, receiving distributors.

(4) A producer who has established a base in any marketing area shall be entitled to continue to ship all his milk to the milk distributor where such base is established, provided, that the total milk production, less that retained for family use, is delivered regularly and meets the requirements of the local and state laws and regulations.

(5) Bases established each year shall be used for allocating classes of milk until new bases become effective.

(f) Transfer of Bases between Producers and Loss of Base. A base shall be applied only to deliveries of milk by the producer for whose account milk was delivered during the base-forming period, except that bases may be transferred, either with or without the sale of cattle, under the following conditions:

(1) When the entire base is sold or transferred to a single producer; or

(2) When a minimum of 100 pounds of daily base is sold or transferred to a single producer, provided that when a producer's remaining base reaches a level of less than 100 pounds, such base shall then

be considered his base and may be sold as a single lot; or

(3) When a base is held jointly and such joint holding is terminated, the entire base may be transferred or divided between the joint holders according to the ownership of the base;

(4) A base established by a new producer as provided for in these rules shall not be transferable under the conditions set forth in this Rule until the producer has been an active shipper for 36 consecutive months from the time such producer began the establishment of the base except in the event of total disability or death of the base holder. Should a producer who has established base under this provision discontinue shipping prior to being active for 36 months, then the base for such producer shall expire;

(5) In all cases of transfer of any base, the owner of the base and the person acquiring base must certify to the commission as to the transaction no later than 15 days following the effective date of the transfer;

(6) All such transfers shall be made in the following manner:

(A) Transfer Dates. Bases sold shall be transferred effective the first day of the month following the month in which a transaction occurs. (For example, if a transaction occurs on the 1st day, the 10th or 30th or 31st of a month, the effective date of transfer will be the first of the following month.)

(B) Transfer of Base History. Base history shall be transferred in the same proportion as the "base in use" is transferred.

(C) Transfer of Production Credits. A producer who purchases base shall be entitled to his comparable part of the seller's production during the base building period and production credits will be transferred in the same proportion as the "base in use" is transferred;

(7) Retention of or

Loss of Base. A producer who has an established base, which is eligible for transfer, shall be entitled to retain such base for a period of 18 months commencing on the first day of the month following the month during which the producer discontinues delivering milk to a Grade A milk plant subject to the provisions as outlined in this Subsection.

If the base is transferred during this 18-month period, for base computation purposes a base history will be created equal to the base in effect without regard as to whether the deliveries of the seller are above or below the base in effect subject to the following:

During the first six months of the 18-month period the full base and the history created under this Paragraph may be transferred. Commencing with the seventh month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by five percent. Commencing with the 13th month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by an additional five percent for a total reduction of 10 percent.

Should a producer fail to transfer his base within the allotted time, then such base shall become null and void. Any producer who has ceased to ship Grade A milk since December 17, 1973, shall be eligible to transfer base under the provisions of this Paragraph. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have 18 months from the time such producer quit producing Grade A milk to transfer base under the provisions of this Subsection.

The provisions of this Subsection shall be applicable only to a producer who discontinues the shipment of milk to a Grade A milk plant and shall not be applicable to a producer who transfers a

part of his base and remains as an active shipper.

Any base and base history transferred under the provisions of the previous inactive base rules shall not be adjusted in accordance with this revised Subsection.

(8) Exception. The provisions outlined in this Subsection (f) shall apply to all producers except where modified by the provisions of a special base plan approved by the commission, provided, however, a complete or partial transfer of base shall be null and void under any of the base rules if the seller of base changes markets (pools) and continues to ship milk to any Grade A plant wherever located and participates in the Class I payoff of such plant any time within 36 months from the date of the sale of such base, unless the seller of base files a request with the commission and shows that he has purchased base to restore base to the level of the total base held at the time of sale or the base held 12 months prior to sale whichever is higher. Should a producer who is changing markets find it necessary to reduce the size of his milking herd, the commission will consider situations such as retirement of a partner, illness, or other special considerations in determining the amount of base that a producer must reacquire. Further, a distributor and/or producer association licensed by the commission shall not pool or permit any milk to share in the Class I payoff which is received or purchased from a producer who has sold his base, until such producer is duly qualified to reenter the market in any pool as a base holder under the provisions outlined in this Subsection.

(g) Base Hardships. Effective with the computation of bases which take effect on and after January 17, 1972, producers experiencing a loss in base may receive relief as provided or may petition for special consideration based upon the provisions as specified.

(1) A producer who

experiences a loss in production during the base building period shall not have his base reduced by more than 10 percent the first year such producer experiences a loss in base, provided the second consecutive year such a loss is experienced this provision shall not apply. When a producer has had his base calculated according to this provision, such producer is then eligible to have his base calculated in accordance with this provision again.

Further, this provision shall apply to all base plans now in effect, provided there is no provision to rebuild the base loss except as may be provided in plans now in effect.

- (2) When a producer, whose base is established on a three-year moving average, has his current base computed under the provisions of (g)(1) of this Rule there shall be no adjustment in the base history for prior years.
- (3) Special request for base adjustment may be made direct to the Milk Commission whether such loss is above or below 10 percent based upon the following circumstances:
 - (A) acts of nature beyond the control of operator such as lightning, floods, drought, loss of cattle due to weather storm, power failure, electrocution, rabies, epidemic disease of unusual occurrence, fire, etc.;
 - (B) death or serious illness of the owner-operator, or a member of the owner-operator's family whose service is essential in the dairy operation;
 - (C) induction into the armed services of a member of the owner-operator's family whose service is essential in the dairy operation.
- (4) Special request for base adjustments will not be considered for errors of judgment in management and the normal hazards of dairy farming.
- (5) In the consideration of any special request for base adjustment, the

commission may at its discretion refer such request to a producer committee of the plant to which the petitioner ships with the request that such committee review the petition for adjustment and make a recommendation to the commission. Such requests may be referred to the executive committee of an existing producer organization or may be referred to a special committee appointed for such purpose.

-0511 PLANT RECORDS AND REPORTS

(a) Books and Records to be Maintained: Each distributor shall at all times keep such "Books and Records" as will enable the commission or its designated representative to determine accurately all receipts, sales, transfers, production, and bottling records, use and disposition of all milk and milk products in accordance with the authority vested in said commission. These records shall include detailed producer payroll records showing total producer receipts, butterfat test, classification, and payment by classes, gross amount, all deductions, and charges and net payment, and a copy of computations used in arriving at classes and allocations of classes to producers. These records shall show the source and quantity of all other milk, cream, condensed or powdered milk. The sales records must include the sales by units, the value of each group of units, showing retail and wholesale sales by daily transactions, summarized into a monthly total. A detailed record shall show all transfers of bottled or bulk products sold to other distributors or buyers.

(b) Reports to be Filed: Each distributor shall furnish to the commission not later than the 18th day of each month on forms furnished by the commission a detailed record showing the total receipts of milk from producers and other sources, all sales, transfers, use and disposition of milk handled in the previous month. Such reports shall show the receipts by classes, butterfat differentials, total dollars paid to each producer and total quantity of dairy products manufactured. This report shall

include a complete accounting for all milk received from producers and other sources each month. The information reported must be compiled from records of a permanent nature and kept on file by the distributor.

(c) Inspection of Records. The procedure regarding the production of records by milk distributors for examination by representatives of the Commission is as follows:

(1) All licensees will be notified of the names of Milk Commission auditors and investigators authorized to examine distributor's records.

(2) Each licensee shall notify the Milk Commission of the persons at each location having custody of and authorization to provide all records to representatives of the Milk Commission. These persons must be normally available since no prior notice of the investigation will be given.

(3) All records shall be made available for the representative's examination upon his request. Such records may include, but are not restricted to, the profit and loss or operating statement, ledgers, and supporting information such as invoices, vouchers, and any other records or documents necessary to verify entries made in the distributor's profit and loss or operating statement.

(4) Representatives will maintain the confidentiality of all records examined. Information which is not related to the purpose of the investigation or examination will not be recorded, nor will any information which might reflect the profit or loss or financial condition of a plant or company be copied.

(5) When the profit and loss or operating statement is examined, the Milk Commission representatives, prior to the examination of the statement, will select at least two expense categories in each month or accounting period which may be blocked out along with the net profit figure for such month or accounting period, in order that the net profit or loss for such month or accounting period may not be ascertained in later computations. The

accounts approved for blocking out may vary from month to month at the discretion of the representatives.

(6) The custodian of the records may be present when the profit and loss or operating statement is being examined.

.0512 ASSESSMENT

(a) For the purpose of defraying the expenses of the Milk Commission there is hereby levied an assessment of two cents (\$0.02) per hundredweight on all milk handled from all sources by the distributor and two cents (\$0.02) per hundredweight on all milk sold by producers. Each distributor shall pay the assessment levied on him and shall deduct from producer payments the assessment of two cents (\$0.02) per hundredweight on all producer milk and pay all such assessments to the Milk Commission.

(b) The distributor assessments on all milk sold or transferred to other distributors where both the shipping and receiving distributor are located in an established marketing area shall be paid by the first distributor. Milk received by a distributor from sources where no assessment by the Milk Commission is in effect shall be included in such distributor assessment.

(c) All assessments shall be paid to the Milk Commission not later than the 10th day of each month following the delivery period and shall be deposited immediately in the designated State Depository to the Treasurer of North Carolina for credit to the "Milk Commission Account."

.0513 METHOD OF SETTLEMENT

(a) On or before the eighth working day following the end of each month, the Milk Commission shall notify all handlers and/or cooperatives of the following information:

(1) The announcement of a monthly uniform price per hundredweight to be paid producers for milk classified as Class I and Class II allocation.

(2) The Class I and Class II allocation of the producer receipts and other source milk and the amounts due producers in each Class after making the pool

computations. The Commission shall furnish a schedule showing the Class I and Class II allocations and the amounts due in each class.

(b) On or before the tenth working day following the end of each month, any handler or association of producers whose net utilization of all base holding milk on a 3.5 per cent butterfat basis exceeds the statewide pool blend prices and blend classification, shall make payments to the commission as computed in Rule .0512(c) of this section.

(c) On or before the twelfth working day following the end of each month, each handler shall make full payment to any association or producers for which it has received milk, according to the classified utilization for each handler at the class prices announced by the commission.

(d) On or before the twelfth working day following the end of each month, the commission shall pay from the settlement fund to any handler or association of producers an amount which will bring the producers of that handler or association of producers up to the uniform statewide pool classification and uniform prices.

(e) After receipt of payment from the pool and prior to payment to producers, an adjustment shall be made to the Class II uniform announced price for any differences between the announced Class II price and the price received for milk sold to a non-grade A plant for use in the manufacturing of non-grade A products.

(f) Certain handling and hauling charges on the sale or transfer of bulk milk may be deducted by the handler or association of producers, after receipt of the payoff from the pool and prior to settlement with producers. The allowances or charges permitted are outlined below:

(1) A handling allowance may be deducted on the sale or transfer of bulk milk diverted directly from farm routes to a pool plant but such allowance shall not exceed fifteen cents (\$0.15) per hundredweight. On milk received in the pool plant and reloaded for sale or transfer, a handling allowance may be deducted but such allowance shall not

exceed twenty-five cents (\$0.25) per hundredweight. On bulk milk transferred to a company operating a non grade A plant (herein referred to as a manufacturing plant) for the manufacturing of non-grade A products only, a maximum receiving and handling allowance of ten cents (\$0.10) per hundredweight may be deducted when such milk is received in the plant of the shipper. Further, no handling or receiving allowance shall be applicable to any portion of a bulk transfer which is classified as Class II under this provision.

(2) Only the actual additional transportation costs may be applied to the sale, transfer or diversion of bulk milk. In computing the necessary additional transportation, a handler must take into consideration the mileage of a diverted farm route and the hauling already paid by producers in arriving at the additional transportation costs which may be applied.

(g) On or before the fourteenth working day following the end of each month, the handler or association of producers shall make payments to producers or associations of producers according to the pool classification and prices as determined in accordance with the pooling procedure, after making such adjustments as are permitted under the provisions as contained in subsections (e) and (f) of this Rule.

(h) Each handler or association of producers shall make such deductions from funds owed to a producer as authorized by the producer.

(i) Each handler or association of producers shall make the necessary adjustments to correct any error in classification or payments to producers or associations of producers for past delivery periods.

(j) Statement to Producers. Each handler or association of producers shall furnish to each producer or association of producers for each delivery period of statement in writing which may be retained by the producer, showing the following:

(1) the identity of the handler or association of producers,
(2) the delivery period,

(3) producer base for period,
 (4) butterfat test,
 (5) pounds of milk in each class,
 (6) class prices,
 (7) gross amount for each class,
 (8) each deduction made by the handler or association of producers,
 (9) net amount paid,
 (k) Partial Payments. Upon request, a partial payment shall be paid to a producer or an association of producers not later than the last day of the delivery period for milk received during the first half of such delivery period. A producer's or association of producers' request for a partial payment shall be honored for an amount up to 40 percent of his previous month's net utilization value computed to the nearest one hundred dollars (\$100.00); provided, a sufficient volume of milk has been delivered for the first half of the month to justify such payment. Further, in determining the amount of the partial payment to be made, the handler may take into account assignments and such other deductions as are authorized by the producer or association of producers. A producer or an association of producers may request that a partial payment be made on a regular basis or may request a single or limited number of partial payments. In addition to the procedure outlined, a handler or an association of producers may make partial payments to a producer or an association of producers at such time or times and in such amounts as may be agreed upon between the two parties.

(l) An Association of producers or a business entity marketing milk on behalf of producers may reimburse handlers to whom they sell milk, or a processor may make a deduction from an individual producer from whom milk is purchased, for the following services and cost savings at the rates listed:

(1) receiving producer milk on the basis of weights determined from the measurement at the farm - five cents (\$0.05) per hundredweight,
 (2) receiving producer milk on the basis of butterfat tests determined from farm bulk tank samples - five cents (\$0.05) per hundredweight,
 (3) receiving producer milk on

regular seven day per week delivery schedule including deliveries on weekends and holidays - three cents (\$0.03) per hundredweight,
 (4) purchasing milk from an association of producers based upon a preordered specified minimum daily volume for a designated period of not less than a month; provided, no reimbursement shall be made on the daily volume of deliveries which exceeds the specified minimum daily volume or on any portion of the daily volume when the deliveries fall below the minimum specified daily volume - seven cents (\$0.07) per hundredweight,
 (5) performing butterfat, bacteria and antibiotic tests for individual producers or members of a producer association - three cents (\$0.03) per hundredweight,
 (6) preparing and compiling receipts, payrolls, filing reports, and preparing payroll checks on behalf of a business entity marketing milk on behalf of producers - three cents (\$0.03) per hundredweight.

(m) Prior to receiving a reimbursement from an association of producers, and a business entity marketing milk on behalf of producers a written contract containing the provisions specified in (n) of this Rule shall have been executed between such handler and an association of producers and a business entity marketing milk on behalf of producers. Such executed contract must be filed with and approved by the commission.

Prior to making a deduction from an individual producer by a handler, a written contract containing the provisions specified in (n) of this Rule shall have been executed between such handler and a producer. Such executed contract must be filed with and approved by the commission.

The commission shall verify that the specified services and cost savings as contained in the contract are performed for the reimbursement made by an association of producers or for the deduction made from an individual producer.

(n) The contract required in (m) of this Rule shall contain the following provisions and shall specify the method

utilized for compensation for services performed, whether by deduction or reimbursement:
"AGREEMENT REGARDING PERFORMANCE OF AND COMPENSATION FOR COST SAVINGS

(1) It is agreed that

(processor/handler) will perform the following services for or effect the following cost savings on behalf of the (producer/business entity marketing milk on behalf of producers); and the (producer/business entity marketing milk on behalf of producers) agrees to compensate or reimburse (processor/handler) for such services and/or cost savings at the following rates:

(A) receiving producer milk on the basis of weights determined from the measurement at the farm - cents per hundredweight,

(B) receiving producer milk on the basis of butterfat tests determined from farm bulk tank samples - cents per hundredweight,

(C) receiving producer milk on a regular seven day per week delivery schedule including deliveries on weekends and holidays - cents per hundredweight,

(D) purchasing milk from an association of producers based upon a preordered specified minimum daily volume for a designated period of not less than a month; provided, no reimbursement shall be made on the daily volume of deliveries which exceeds the specified minimum daily volume or on any portion of the daily volume when the deliveries fall below the minimum specified daily volume - cents per hundredweight,

(E) performing butterfat, bacteria and antibiotic tests for individual producers or members of a producer association - cents per hundredweight,

(F) preparing and compiling receipts, payrolls, filing reports, and preparing payroll checks on behalf of a business entity marketing milk on behalf of producers - cents per hundredweight.

(2) In no instance shall said services performed or cost savings so effected by (processor/handler) be compensated or reimbursed by

(producer/business entity marketing milk on behalf of producers) at a rate which exceeds those specified by the North Carolina Milk Commission Rule 4 NCAC 7 .0513(1)."

.0514 FINANCIAL RESPONSIBILITY FOR MILK RECEIVED BY BULK TANKER

A licensed milk distributor handler shall be financially responsible, as determined by such distributor's handler's monthly utilization, for each producer's milk received from a farm bulk tank by the distributor handler or its agent or employee. In the absence of a written contract or agreement between the hauler and the producer (copy of which must be on file with the commission), a contract hauler or an independent hauler shall be deemed to be the agent of the distributor handler; provided, that any distributor handler, within 20 days after the promulgation of this Regulation (or within 10 days after any contract is hereafter made with a hauler), may petition the commission for a hearing to determine whether the hauler is in fact the agent of the distributor handler.

Nothing herein contained shall prevent the distributor handler from requiring the hauler (1) to obtain insurance, (2) to post bond, or (3) to agree to save the distributor handler harmless from any loss in connection with the handling of said milk; but no such agreement shall relieve the distributor handler from its liability to the producer in the event the hauler or his insurer fails to pay the producer for said loss.

Where milk is received from a member producer's farm tank and transported to market by a producer cooperative association which is not a licensed milk distributor, the association shall be financially responsible to the producer for said milk until the milk is received by a licensed milk distributor handler.

.0515 ESTABLISHMENT OF CLASS I BASES FOR PRODUCERS

(a) Producer bases shall be established in accordance with the following rules:

(1) North Carolina Base Holding Producers. To qualify as a North Carolina base holding producer such

producer must have held a North Carolina Milk Commission base on the date the pooling rules became effective and must be shipping to a North Carolina regulated processor or association of producers.

(2) Beginning Base.

Effective November 1, 1986, the base for each North Carolina base holder for pooling purposes shall be the North Carolina Milk Commission base then in effect for a producer on that day.

(3) Base Building Period.

The base building period shall be September through December each year.

(4) Determination of Average

Daily Production. To compute the average daily bases, divide the total pounds of milk delivered by each producer for the base building period by the number of days (from the first day of delivery during such base building period to the last day inclusive) but not less than 91 days. This 91 day requirement does not apply to a new producer establishing a base under the provisions set forth for new producers but applies only to established base holding producers who are off the market for a period of time during the base building period.

The base for a producer who delivers on an every other day delivery schedule shall be computed using the total number of days in the period calculated from the first day of delivery of such producer but no less than 91 days.

(5) Total Base Requirements.

The total daily base to be in effect shall be the daily average of the Class I sales of the pool plants for the months of September, October and November the previous calendar year plus 12 percent.

(6) Base Determination for

1987. After determining the total base requirements for 1987, this requirement shall be related to the total production for all pooled producers to determine the percentage of base to be allocated.

After determining the percentage of base to be allocated, multiply the average daily production of

each producer by this percentage to determine his base for 1987.

(7) Determination of Base for Subsequent Years. For 1988 and subsequent years the total base requirements shall be determined and this total base requirement shall be allocated to existing base holders as a percentage of the previous years base provided the new base cannot exceed the average production for such producer. Any base not allocated shall be reallocated to other producers who have additional production to cover such allocation. This allocation process shall be followed whether bases are increased or decreased.

(8) On or about the fifth day of the second month following the end of each base period, the Executive Secretary shall determine and notify each producer of the amount of daily market base earned during the base period.

(9) Base Listing. Each producer's base shall be established only in the name(s) of the individual(s) or in the corporate name of the owner(s) of the herd with which the base is earned and each handler shall report all deliveries and maintain all records relating to each producer's settlement in the name(s) in which the base is established.

(b) Qualifications and Establishment of Base for a New Producer.

(1) Qualifications. The establishment of a base for a new producer who enters or has entered the market after June 1, 1961, and who meets the qualifications outlined this subsection shall be calculated under the following plan;

First Month

No Base

Second Month

25 percent

of first month's deliveries

Third Month

50 percent

of first and second months' deliveries

Fourth Month

75 percent

of first, second and third months' deliveries

Fifth Month
100 percent
of first four months'
deliveries

A daily average shall be computed by dividing the deliveries by the number of days in the period. Apply to this computed daily base the above percent which is applicable in order to arrive at the daily base which will apply for a particular month. Provide, however, a base established in accordance with the above plan shall not exceed 3,000 pounds per day for producers who commence building base under this Rule after June 7, 1976.

The base established for a new producer under this Rule, shall be considered the base for such producer until such producer delivers through a regular base building period.

(2) Base for a New Producer.

To qualify to build base under this provision, a producer must petition the commission in writing at least 30 days prior to the date he desires to commence building base and provide information which will show that such producer has not been a base holder or active pool participant on any market for a period of 36 months and that such producer during this 36 month period had less than one percent ownership, either directly or indirectly nor has been an officer or director of a corporation, nor has had a debtor or creditor relationship in any other dairy operation and must further certify that the proposed new operation is not in cooperation with a previous base holder who could not certify to the same circumstances and is not in anyway tied to a present Grade A dairy operation.

Should it be determined that a producer knowingly furnished incorrect or fraudulent information in order to obtain approval to build base, then the commission after review may revoke the base established under this provision and disqualify such producer from holding base under this Rule.

After a producer has been approved to build base under this provision, a producer shall have the option of designating the first full month his shipments are to be considered for base building purposes.

Should a producer who is building base under the new producer rule purchase base, the base earned under the new producer rule at the time such base is purchased shall be computed and become the base earned under the new producer rule to which the purchased base may be combined. The portion of the base earned shall be subject to the 36 month limitation specified in (a)(4) of this Rule.

(c) Transfer of Base Holding Producers from Other States or Federal Order Markets. The Commission will recognize the transfer of base for a producer in another state or federal order market who has established such base under the state or federal order regulations in effect in such state or market, provided such producer will become an active shipper to a North Carolina handler or association or producers. Further, the base to be transferred shall be adjusted to conform with the manner bases were computed for the producers already in the pool.

(d) Use of the Base Plan. The producer base plan as defined in this Rule shall be used by all handlers and associations of producers in the established marketing area.

(e) Application of Producer Bases. The following rules shall apply to the base established for each producer:

(1) Use of Average Daily

Base for Payment purposes. All handlers or associations of producers shall use the daily average in effect for individual producers, multiplying this average times the number of days in a monthly payment period to determine the base to be used for each producer for the allocation of classes during such payment period.

(2) Adjustment of Base

during Payment Period. When a producer is off the market during a period, the case for such producer shall be reduced by the number of days such producer is off the market in order to

determine the base which will be used for this producer for such payment period.

(3) A producer who has established a base in accordance with the requirements of this Rule shall have the right to retain such base when his daily deliveries of milk are transferred to another handler within any marketing area. A producer who transfers from one handler or association of producers to another handler or association of producers during a base forming period shall have his base computed from his total deliveries to both, or all, receiving handlers or association of producers.

(4) A producer who has established a base in any marketing area shall be entitled to continue to ship all his milk to the handler or association of producers where such base is established; provided, that the total milk production, less that retained for family use, is delivered regularly and meets the requirements of the local and state laws and regulations.

(5) Bases established each year shall be used for allocating classes of milk until new bases become effective.

(f) Transfer of Established Bases between Handlers and Associations of Producers. A producer transferring from one handler or an association of producers to another shall have the right to transfer the North Carolina base currently in effect for his herd.

(g) Transfer of Bases between Producers and Loss of Base. A base shall be applied only to deliveries of milk by the producer for whose account milk was delivered during the base-forming period, except that bases may be transferred, either with or without the sale of cattle, under the following conditions:

(1) When the entire base is sold or transferred to a single producer; or

(2) When a minimum of 100 pounds of daily base is sold or transferred to a single producer; provided that when a producer's remaining base reaches a level of less than 100 pounds, such base shall

then be considered his base and may be sold as a single lot; or

(3) When a base is held jointly and such joint holding is terminated, the entire base may be transferred or divided between the joint holders according to the ownership of the base;

(4) A base established by a new producer as provided for in these rules shall not be transferable under the conditions set forth in this Rule until the producer has been an active shipper for 36 consecutive months from the time such producer began the establishment of the base except in the event of total disability or death of the base holder. Should a producer who has established base under this provision discontinue shipping prior to being active for 36 months, then the base for such producer shall expire;

(5) In all cases of transfer of any base, the owner of the base and the person acquiring base must certify to the Commission as to the transaction no later than 15 days following the effective date of the transfer;

(6) All such transfers shall be made in the following manner:

(A) Transfer Dates. Bases sold shall be transferred effective the first day of the month following the month in which a transaction occurs. (For example, if a transaction occurs on the 1st day, the 10th or 30th or 31st of a month, the effective date of transfer will be the first of the following month.)

(B) Transfer of Base History. Base history shall be transferred in the same proportion as the "base in use" is transferred.

(C) Transfer of Production Credits. A producer who purchases base shall be entitled to his comparable part of the seller's production during the base building period and production credits will be transferred in the same proportion as the "base in use" is transferred;

(7) Retention of or Loss of Base. A producer who has an established base, which

is eligible for transfer, shall be entitled to retain such base for a period of 18 months commencing on the first day of the month following the month during which the producer discontinues delivering milk to a Grade A milk plant subject to the provisions as outlined in this subsection.

If the base is transferred during this 18-month period, for base computation purposes a base history will be created equal to the base in effect without regard as to whether the deliveries of the seller are above or below the base in effect subject to the following:

During the first six months of the 18-month period the full base and the history created under this Paragraph may be transferred. Commencing with the seventh month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by five percent. Commencing with the 13th month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by an additional five percent for a total reduction of 10 percent.

Should a producer fail to transfer his base within the allotted time, then such base shall become null and void. Any producer who has ceased to ship Grade A milk since December 1, 1973, shall be eligible to transfer base under the provisions of this Paragraph. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have 18 months from the time such producer quit producing Grade A milk to transfer base under the provisions of the subsection.

The provisions of this subsection shall be applicable only to a producer who discontinues the shipment of milk to a Grade A milk handler or association of producers and shall not be applicable to a producer who transfers a part of his base and remains as an active shipper.

Any base and base history

transferred under the provisions of the previous inactive base rules shall not be adjusted in accordance with this revised subsection.

(8) Exception. The provisions outlined in this Subsection (g) shall apply to all producers provided, however, a complete or partial transfer of base shall be null and void under any of the base rules if the seller of base changes markets (pools) and continues to ship milk to any Grade A handler or association of producers wherever located and participates in the Class I payoff of such handler or association of producers anytime within 36 months from the date of the sale of such base, unless the seller of base files a request with the commission and shows that he has purchased base to restore base to the level of the total base held at the time of sale or the base held 12 months prior to sale whichever is higher. Should a producer who is changing markets find it necessary to reduce the size of his milking herd, the commission will consider situations such as retirement of a partner, illness, or other special considerations in determining the amount of base that a producer must reacquire. Further, a handler and/or producer association licensed by the commission shall not pool or permit any milk to share in the Class I payoff which is received or purchased from a producer who has sold his base, until such producer is duly qualified to reenter the market in any pool as a base holder under the provisions outlined in this subsection.

(h) Base Hardships. Effective with the computation of bases which take effect on and after January 1, 1972, producers experiencing a loss in base may receive relief as provided or may petition for special consideration based upon the provisions as specified:

(1) A producer who experiences a loss in production during the base building period shall not have his base reduced by more than 10 percent the first year such producer

experiences a loss in base, provided the second consecutive year such a loss is experienced this provision shall not apply. When a producer has had his base calculated according to this provision, such producer is then eligible to have his base calculated in accordance with this provision again.

- (2) Special requests for base adjustment may be made direct to the Milk Commission whether such loss is above or below 10 percent based upon the following circumstances:

(A) acts of nature beyond the control of operator such as lightning, floods, drought, loss of cattle due to weather, storm, power failure, electrocution, rabies, epidemic disease of unusual occurrence, fire, etc.;

(B) death or serious illness of the owner-operator, or a member of the owner-operator's family whose service is essential in the dairy operation;

(C) induction into the armed services of a member of the owner-operator's family whose service is essential in the dairy operation.

- (3) Special requests for base adjustments will not be considered for errors of judgment in management and the normal hazards of dairy farming.

- (4) In the consideration of any special request for base adjustment, the commission may at its discretion refer such request to a producer committee of the association of producers or processor to which the petitioner ships with the request that such committee review the petition for adjustment and make a recommendation to the commission. Such requests may be referred to the executive committee of an existing producer organization or may be referred to a special committee appointed for such purpose.

.0516 PLANT RECORDS AND
INSPECTION OF

RECORDS
(a) Books and Records
to be Maintained. Each
distributor handler or

association of producers shall at all times keep such "Books and Records" as will enable the commission or its designated representative to determine accurately all receipts, sales, transfers, production, and bottling records, use and disposition of all milk and milk products in accordance with the authority vested in said commission. These records shall include detailed producer payroll records showing total producer receipts, butterfat test, classification, and payment by classes, gross amount, all deductions, and charges and net payment, and a copy of computations used in arriving at classes and allocations of classes to producers. These records shall show the source and quantity of all other milk, cream, condensed or powdered milk. The sales records must include the sales by units, the value of each group of units, showing retail and wholesale sales by daily transactions, summarized into a monthly total. A detailed record shall show all transfers of bottled or bulk products sold to other distributors handlers or buyers.

(b) Reports to be Filed:
Each distributor shall furnish to the commission not later than the 18th day of each month on forms furnished by the commission a detailed record showing the total receipts of milk from producers and other sources, all sales, transfers, use and disposition of milk handled in the previous month. Such reports shall show the receipts by classes, butterfat differentials, total dollars paid to each producer and total quantity of dairy products manufactured. This report shall include a complete accounting for all milk received from producers and other sources each month. The information reported must be compiled from records of a permanent nature and kept on file by the distributor.

(c) (b) Inspection of Records.
The procedure regarding the production of records by milk distributors handlers or associations of producers for examination by representatives of the Commission is as follows:

- (1) All licensees will be notified of the names of Milk Commission auditors and investigators authorized to examine distributor's handler's or associations of producer's records.

(2) Each licensee shall notify the Milk Commission of the persons at each location having custody of and authorization to provide all records to representatives of the Milk Commission. These persons must be normally available since no prior notice of the investigation will be given.

(3) All records shall be made available for the representative's examination upon his request. Such records may include, but are not restricted to, the profit and loss or operating statement, ledgers, and supporting information such as invoices, vouchers, and any other records or documents necessary to verify entries made in the distributor's handlers or associations of producers profit and loss or operating statement.

Representatives will maintain the confidentiality of all records examined. Information which is not related to the purpose of the investigation or examination will not be recorded, nor will any information which might reflect the profit or loss or financial condition of a plant or company be copied.

(5) When the profit and loss or operating statement is examined, the Milk Commission representatives, prior to the examination of the statement, will select at least two expense categories in each month or accounting period which may be blocked out along with the net profit figure for such month or accounting period, in order that the net profit or loss for such month or accounting period may not be ascertained in later computations. The accounts approved for blocking out may vary from month to month at the discretion of the representatives.

(6) The custodian of the records may be present when the profit and loss or operating statement is being examined.

.0517 ASSESSMENT

(a) For the purpose of defraying the expenses of the Milk Commission there is hereby levied an assessment of two cents (\$0.02) per hundredweight

on all milk handled from all sources by the distributor (handler) and two cents (\$0.02) per hundredweight on all milk sold by producers. Each distributor (handler) shall pay the assessment levied on him and shall deduct from producer payments the assessment of two cents (\$0.02) per hundredweight on all producer milk and pay all such assessments to the Milk Commission.

(b) The distributor (handler) assessments on all milk sold or transferred to other distributors (handlers) where both the shipping and receiving distributor (handler) are located in an established marketing area shall be paid by the first distributor (handler).

Milk received by a distributor (handler) from sources where no assessment by the Milk Commission is in effect shall be included in such distributor (handler) assessment.

(c) All assessments shall be paid to the Milk Commission not later than the 18th day of each month following the delivery period and shall be deposited immediately in the designated State Depository to the Treasurer of North Carolina for credit to the "Milk Commission Account".

TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt and amend regulations cited as 10 NCAC 7A .0101; 10 NCAC 7A .0401; 10 NCAC 7B .0102, .0103, .0212, .0335, and .0406; 10 NCAC 10A .0306, .0307, .0448, .0507, .1008, and .2205; 10 NCAC 10A .1954; 10 NCAC 10D .0702, .1005, .1616, .1625, and .2512; 10 NCAC 10F .0001, .0002, .0029, .0030, .0031, .0032, .0033, .0034, .0035, .0039, and .0041; 10 NCAC 11 .0705; 10 NCAC 12 .0236 and .0239. The purpose of the proposed regulations is to 10 NCAC 7A .0101 updates the list of reportable diseases; 10 NCAC 7A .0401 updates immunization requirements; 10 NCAC 7B .0102, .0103, .0212, .0335 and .0406 make changes to the Highway Safety rules; 10 NCAC 10A .0306, .0307, .0448, .0507, .1008, and .2205 amend sanitation grading rules; 10 NCAC 10A .1954 allows the use of polypropylene fibers as a reinforcing material in the manufacture of concrete septic tanks; 10 NCAC .0702, .1005, .1616, .1625, and .2512 amend

procedures for determining maximum contaminant levels for water supplies, and amend the standards for hydropneumatic storage tanks; 10 NCAC 10F .0001, .0002, .0029, .0030, .0031, .0032, .0033, .0034, .0035, .0039, and .0041 adopt by reference Federal EPA hazardous waste regulations, and change closure and postclosure trust fund requirements; 10 NCAC 11 .0705 excludes bodies donated to medical schools in North Carolina from the required medical examiner's inquiry into the cause and manner of death before cremation or burial at sea; 10 NCAC 12 .0236 and .0239 delete a provision in the rule requiring water supply sanitarians to attend a food protection course, and establish the frequency of inspections by sanitarians for Temporarily Closed Establishments.

The proposed effective date of this action is October 1, 1986.

Statutory Authority: G.S. 130A-134; 130A-152(c); 20-139.1(b); 20-139.1(g); 20-9; 143B-10; 130A-248; 130A-228; 130A-250; 130A-335(e); 130A-315; 130A-321; 130A-317; 130A-294(c); 130A-393; 130A-388; 130A-9.

The public hearing will be conducted at 1:30 p.m. on August 14, 1986 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P. O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3131. Written comments on these subjects may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on these subjects may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

.0101 REPORTABLE DISEASES
The following named diseases

are declared to be dangerous to the public health and are hereby made reportable:

- (7) Chlamydial infection;
- (14) Hemophilus influenzae, invasive disease;
- (17) Lyme disease;
- (21) meningitis, Hemophilus influenzae;
- (24) Mucocutaneous Lymph Node Syndrome (Kawasaki);
- (25) nongonococcal urethritis, cervicitis, and pelvic inflammatory disease (PID);

SECTION .0400 - IMMUNIZATION

.0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every child in North Carolina shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) diphtheria, tetanus, and and whooping cough-- four doses: three doses by age one year; and one booster dose on or after the fourth birthday;
- (2) oral poliomyelitis vaccine, trivalent type -- three doses by age two years; or monovalent type -- one dose of each type by age two years; oral poliomyelitis vaccine -- three doses of trivalent type by age two years and a booster dose of trivalent type on or after the fourth birthday; or one dose of each of the three monovalent types by age two years and a dose of trivalent type after the fourth birthday;
- (5) mumps vaccine--one dose of live attenuated vaccine by age two years.

(b) Notwithstanding the requirements of Paragraph (a) of this Regulation:

- (6) The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine, and of oral poliomyelitis vaccine on or after the fourth birthday and for mumps vaccine shall not apply to children who enrolled for the first time in the first grade before July 1, 1987.

SUBCHAPTER 7B - HIGHWAY SAFETY

SECTION .0100 - GENERAL POLICIES

.0102 DEFINITIONS
The following definitions

shall apply throughout 10 NCAC 7B:

(8) "Breath-testing Instrument" shall mean an instrument for making a chemical analysis and giving the resultant alcohol concentration on the basis of an alveolar air/blood ratio of 1:2, +00, grams of alcohol per 210 liters of breath; the reading given by an instrument that reports a breath-test result as a blood-alcohol concentration on the basis of an alveolar air/blood ratio of 2,100:1 shall be interpreted as reporting alcohol concentration, with a reading of 0.10 per cent by weight of alcohol in a person's blood being the same as 0.10 alcohol concentration;

(20) "Simulator Solution" shall mean a water-alcohol solution made by preparing a stock solution of 60.5 grams of alcohol per liter of water solution (77.0 ml. of absolute alcohol diluted to one liter of with distilled water, or equivalent ratio) and then preparing for simulator use as a control sample by using 10 ml. of stock solution and further diluting to 500 ml. with distilled water, which then corresponds to the equivalent alcohol concentration of 0.10;

.0103 CONSULTANT PANEL AND REVIEW BOARD

(a) The highway safety branch shall provide for the professional services of the Medical Evaluation Consultant Panel for the purposes set forth in Rule

.0101(1) of this Subchapter:

(3) Medical Evaluation Consultant Panel members may shall be paid a fee of eight dollars (~~\$8.00~~) ten dollars (\$10.00) for each case reviewed, as set by the Secretary, Department of Human Resources.

(b) The highway safety branch shall provide for the professional services of the physician members of the Driver License Medical Review Board in accordance with for the purposes set forth in Rule

.0101(1) of this Subchapter:

(3) The physician members of the Driver License Medical Review Board may be paid a fee for consultant services of one hundred thirty-five dollars (~~\$135.00~~) per

session attended, as set by the Secretary, Department of Human Resources. In addition to the services required in G.S. 20-9, the Board, at the time of its regular scheduled meeting, may review other medical records and documents, along with policies and procedures dealing with medical impairments or driving, and make recommendations to the Commissioner of Motor Vehicles or the State Health Director. The physician members of the board shall be paid a fee for such additional consultant services of one hundred thirty-five dollars (\$135.00) per session attended, which shall be in addition to other remuneration to which they may be entitled.

SECTION .0200 - BLOOD ALCOHOL TEST REGULATIONS

.0212 REPORTING OF ALCOHOL CONCENTRATIONS BY BLOOD ANALYSTS

When performing chemical analyses of blood under the authority of G.S. 20-139.1 and the provisions of these Rules and Regulations, blood analysts shall report alcohol concentrations on the basis of grams of alcohol per 100 milliliters of whole blood.

SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

.0335 BREATH-TESTING INSTRUMENTS : REPORTING OF SEQUENTIAL TESTS

(a) The commission approves the method of performing chemical analyses through the use of breath-testing instruments of a design and of a model specifically approved by the commission as meeting, to its satisfaction, nationally accepted high standards of accuracy, reliability, convenience and efficiency of operation.

(b) The succeeding rules of this Section establish operational and preventive maintenance procedures for breath-testing instruments approved by the commission.

(c) Pending reassessment of the criteria for approval of breath-testing instruments that utilize infrared technology, there is a moratorium on the

placing of new instruments utilizing that technology into service on or after January 1, 1986. Individual infrared instruments placed into service before January 1, 1986, may continue to be used in accordance with the succeeding rules of this Section applicable to them. Unless this Paragraph is earlier amended or repealed, the moratorium lasts until January 1, 1988. The models of instruments subject to the moratorium are:

- (1) Intoxilyzer, Model 4011AS, Modified (Rules .0344 and .0345).
- (2) Breathalyzer, Model 2000 (Rules .0346 and .0347).
- (3) Intoximeter, Model 3000 (Rules .0348 and .0349).
- (4) Intoxilyzer, Model 5000 (Rules .0350 and .0351).
- (5) BAC Verifier (Rules .0352 and .0353).

(a) The standards for the approval of breath-testing instruments are as follows:

(1) The commission approves the method of performing chemical analyses through the use of breath-testing instruments of a design and of a model specifically approved by the commission as meeting, to its satisfaction, nationally accepted high standards of accuracy, reliability, convenience and efficiency of operation.

(2) The succeeding rules of this Section establish operational and preventive maintenance procedures for breath-testing instruments approved by the commission.

(3) Pending reassessment of the criteria for approval of breath-testing instruments that utilize infrared technology, there is a moratorium on the placing of new instruments utilizing that technology into service on or after January 1, 1986. Individual infrared instruments placed into service before January 1, 1986, may continue to be used in accordance with the succeeding rules of this Section applicable to them. Unless this Paragraph is earlier amended or repealed, the moratorium lasts until January 1, 1988. The models of instruments subject to the moratorium are:

- (A) Intoxilyzer, Model 4011AS, Modified (Rules .0344 and .0345).
- (B) Breathalyzer, Model

2000 (Rules .0346 and .0347).

(C) Intoximeter, Model 3000 (Rules .0348 and .0349).

(D) Intoxilyzer, Model 5000 (Rules .0350 and .0351).

(E) BAC Verifier (Rules .0352 and .0353).

(b) The standards for the reporting of sequential tests are as follows:

(1) In recording the results of a chemical analysis under G.S. 20-139.1(e) and in reporting results for use in court or in an administrative proceeding, the chemical analyst shall report the result of all tests of breath performed in conducting the chemical analysis. These results may be used for all relevant purposes, but these results may not be used to prove a person's particular alcohol concentration unless a pair of consecutively administered tests do not differ from each other by an alcohol concentration of greater than 0.02.

(2) In proceedings in court and before administrative agencies, the state may use all breath-test procedures and results for all relevant purposes, but when there is a difference in readings, the state may use only the lower of the two consecutive readings that meet the requirements of Paragraph (b) to prove a person's particular alcohol concentration. "Particular alcohol concentration" is an alcohol concentration that has legal significance under G.S. 20-138.1(a)(2), 20-16.5(b)(4), 20-179(d)(1), and 20-179(m).

SECTION .0400 - CONTROLLED DRINKING PROGRAMS

.0406 RESTRICTED USE OF ALCOHOLIC BEVERAGES

(b) Alcoholic beverages procured for use in a controlled-drinking program shall be used only for this purpose. Spiritous liquor or fortified wine Malt beverages, unfortified wine, fortified wine or spiritous liquor shall not be given or otherwise administered to anyone under 21 years of age. Malt beverages and unfortified wine shall not be given or

otherwise administered to anyone under 19 years of age.

SUBCHAPTER 10A - SANITATION

SECTION .0300 - SANITATION OF LODGING PLACES

.0306 GRADING

(a) The sanitation grading of all hotels, motels, inns, and tourist homes shall be based on a system of scoring wherein all establishments receiving a score of at least 90% shall be awarded Grade A; all establishments receiving a score of at least 80% and less than 90% shall be awarded a Grade B; all establishments receiving a score of at least 70% and less than 80% shall be awarded Grade C; and no establishment receiving a score of less than 70%, or Grade C, shall operate.

(b)

The grading of lodging places shall be based upon the standards of construction and operation set out in .0308 - .0314 of this Section.

.0307

APPROVED LODGING PLACES INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS

The sanitation grading of all hotels, motels, inns, and tourist homes shall be based on a system of scoring wherein all establishments receiving a score of at least 90% shall be awarded Grade A; all establishments receiving a score of at least 80% and less than 90% shall be awarded a Grade B; all establishments receiving a score of at least 70% and less than 80% shall be awarded Grade C; and no establishment receiving a score of less than 70% or Grade C shall operate.

(a) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.

(b) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.

(c) If a permit is suspended

pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .0400 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.0448 GRADING

: INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS

(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.

(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.

(e) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .0500 - SANITATION OF MEAT MARKETS

.0507 GRADING

: INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS

(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.

(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.

(e) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .1000 - SANITATION OF
SUMMER CAMPS

.1008 GRADING
: INSPECTION OF
TEMPORARILY CLOSED
ESTABLISHMENTS

(b) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.

(c) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.

(d) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .1900 - SEWAGE
DISPOSAL SYSTEMS

.1954 MINIMUM STANDARDS FOR
PREFABRICATED SEPTIC TANKS

(a) The following are minimum standards of design and construction of precast reinforced concrete septic tanks:

(7) All tanks shall be manufactured with a cast-in-place partition so that the tank contains two compartments. The partition shall be located at a point not less than two-thirds nor more than three-fourths the length of the tank from the inlet end. The top of the partition shall terminate two inches below the bottom side of the tank top in order to leave space for air or gas passage between compartments. The top and bottom halves of the partition shall be cast in such manner as to leave a water passage slot four inches high for the full width of the tank. The partition (both halves) shall be reinforced by the placing of six-inch by six-inch No. 10 gage welded reinforcing wire. The reinforcing wire shall be bent to form an angle of 90

degrees on the ends in order to form a leg not less than four inches long. When the wire is placed in the mold, the four-inch legs should lay parallel with the sidewall wire and adjacent to it. In lieu of using the six-inch by six-inch No. 10 gage welded steel reinforcing wire, reinforcing may be made by use of a polypropylene fiber reinforcing material. The polypropylene fiber reinforcing shall not be less than three-fourths inch in length and more than two inches in length. The polypropylene fiber must be added to the concrete mix at a minimum rate of 1.5 pounds per cubic yard of concrete or a rate recommended by the fiber manufacturer, whichever is greater. Further, the rate and time of mixing as recommended by the fiber manufacturer must be followed. It is recognized that there are other methods of constructing a partition or two-compartment tank. Any method other than the one described will be considered on an individual basis for approval by the Division of Health Services. However, the tank wall thickness must remain not less than two and one-half inches thick throughout the tank except for blockouts.

(9) The tank shall be reinforced by using a minimum reinforcing of six-inch by six-inch No. 10 gage welded steel reinforcing wire in the top, bottom, ends, and sides of the tank. The reinforcing wire shall be lapped at least six inches. In lieu of using the six-inch by six-inch No. 10 gage welded steel reinforcing wire, reinforcing may be made by use of a polypropylene fiber reinforcing material. The polypropylene fiber reinforcing shall not be less than three-fourths inch in length and more than two inches in length. The polypropylene fiber must be added to the concrete mix at a minimum rate of 1.5 pounds per cubic yard of concrete or a rate recommended by the fiber manufacturer, whichever is greater. Further, the rate and time of mixing as recommended by

the fiber manufacturer must be followed.

The tank top must be able to withstand a uniform loading of 150 pounds per square foot. If additional reinforcing is required to accomplish this, it is the responsibility of the manufacturer to install the added reinforcing.

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

.2205 GRADING : INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS

(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.

(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.

(e) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SUBCHAPTER 10D - WATER SUPPLIES

SECTION .0700 - PROTECTION OF PUBLIC WATER SUPPLIES

.0702 DEFINITIONS

As used in this Subchapter, the term:

(39) "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the Department. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

SECTION .1000 - WATER SUPPLY DESIGN CRITERIA

.1005 STORAGE OF FINISHED WATER

(c) Hydropneumatic Storage Tanks (Pressure Tanks)

(5) Hydropneumatic Storage

Tanks. Hydropneumatic storage tanks shall conform to the construction requirements for pressure vessels adopted by the North Carolina Department of Labor as amended through October 1, 1986, and codified in 13 NCAC 13. Copies of the rules are available from the Boiler and Pressure Vessel Division, North Carolina Department of Labor, 214 West Jones Street, Raleigh, NC 27603.

SECTION .1600 - WATER QUALITY STANDARDS

.1616 MAXIMUM CONTAMINANT LEVELS FOR INORGANIC CHEMICALS

(c) When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following, the maximum contaminant levels for fluoride are-

Temperature

Degrees

Fahrenheit

53.7 and below
53.8 to 58.3
58.4 to 63.8
63.9 to 70.6
70.7 to 79.2
79.3 to 90.5

Degrees

Celsius

+2.0 and below
+2.1 to +4.6
+4.7 to +7.6
+7.7 to +21.4
+21.5 to +26.3
+26.3 to +32.5

Level,

Milligrams

Per liter

2.4
2.2
2.0
1.8
1.6
1.4

Fluoride at optimum levels in drinking water has been shown to have beneficial effects in reducing the occurrence of tooth decay.

(c) The maximum contaminant level for fluoride is 4.0 mg/l.

.1625 INORGANIC CHEMICAL SAMPLING AND ANALYSIS

(b) If the result of an analysis made pursuant to (a) or (f) of this Rule indicates that the level of any contaminant

listed in .1616 of this Section exceeds the maximum contaminant level, the supplier of water shall report to notify the department division within seven days and initiate three additional analyses at the same sampling point within one month.

(c) Analyses conducted to determine compliance with .1616, .1619, .1620, and .1621 of this Section shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 141.23 (f)(1) through (10) and 40 C.F.R. 143.4(b)(5), (6), and (8) which are hereby adopted by reference as amended through March 12, 1982 May 2, 1986.

A list of these methods is available from the Water Supply Branch, Environmental Health Section, Division of Health Services, P. O. Box 2091, Raleigh, NC 27602.

(f) In addition to complying with Paragraphs (a) through (e) of this Rule systems monitoring for fluoride must comply with the requirements of this Paragraph.

(1) Where the system draws water from one source, the system shall take one sample at the entry point to the distribution system. Where the system draws water from more than one source, the system must sample each source at the entry points to the distribution system. If the system draws water from more than one source and sources are combined before distribution the system must sample at an entry point to the distribution system during periods representative of the maximum fluoride levels occurring under normal operating conditions.

(2) The division may alter the frequencies for fluoride monitoring required by (a) of this Rule considering the following factors:

(A) Reported concentrations from previously required monitoring;

(B) The degree of variation in reported concentrations; and

(C) Other factors which may affect fluoride concentrations such as changes in the water system's configuration, operating procedures, source of water, and changes in stream flows.

(3) Monitoring may be

decreased from the frequencies in (a) of this Rule if the division determines that the water system is unlikely to exceed the maximum contamination level. Such determination shall be made by the division and the owner notified in writing after the sampling results from each source have been received and evaluated. Evaluation of these results and the factors in (f) (2) of this Rule will provide the basis for the determination. A copy shall be provided to the administrator. In no case shall monitoring be reduced to less than one sample every 10 years. For systems monitoring once every 10 years, the division shall review monitoring results to determine whether more frequent monitoring is necessary.

(4) Analyses for fluoride under this Rule shall only be used for determining compliance if conducted by laboratories that within the last 12 months have analyzed performance evaluation samples to within 10% of the reference value at fluoride concentrations from 1.0 mg/l to 10.0 mg/l.

(5) Compliance with the maximum contaminant level shall be determined based on each sampling point. If any sampling point is determined to be out of compliance, the water system is deemed to be out of compliance.

SECTION .2500 - VARIANCES AND EXEMPTIONS

.2512 VARIANCES FOR FLUORIDE

(a) The following shall be the best technology, treatment techniques or other means generally available for achieving compliance with the maximum contaminant level for fluoride:

(1) Activated alumina absorption, centrally applied,

(2) Reverse osmosis, centrally applied.

(b) The division shall require a community water system to install and/or use any treatment method identified in (a) of this Rule as a condition for granting a variance unless it is determined that such a treatment method is not available and effective for fluoride control

for the system. A treatment method shall not be available and effective for a water system if the method would not be technically appropriate and technically feasible. If upon application for a variance it is determined that no treatment method is available and effective then the water system shall be entitled to a variance. A determination of availability and effectiveness of treatment methods shall be based upon studies by the water system and other relevant information. A finding shall be made by the division whether the information supports a decision that a treatment method is not available and effective before requiring installation and use of the treatment method.

(c) The division shall issue a compliance schedule that may require the water system to examine the following treatment methods to determine the probability that any method will significantly reduce the level of fluoride and to determine whether any method is technically feasible and economically reasonable and that the fluoride reduction obtained will be commensurate with the costs incurred with installation and use of the treatment methods:

- (1) Modification of lime softening;
- (2) Alum coagulation;
- (3) Electrodialysis;
- (4) Anion exchange resins;
- (5) Well field management;
- (6) Alternate source; and
- (7) Regionalization.

(d) If the division determines that a treatment method identified in (c) of this Rule or any other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and use of such treatment method for the system, the division shall require the system to install and/or use that treatment method in connection with a compliance schedule. The determination shall be based upon studies by the system and other relevant information.

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0001 GENERAL

(d) Copies of all material adopted by reference in this Subchapter may be inspected in the Solid and Hazardous Waste

Branch Office, Division of Health Services, 306 N. Wilmington Street, P. O. Box 2091, Raleigh, N.C. 27602. Copies may be obtained from the Solid and Hazardous Waste Branch for a fee of ten cents ~~(\$0.10)~~ per page, at the actual cost to the Branch.

.0002 DEFINITIONS

(a) The definitions contained in 45 Fed. Reg. 33,073 to 33,076 (1980) to be codified in 40 CFR 260.10 (Subpart B); 45 Fed. Reg. 33,419 to 33,424 (1980); (to be codified in 40 CFR 270.2); and 45 Fed. Reg. 33,486 (1980) (to be codified in 40 CFR 124.2) have been adopted by reference as amended by 45 Fed. Reg. 72,028, 76,075, 76,630, and 86,968 (1980); 46 Fed. Reg. 2,348 (1981); 47 Fed. Reg. 32,349 (1982); 48 Fed. Reg. 2,511, and 30,115 (1983); 49 Fed. Reg. 10,500 (1984); and 50 Fed. Reg. 661 and 18,374 (1985); and 51 Fed. Reg. 16,443 (1986) to be codified in 40 CFR 260.10 (Subpart B), 45 Fed. Reg. 76,075, 76,630, and 86,968; 46 Fed. Reg. 2,348 (1981); 47 Fed. Reg. 4,996 (1982); and 48 Fed. Reg. 14,230 to 14,231 (to be codified in 40 CFR 270.2).

.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

(a) The general provisions contained in 45 Fed. Reg. 33,119 to 33,121 (1980) to be codified in 40 CFR 261.1 to 261.6 (Subpart A) have been adopted by reference as amended by 45 Fed. Reg. 72,028, 72,037, 76,620, 76,623, 76,624, and 78,531 (1980); 46 Fed. Reg. 56,588, 56,589, 47,429, 44,972, 44,973 (1981); 48 Fed. Reg. 2,532, 14,293, 14,294, and 30,115 (1983); 49 Fed. Reg. 23,287, and 44,980 (1984); and 50 Fed. Reg. 663, 664, 665, 1,999, 14,219, 28,743, 28,744, 49,202, 49,203, and 33,542, (1985); and 51 Fed. Reg. 10,174, and 10,175 (1986).

(c) The "Lists of Hazardous Wastes" and the accompanying appendices (I through VIII) contained in 45 Fed. Reg. 33,122 to 33,137 (1980) to be codified in 40 CFR 261.30 to 261.33 (Subpart D) have been adopted by reference as amended by 45 Fed. Reg. 72,032 to 72,034, 74,890, 74,892, and 74,894 (1980); 46 Fed. Reg. 78,529, 78,537 to 78,544, 4,614, to 4,620 (1981); 49 Fed. Reg. 5,312, 19,923 (1984); and 50 Fed. Reg. 662, 665, and 2,000 and 28,744 (1985). Supplemental material contained in 45 Fed. Reg.

47,833, and 47,834 (1980); 46 Fed. Reg. 35,247 to 35,249 (1981); and 48 Fed. Reg. 14,294, and 15,256 to 15,258 (1983) have also been adopted by reference as amended by 50 Fed. Reg. 2001, 2002, and 2003, 42,942, and 42,943, and 53,319 (1985); and 51 Fed. Reg. 2,702, 6,541, 5,330, and 10,175 (1986).

.0030 STANDARD FOR HAZARDOUS WASTE GENERATORS - PART 262

(b) The provisions for "Manifests" contained in 45 Fed. Reg. 33,143 (1980) to be codified in 40 CFR 262.20 to 262.23 (Subpart B) have been adopted by reference as amended by 45 Fed. Reg. 86,973 (1980); and 49 Fed. Reg. 10,500 (1984); and 51 Fed. Reg. 10,175 (1986).

(c) "Pre-Transport Requirements" contained in 45 Fed. Reg. 33,143, and 33,144 (1980) to be codified in 40 CFR 262.30 to 262.34 (Subpart C) have been adopted by reference as amended by 45 Fed. Reg. 76,626 (1980); 47 Fed. Reg. 1,251 (1982); 48 Fed. Reg. 14,294 (1983); and 49 Fed. Reg. 49,571 and 49,572 (1984); and 51 Fed. Reg. 10,175, and 10,176 (1986).

(d) The provisions for "Recordkeeping and Reporting" contained in 45 Fed. Reg. 33,144 (1980) to be codified as 40 CFR 262.40 to 262.43 (Subpart D) have been adopted by reference as amended by 48 Fed. Reg. 3,981, 3,982, and 14,294 (1983); and 50 Fed. Reg. 28,746 (1985); and 51 Fed. Reg. 10,176 (1986).

.0031 STANDARDS FOR HAZARDOUS WASTE TRANSPORTERS - PART 263

(c) The provisions for "Compliance With the Manifest System and Recordkeeping" contained in 45 Fed. Reg. 33,151 and 33,152 (1980) to be codified in 40 CFR 263.20 to 263.22 (Subpart B) have been adopted by reference as amended by 45 Fed. Reg. 86,973, 86,974 (1980); and 51 Fed. Reg. 10,176 (1986).

.0032 STANDARDS FOR OWNERS/OPERATORS OF HWMF'S - PART 264

(h) The provisions for "Closure and Post-Closure" contained in 46 Fed. Reg. 2,849 to 2,851, and 7,678 (1981) to be codified in 40 CFR 264.110 to 264.120 (Subpart G) have been adopted by reference as amended by 47 Fed. Reg. 32,356, 32,357 (1982); as amended by 48 Fed. Reg. 14,294 (1983); and 51 Fed. Reg. 16,444 to 16,447, (1986); except that 40 CFR 264.120(b) is rewritten

as follows: "If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation on the deed to the facility property or other instrument normally examined during title search, indicating the removal of the waste."

(i) "Financial Requirements" contained in 46 Fed. Reg. 2,851 to 2,866 and 7,678 (1981) to be codified in 40 CFR 264.140 to 264.151 (Subpart H) have been adopted by reference as amended by 47 Fed. Reg. 15,047 to 15,064 and 16,554 to 16,558, and 32,357 (1982) and 48 Fed. Reg. 30,115 (1983), and 51 Fed. Reg. 16,447 to 16,451 (1986), except that 40 CFR 264.143(a)(3), (a)(4), (a)(5), (a)(6), 40 CFR 264.145(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 264.151(a)(1), Section 15, are not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 264.143 (a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the closure cost estimate at the time the fund is established. Within 60 days of the effective date of these regulations, an owner or operator using a closure trust fund established prior to the effective date of these regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this section."

(2) The following shall be substituted for the provisions of 40 CFR 264.143(a)(4) which were not adopted by reference: "Deleted"

(3) The following shall be substituted for the provisions of 40 CFR 264.143(a)(5) which were not adopted by reference: "Deleted"

(4) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the

current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

(5) The following shall be substituted for the provisions of 40 CFR 264.145(a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 60 days of the effective date of these Regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these Regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this Section."

(6) The following shall be substituted for the provisions of 40 CFR 264.145(a)(4) which were not adopted by reference: "Deleted"

(7) The following shall be substituted for the provisions of 40 CFR 264.145(a)(5) which were not adopted by reference: "Deleted"

(8) The following shall be substituted for the provisions of 40 CFR 264.145(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is

less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference."

(9) The following shall be substituted for the provisions of 40 CFR 264.151(a)(1), Section 15, which were not adopted by reference: "Section 15. Notice of Payment. The trustee shall notify the EPA Regional Administrator of payment to the trust fund, by certified mail with ten days following said payment to the trust fund. The notice shall contain the name of the grantor, the date of payment, the amount of payment, and the current value of the trust fund."

.0033 INTERIM STATUS STANDARDS FOR HWMF'S - PART 265

(g) The provisions for "Closure and Post-Closure" contained in 45 Fed. Reg. 33,242 and 33,243 (1980) to be codified in 40 CFR 265.110 to 265.120 (Subpart G) have been adopted by reference as amended by 46 Fed. Reg. 2,875, 2,876, and 2,877, and 2,896 (1981); and 51 Fed. Reg. 16,451 to 16,455 (1986) ; except that 40 CFR 265.120(b) is rewritten as follows: "If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation on the deed to the facility property or other instrument normally examined during title search, indicating the removal of the waste."

(h) "Financial Requirements" contained in 45 Fed. Reg. 33,243 and 33,244 (1980) to be codified in 40 CFR 265.140 to 265.151 (Subpart H) have been adopted by reference as amended by 46 Fed. Reg. 2,877 to 2,888 (1981); 47 Fed. Reg. 15,064 to 15,074, and 16,558 to 16,561 (1982); and 48 Fed. Reg. 14,295 and 30,115 (1983); and 51 Fed. Reg. 16,455 to 16,458 (1986), except that 40 CFR 265.143(a)(3), (a)(4),

(a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), (a)(6) are not adopted by reference.

(1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the closure cost estimate at the time the fund is established. Within 60 days of the effective date of these Regulations, an owner or operator using a closure trust fund established prior to the effective date of these Regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section."

(2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(4) which were not adopted by reference: "Deleted"

(3) The following shall be substituted for the provisions of 40 CFR 265.143(a)(5) which were not adopted by reference: "Deleted"

(4) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference."

(5) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not adopted by reference: "The owner or operator must

deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 60 days of the effective date of these Regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these Regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this Section."

(6) The following shall be substituted for the provisions of 40 CFR 265.145(a)(4) which were not adopted by reference: "Deleted"

(7) The following shall be substituted for the provisions of 40 CFR 265.145(a)(5) which were not adopted by reference: "Deleted"

(8) The following shall be substituted for the provisions of 40 CFR 265.145(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current post-closure cost estimate changes during the operating life of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference."

.0034 INTERIM STATUS STANDARDS FOR PERMITTING PART 270

(a) The following provisions for permitting requirements contained in 48 Fed. Reg. 14,228 to 14,233, 30,113, and 30,114 (1983) to be codified in 40 CFR 270 (Subpart A, General Information) have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); and 49

Fed. Reg. 47,391 (1984); and 50 Fed. Reg. 18,375 (1985); and 51 Fed. Reg. 10,176 (1986).

(b) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,233 to 14,241, and 30,114 (1983) to be codified in 40 CFR 270 (Subpart B, Permit Application) have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); and 50 Fed. Reg. 2006, 28,751, and 28,752 (1985); and 51 Fed. Reg. 10,176, and 16,458, (1986).

(g) The following provisions for additional permitting requirements contained in 48 Fed. Reg. 14,248 (1983) to be codified in 40 CFR 270 (Subpart G, Interim Status) have been adopted by reference as amended by 49 Fed. Reg. 17,718 (1984); and 50 Fed. Reg. 28,753 (1985); and 51 Fed. Reg. 16,459 (1986). However, the date "November 8, 1985" contained in 40 CFR 270.73(c) shall be deleted and replaced with the date "January 1, 1986".

.0035 PERMITTING PROCEDURES

PART 124

The following decision-making requirements for permits contained in 45 Fed. Reg. 33,485 to 33,493 (1980) to be codified in 40 CFR 124 (Subpart A) have been adopted by reference as amended by 46 Fed. Reg. 36,706 (1981); 48 Fed. Reg. 30,115 and 39,620 (1983); and 49 Fed. Reg. 17,718 and 17,719 (1984).

(15) 40 CFR 124.20
Computation of Time

.0039 RECYCLABLE MATERIALS

PART 266

(e) The following provision for "Used Oil Burned for Energy Recovery" contained in 50 Fed. Reg. 4 & 9, 205, 49,206, and 49,207 (1985) to be codified in 40 CFR 266.40 to 266.44 (Subpart E) have been adopted by reference.

.0041 REQUIREMENTS: HAZARDOUS WASTE PROGRAM - PART 271

The following provisions for the sharing of information to be codified in 40 CFR 271.1 to 271.17 have been adopted by reference as amended by 50 Fed. Reg. 28,754 (1985) and 51 Fed. Reg. 10,176 (1986).

CHAPTER 11 - MEDICAL EXAMINER

SECTION .0700 - FEES PAID FOR SERVICES

.0705 CREMATION FEE

The county medical

examiner is authorized a fee of thirty-five dollars (\$35.00) to be paid by the applicant for inquiring into the cause and manner of death and inspecting the body of a decedent who is to be cremated or buried at sea. The fee is not authorized if the death comes within the jurisdiction of the county medical examiner as specified in G.S. 130A-383 or G.S. 130A-384. The fee is authorized in the investigation of deaths of infants with a gestational age of 20 weeks or greater if they were born alive, and lived for more than 24 hours. Investigation of still births is not required unless there is indication that death occurred by criminal act or default, or under suspicious, unusual or unnatural circumstances. Deaths in association with medically unattended deliveries or delivery by a licensed midwife are considered to fall within the medical examiner's jurisdiction as specified in G.S. 130A-383 and G.S. 130A-384. No inquiry is required in deaths of patients resulting only from natural disease and occurring in a licensed hospital or nursing home. No inquiry is required prior to cremation or burial at sea for bodies donated to the Commission for Anatomy or or medical schools in North Carolina.

CHAPTER 12 - HEALTH: OFFICES OF LOCAL SERVICES

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENT

.0236 INDIVIDUAL (ON-SITE) WATER SUPPLY

(b) A local health department shall establish, implement, and maintain written policies for the provision of orientation and in-service training for sanitarians. The policies shall include the following minimum requirements for sanitarians providing individual on-site water supply services:

- (1) Initial field training for newly employed sanitarians;
- (2) CDC Homestudy Course 3010-G or its equivalent as approved by the division;
- (3) ~~North Carolina State University Food Protection Short Course or its equivalent as approved by the division;~~ and (4 3) Registration by the Board of Sanitarian Examiners.

.0239 FOOD: LODGING: AND
INSTITUTIONAL SANITATION

(a) A local health department shall provide food, lodging, and institutional sanitation services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) The frequency of inspections of food, lodging, and institutional facilities with the following being the minimum:

Type of Establishment and Frequency
Bed and breakfast homes 1/year,
Child day-care facilities 1/year,
Education food service 3/year,
Institutions 2/year,
Local confinement facilities 1/year,
Lodging 2/year,
Mass gatherings 2/gathering,
Meat markets 4/year,
Migrant housing 2/year,
Mobile food units 4/year,
Private boarding schools and colleges 2/year,
Pushcarts 4/year,
Residential care facilities 1/year,
Restaurants 4/year,
School lunchrooms 3/year,
Schools 1/year,
Seasonal establishments (operate 3 months or less/year) 1/year,
Summer camps 1/year,
<u>Temporarily closed</u> <u>establishments 1/three</u> <u>months of operation</u> <u>(or part thereof).</u>
Temporary restaurants, food stands, or drink stands, 1/two weeks, Vending machine locations representative number of locations/year,

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends

to amend regulation cited as 10 NCAC 26D .0012. The purpose of the proposed regulation is to extend the time frame for requesting adjustment of a claims payment from 90 days after initial payment or denial to 180 days.

The proposed effective date of this action is November 1, 1986.

Authority: G.S. 108A-25(b); 42 C.F.R. 447.45.

The public hearing will be conducted at 1:30 p.m. on August 15, 1986, at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC, Room 201-A.

Comment Procedures: Written comments concerning this amendment must be submitted by August 15, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing.

SUBCHAPTER 26D - LIMITATIONS
ON AMOUNT: DURATION AND SCOPE

.0012 TIME LIMITATION

- (a) To receive payment, claims must be filed:

- (1) Within 365 days of the first date of service for services other than inpatient hospital services;
(2) Within 365 days of the date of discharge for inpatient hospital services or not to exceed the limitations as specified in 42 C.F.R. 447.45;
(3) Within 90 days of the Medicare or other third party payor.

- (b) Providers must file adjustments no later than ~~90~~ 180 days after date of payment or adjustment will not be made.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26G .0403; 10 NCAC 26G .0504; 10 NCAC 26G .0511; 10 NCAC 26G .0601 and 10 NCAC 26G .0602. The purpose of the proposed regulations is to update the procedure by which providers request an administrative review of investigative findings in

accordance with the requirements set out in Chapter 150B of the General Statutes.

The proposed effective date of this action is December 1, 1986.

Authority: G.S. 108A-25(b); 150B-11; 42 C.F.R. Part 455; 42 C.F.R. Part 456.

The public hearing will be conducted at 1:30 p.m. on September 17, 1986 at the North Carolina Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina, Room 201-A.

Comment Procedures: Written comments concerning these amendments must be submitted by September 17, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603. Oral comments may be presented at the hearing.

SUBCHAPTER 26G -PROGRAM INTEGRITY

SECTION - .0400-AGENCY RECONSIDERATION AND EXECUTIVE DECISIONS

.0403 EXECUTIVE DECISION FOR PROGRAM ABUSE

(a) The Deputy Director of the Division of Medical Assistance shall have the authority to render the Executive Decision on behalf of the Secretary of the Department of Human Resources in cases of Medicaid abuse.

(b) Except in cases of recommended suspension or termination, the provider will be offered, in writing, the opportunity to request an Executive Decision on the tentative determination and the reasons thereof. The provider will be instructed to submit a written request for an Executive Decision. The instructions will allow the provider a minimum of fifteen working days to make such a request for an Executive Decision. The instructions will allow the provider a minimum of fifteen working days to make such a request and will specify to whom to address the request. Unless the request is received by within the specified time specified, the tentative decision will become the Division's final decision. Further, the provider shall be informed that the Executive Decision is final and that the provider has no further administrative review.

(c) Upon receipt of the

provider's request for an Executive Decision, the Chief, Program Validation Integrity

Section, shall prepare for the Deputy Director of the Division written statements of the matter in dispute and the position of the Program Validation Integrity staff, citing laws, regulations, rules and policies upon which the position relies, together with such documentation, records, papers, correspondence, etc., pertinent to the tentative decision and necessary for an understanding of the written statements. Further, he shall give written notice to the provider regarding the referral to the Deputy Director of the Division of Medical Assistance for an Executive Decision of the matter in dispute. The notice shall state that the provider may submit to the Deputy Director of the Division of Medical Assistance, within fifteen working days of the date of the notice, a written statement of the provider's position, together with documents, records, papers, etc., which the provider feels is necessary for understanding the position statement.

(d) The Deputy Director of the Division shall make the Executive Decision for disposition of the matter in dispute. There is no further level of administrative review available to the provider.

(e) The Executive Decision shall be sent to the provider by certified mail within ten working days following the date the provider's written position statement is received. The decision shall contain a statement of the provider's right to request a contested case hearing in accordance with the provisions of 10 NCAC 1B .0200. The provider shall have fifteen working days to request a contested case hearing. Unless the request is received within the time provided, the Executive Decision will become the Division's final decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the Secretary's designee and shall be responsible for making the final agency decision.

(f) The Executive Decision shall be accompanied by the schedule for implementing the administrative measures and/or recoupment plan, if applicable.

SECTION .0500 - PEER REVIEW

.0504 COMPOSITION OF PEER
REVIEW BOARD

(a) The Medicaid Agency will establish five standing committees representing the various professions, which shall act as Peer Review Boards.

(1) The Medical Peer Review Board which sits to review a particular case shall be composed of seven members of the standing committee chosen by the Director, Division of Medical Assistance or his designee. The Peer Review Board shall designate one of the board members as the Chief Hearing Officer chairman.

(2) The Dental Peer Review Board which sits to review a particular case will be composed of three members of the standing committee and two members of the dental district committee and two members of the dental district committee from the area in which the provider practices. The district committee members who serve on the board for a particular case shall be chosen by the Director, Division of Medical Assistance or his designee.

(3) The Podiatry, Optometry, and Chiropractic Peer Review Boards which sit to review particular cases in their speciality shall be composed of three members of the Podiatry, Optometry, and Chiropractic standing committees respectively. The three members shall be chosen by the Director, Division of Medical Assistance or his designee.

.0511 PEER REVIEW
PROCEDURES

(a) The Chief Hearing Officer chairman of the peer review board shall have complete control over the conduct of the review proceedings and will be responsible for;

(1) calling the review to order;

(2) stating the purpose of the review;

(3) recognizing speakers and witnesses;

(4) ensuring that presentations are pertinent and nonrepetitious;

(5) ensuring that the provider has a full and fair opportunity to present his defense and question or rebutt the person(s)

presenting the Medicaid Agency's case;

(6) having a record made of the proceedings which must include the peer review board's findings, conclusions, and recommendations, and

(7) proceedings where oral evidence is presented shall be tape recorded, but need not be transcribed unless a party to the proceedings requests a transcript. The party requesting a transcript, or part thereof, must pay for the transcript. Either party may provide a court reporter at its expense.

(f) The provider shall have fifteen days from receipt of the findings, conclusions, and recommendations in which to file with the Deputy Director of the Division of Medical Assistance a written rebuttal or comment. This response may not contain new evidence. The deputy director must consider the rebuttal before making a decision on the board's recommendations. Only The division deputy director shall make a determination as to what, if any, sanctions, remedial measures and/or recoupment actions shall be imposed on a provider. Only The division Deputy Director shall have the authority to impose sanctions, remedial measures and/or recoupment actions against a provider. The division Deputy Director is not bound by the board's recommendations; it he is bound by the board's findings of fact and conclusions regarding medical issues. The division's Deputy Director's decision shall be in writing and shall contain a statement of the provider's right to request a contested case hearing in accordance with the provisions of 10 NCAC 1B .0200. The provider shall have fifteen working days to request a contested case hearing. Unless the request is received within the time prescribed, the Deputy Director's decision will become the division's final decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the Secretary's designee and shall be responsible for making the final agency decision.

SECTION .0600 - HEARINGS
CONCERNING QUESTIONS OF
SUSPENSION OR TERMINATION

.0601 AUTHORITY AND PURPOSE
Hearings shall be conducted according to in accordance with the provisions of Subchapter 26 of Title 22 10 NCAC 1B .0200 of the North Carolina Administrative Code, whenever the division has recommended suspension or termination of the provider.

.0602 ORGANIZATION
AND FUNCTION

(a) As used in Subchapter 26 of Title 22 of the North Carolina Administrative Code 10 NCAC 1B .0200, the word agency "department" shall mean the North Carolina Department of Human Resources, Division of Medical Assistance.

(b) For the purpose of conducting hearings concerned with administrative issues the division director shall appoint a hearing officer according to Subchapter 26 of Title 22 NCAC. In selecting hearing officers and in issuing final decisions in contested cases, the Director, Division of Medical Assistance shall serve as the Secretary's designee.

(c) For the purpose of conducting hearings concerning medical issues according to Subchapter 26 of the Title 22 of the North Carolina Administrative Code,

(1) The following persons are hereby designated as peer review boards and "presiding officers" as that term is used in Subchapter 26 of Title 22 NCAC, the Medical Dental, Podiatry, Optometry, and Chiropractor Peer Review Boards, as set forth a Rule .0504 of this Subchapter, together with a hearing officer, who shall be without vote in the deliberation of the board.

(2) The hearing officer, as the chairman of the board of presiding officers per Title 22 NCAC 26 Rule .0301 (a) (2), shall handle all pre-hearing matters, conduct the hearing, draft the proposed decision and do other things required of him by the Peer Review Board.

(3) Whenever a peer review is conducted according to the procedures provided for in this Section, the Peer Review Board may recommend in its proposed decision, and the division may impose in the final agency decision suspension or termination of the provider, in accordance

with the standards established by law or regulations for the suspension of termination (sometimes called "kick out") of Medicaid providers.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26H .0106, .0204, and .0304. The purpose of the proposed regulations is to clearly define the appeal process for Medicaid provider rate disputes in accordance with N. C. G. S. 150B.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G. S. 10A-25(b); 108A-54; 150B-11.

The public hearing will be conducted at 1:30 p.m. on September 19, 1986 at the N. C. Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina, Room 201.

Comment Procedures: Written comments concerning these amendments must be submitted by September 19, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N. C. 27603. Oral comments may be presented at the hearing.

SUBCHAPTER 26H - REIMBURSEMENT
PLANS

SECTION .0100 - REIMBURSEMENT
FOR SKILLED NURSING
FACILITY AND
INTERMEDIATE CARE
FACILITY SERVICES

.0106 APPEALS

(a) Providers may appeal their rates rate determinations and/or reimbursement settlements using. These appeals will be processed according to procedures set forth in 10 NCAC 26J .0200.

SECTION .0200 - HOSPITAL
INPATIENT REIMBURSEMENT
PLAN

.0204 ADMINISTRATIVE APPEALS

(a) Appeals of rate determinations will be processed in accordance with the provisions of 10 NCAC 26J .0200.

Appeals must be submitted to the Division of Medical Assistance within sixty days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case an appeal may be considered at any time.

SECTION .0300 - ICF-MR
PROSPECTIVE
RATE PLAN

.0304 PROVIDER APPEALS

Rate appeals must be filed in writing within 60 days after a provider receives notification of its prospective rate. Such appeals are subject to the Reimbursement and Administrative Review process as set forth in 10 NCAC 26J

will be processed in accordance with the provisions of 10 NCAC 26J .0200.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to amend regulation cited as 10 NCAC 26H .0202. The purpose of the proposed regulation is to establish options for paying out-of-state hospitals participating in the Medicaid Program.

The proposed effective date of this action is December 1, 1986.

Authority: G.S. 108A 25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

The public hearing will be conducted at 1:30 p.m. on September 15, 1986 at the N. C. Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, Room 201.

Comment Procedures: Written comments concerning these amendments must be submitted by September 15, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603. Oral comments may be presented at the hearing.

SECTION .0200 - HOSPITAL
INPATIENT
REIMBURSEMENT PLAN

.0202 RATE SETTING METHODS

(f) Out-of-state hospital services are reimbursed according to the rates established by the Medicaid Agency of the State in which the hospital is located. If a

usable rate cannot be obtained, services are reimbursed at seventy-five percent of billed charges or a negotiated rate not to exceed reasonable cost.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to amend regulations cited as 10 NCAC 26H .0302 and .0303. The purpose of the proposed regulations is to make changes to the ICF-MR Prospective Rate Plan as follows: 1. 10 NCAC 26H .0302 - to delete references to sections of the ICF-SNF Reimbursement Plan which are contained in but not applicable to the ICF-MR Rate Plan. 2. 10 NCAC 26H .0303 - to delete utilities cost as a separate component in the composite inflation rate and to delete the provision that prohibits interim rate increases in the event that new annual prospective rates are delayed.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 108A-25(b); 108A-54; 108A-55; S. L. 1985, c. 479, s. 86; 42 C.F.R. Part 447, Subpart C.

The public hearing will be conducted at 1:30 p.m. on September 15, 1986 at the N. C. Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603, Room 201.

Comment Procedures: Written comments concerning these amendments must be submitted by September 15, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603. Oral comments may be presented at the hearing.

SECTION .0300 - ICF-MR
PROSPECTIVE RATE
PLAN

.0302 ALLOWABLE COST
FINDING: REPORTING
AND VERIFICATION

(a) Annual cost reports are required from all providers within 90 days after their fiscal year end. These reports shall be presented on forms and in a format approved by the state agency. A 30 day extension of the due date may, for good cause, be granted by the state.

(b) These cost reports shall

detail the providers cost for the entire reporting period, or for the period of participation in the plan if less than a full cost reporting year, for allowable costs. The allowable reasonable, and necessary costs of any services are determined in accordance with regulations (HIM-15) establishing the method or methods to be used and the items included. consistent with the applicable provisions of SNF ICF Rule 10 NCAC 26H -0103, ALLOWABLE COST IDENTIFICATION, of this Subchapter.

(c) Allowable costs will be recorded on the basis of generally accepted accounting principles using the accrual method of accounting.

(d) Each cost report will be verified by the state agency or its representative for completeness, accuracy and reasonableness through a desk review. Desk reviews are to be completed within six months from the date of submission. A desk audit or field audit of the cost report will be performed as required. in 42 CFR 447.291 and 447.292.

All cost reports will be desk reviewed in accordance with standard procedures. On-site audits will be performed in accordance with applicable state and federal laws and regulations. Onsite audit policies and procedures shall follow those set forth in Rules 10 NCAC 26H -0102 (f) (j) of this Subchapter.

.0303 METHODS AND STANDARDS FOR DETERMINING RATES

(a) Prospective rates for each ICF-MR provider shall be determined annually to be effective for a 12-month period beginning July 1 and ending the following June 30. These rates shall be derived from actual cost data from a base year to be selected by the state presented in cost reports submitted to and audited by the state agency. The year to which this cost report applies shall be known as the base year. Appropriate adjustments may be made to these base year costs to accommodate changes in applicable federal and state laws or regulations.

(b) The per diem rate for each provider in the base year shall be determined by dividing the total allowable costs in that year by the total actual number of patient days.

(c) The base year per diem rate for each provider will be inflated from the base year to

the year in which the rate will apply using inflation factors for each intervening year computed as follows:

(1) Cost data from the base year cost reports will be aggregated to determine the proportion (percent of total) of cost in each of the following categories:

(A) Labor;

(B) Utilities;

(C) Other Operating;

(D) Capital which includes

(1) Labor;

(2) Utilities;

(2) Inflation rates for each category will be established using official estimates of inflation provided by the North Carolina office of Budget and Management for the year in which the rate shall apply.

(A) Labor costs shall be inflated by the estimate of the increase in Average Annual Service Wages in North Carolina, adjusted for any special factors related to ICF-MR personnel. however, salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Director of the Division of Medical Assistance;

(B) Utilities costs shall be inflated by the mean average of the estimated increase for the following: Electricity prices, Natural Gas Prices, Fuel Oil and other Utilities Prices;

(C) Other costs shall be inflated by the estimate of the Implicit Price Deflator for the U. S. Gross National Product; however, management fees shall be limited to a sum equal to seven percent of the Maximum ICF rate in the state during the current fiscal year;

(D) Capital cost shall not

(1) be inflated. The annual capital cost or lease expense shall be limited to the sum of (c) (2) (D) (i) and (ii) as follows:

(i) The annual

depreciation on plant and equipment that would be computed on assets equal to twenty-five thousand dollars (\$25,000) per bed during the fiscal year 1982-83 adjusted for changes in the Dodge Building Cost Index of North Carolina cities for each year since 1982-83. This amount is computed using the straight-line method of depreciation and the useful life standards established by the American Hospital Association.

- (ii) An interest allowance equal to 10 percent of the maximum allowed historical cost used to compute the annual depreciation in (c) (2) (D) (i) of this Rule.
 - (iii) This capital/lease limit does not apply to leases in effect prior to August 3, 1983.
 - (iv) The State may waive this capital/lease limit for group homes established pursuant to the provisions of Chapter 858 of the 1983 Session laws provided that the per diem rate of any such group home does not exceed the per diem of the institution from which certified beds are transferred.
- (3) Rates determined in 10 NCAC 26H .0303(c) (2) will be multiplied times the percentages determined in 10 NCAC 26H .0303(c) (1) to obtain a weighted inflation rate for each category of cost.
- (4) The weighted rates determined in 10 NCAC 26H .0303(c) (3) will be added to obtain the composite inflation rate.
- (5) No inflation factor for any provider will exceed the maximum amount permitted for that provider by federal or state law or regulation.
- (d) The prospective rate established in Paragraph (c) of this Rule, will be paid to the provider for every medicaid eligible day during the year in which it will apply. These prospective rates may be determined after the date in which they are to go into effect and paid retroactively to that date. During such a period the preceding prospective rates

shall be paid to the providers until the new rates are determined.

(e) If allowable costs are less than prospective payments during a cost reporting period, a provider may retain one-half of the difference between costs and payments, up to an amount of one dollar (\$1.00) per patient day. The balance of unexpended payments must be refunded to the Division of Medical Assistance.

(f) new providers are those that have not filed a cost report in the base year covering at least one full year of normal operations. These providers shall have a rate established by the Division of Medical Assistance using budgeted data. This rate for a new facility shall not exceed the median rate for all existing facilities.

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to adopt regulations cited as 10 NCAC 26J .0201-.0206. The purpose of the proposed regulations is to more clearly define the appeal process for Medicaid provider rate disputes in accordance with N.C.G.S. 150B.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 10A-25(b); 108A-54; 150B-11.

The public hearing will be conducted at 1:30 p.m. on September 19, 1986 at the N.C. Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, North Carolina.

Comment Procedures: Written comments concerning these adoptions must be submitted by September 19, 1986 to Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N. C. 27603. Oral comments may be presented at the hearing.

SUBCHAPTER - 26J - TITLE XIX REIMBURSEMENT AND ADMINISTRATIVE REVIEW PROCESS

SECTION .0200 - RATE REVIEW PROCESS

.0201 ADMINISTRATIVE CONFERENCE

(a) Rates are set for providers pursuant to the applicable provisions of 10 NCAC 26H.

(b) Following receipt of the rate

notice a provider may file a request for an administrative conference with the Division of Medical Assistance to request a change to its rate.

(c) Any request must be made within the time period designated in the applicable section of 10 NCAC 26H and must be submitted in conformance with applicable provisions of 10 NCAC 26H.

.0202 REQUEST FOR ADMINISTRATIVE CONFERENCE

A request for an administrative conference must be made in writing and signed by the provider or its representative. It must state the provider's specific dissatisfaction with the rate determination and the desire to have the matter reviewed further. The provider must further cite the specific provisions of state or federal law and regulations, including 10 NCAC 26H, under which it seeks the rate determination to be reviewed. The request for a conference should be sent to:

Assistant Director,
Financial Operations
Division of Medical Assistance
North Carolina Department of
Human Resources
1985 Umstead Drive
Raleigh, North Carolina 27603

Each request for an administrative conference must be disposed of in one of the following ways:

- (1) Conducting an administrative conference;
- (2) Denying the request for cause (i.e., State Statutes, Medicare, Late Request); or
- (3) Accepting a withdrawal at the request of the provider or its representative.

.0203 REPRESENTATIVE FOR THE PROVIDER

(a) A provider may appoint an attorney, accountant, or other individual to act as its authorized representative. A written statement setting forth the name, address, and telephone number of a representative designated by the provider shall be sent to the assistant director.

(b) The representative may exercise any and all of the rights given to parties in the conference process on behalf of the provider he is representing. Notice of meeting date, request for information, the

administrative conference decision and final decision shall be sent to such authorized representative. Copies of such documents will be sent to the provider only if written request is made to the assistant director.

.0204 ADMINISTRATIVE CONFERENCE TO BE HELD

The Division of Medical Assistance will arrange an administrative conference with the provider and/or its representative. However, written arguments describing and supporting its position may be accepted from the provider as a substitute for an administrative conference if the assistant director for Financial Operations and the provider mutually agree to the substitution. The submission of such written arguments do not limit the right of either the assistant director or the provider to require an administrative conference to be held prior to the issuance of a proposed division decision.

.0205 PROPOSED DIVISION DECISION

Following the administrative conference, the Assistant Director for Financial Operations shall, within ten days or such additional time thereafter as specified in writing within the ten days, present his decision to the provider or its representative. The provider then has ten days in which to file a request for a contested case hearing with the Director of the Division of Medical Assistance. If the provider does not file a request for hearing within ten days, the decision issued by the Assistant Director for Financial Operations shall become final.

.0206 FINAL DECISION

All requests for contested case hearings shall be processed in accordance with 10 NCAC 1B .0200. In appointing the hearing officer and issuing the final decision, the Director of the Division of Medical Assistance shall serve as the designee of the Secretary.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-12 that the Boiler and Pressure Vessel Division intends to amend regulation cited as 13 NCAC 13

.0402(a). The purpose of the proposed regulations is to exempt ASME Code constructed pressure vessels which were operated by an owner in another jurisdiction prior to January 1, 1979 and are transferred for operation in this State from the additional stamping requirements of 13 NCAC .0402(a) as long as there has been and is no change in ownership of the vessel.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 95-69.11 and 95-69.14.

The public hearing will be conducted at 2:00 p.m. on Monday, August 25, 1986, Room 614, Cooper Memorial Building, 225 North McDowell Street, Raleigh.

Comment Procedures: People wanting to present oral testimony at the hearing, or who want to have written testimony read at the hearing, should provide a written summary of the proposed testimony to the department by August 18, 1986. Oral presentations will be limited to 15 minutes each. Written statements not presented at the hearing will be accepted by the department until September 4, 1986. All correspondence should be directed to: B. L. Whitley, N.C. Department of Labor, Boiler and Pressure Vessel Division, 214 W. Jones St., Raleigh, NC 27603. Interpreters for the hearing impaired will be made available if requested 24 hours in advance.

SECTION .0400 - GENERAL REQUIREMENTS

.0402 ADDITIONAL STAMPING AND REGISTRATION

(a) Power boilers installed after November 1, 1935, heating boilers (except cast iron boilers) installed after January 1, 1976, and pressure vessels installed after January 1, 1979, shall bear the national board stamping and the manufacturer's registered national board number. This requirement shall not apply to ASME Code constructed pressure vessels which were operated by an owner in another jurisdiction prior to January 1, 1979, and are transferred for operation at a location in this State, so long as there has been and is no

change in the ownership of the vessel.

TITLE 15 - NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0304(e). The purpose of the proposed regulation is to reclassify the South Toe River and all its tributaries upstream of U.S. Hwy 19E by adding an Outstanding Resource Waters (ORW) classification to the existing C-trout and B-trout classifications. This classification will provide additional protection of the excellent water quality and the native trout waters of these streams.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on August 21, 1986 at South Toe River School, N.C. Hwy 80, Burnsville, N.C. 28714.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five (5) minutes at the discretion of the hearing officer and presentations exceeding three (3) minutes are requested to have a written copy which will be filed with the hearing officer.

SUBCHAPTER 2B -SURFACE WATER STANDARDS: MONITORING

SECTION .0300 -ASSIGNMENT OF STREAMS CLASSIFICATION

.0304 FRENCH BROAD RIVER BASIN

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;

- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) December 1, 1986;

Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0305(c). The purpose of the proposed regulation is to reclassify the Watauga River "From source to U.S. Hwy 321 Bridge" from Class C-trout to Class B-trout. This change will protect this portion of the river for frequent swimming.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 143-214.1.

The public hearing will be conducted at 7:00 p.m. on August 20, 1986 at Watauga County Courthouse, Commissioners Meeting Room, West King Street, Boone, N.C. 28714.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited to five (5) minutes at the discretion of the hearing officer and presentations exceeding three (3) minutes are requested to have a written copy which will be filed with the hearing officer.

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATION

.0305 WATAUGA RIVER BASIN

(c) The Watauga River Basin schedule of Classifications and Water Quality Standards was amended effective:

- (1) August 12, 1979;
- (2) February 1, 1986;
- (3) December 1, 1986.

Notice is hereby given in accordance with G.S. 150B-12 that the NC Marine Fisheries Commission intends to amend

regulations cited as 15 NCAC 3B .0101 (a); .0401; .0402 (4); .0404; .0504; .0902; .1111; .1501; .1502; .1505. The purpose of the proposed regulations is to clarify jurisdiction, amend striped bass regulations to allow other fisheries to operate, restrict the taking of small flounder in the ocean; adjust areas designated for use of pots; include mussels in restrictions for polluted areas and clarify process for designation of polluted/prohibited areas.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 113-134; 113-182; 143B-286.

The public hearing will be conducted at 7:30 p.m. on August 18, 19, 20, 21, 25, 1986 at: August 18 - County Office Building, Hertford, NC; August 19 - District Court Room, Washington, NC; August 20 - Duke University Marine Lab Aud., Beaufort, NC; August 21 - New Hanover County Courthouse, Room 302, Wilmington, NC; August 25 - Ground Floor Hearing Room, Archdale Building, Raleigh, NC. Business Session - September 23, 1986, Division of Marine Fisheries Conference Room, Morehead City, NC., - 10:00 a.m.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearing. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than September 5, 1986.

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0100 - GENERAL REGULATIONS

.0101 SCOPE AND FUNCTION

(a) The regulations herein are applicable in all coastal waters of North Carolina, including joint fishing waters, and in the Atlantic Ocean within three nautical miles of the beach.

SECTION .0400 - NET REGULATIONS SPECIFIC

.0401 ALBEMARLE SOUND

AND TRIBUTARIES

In Albemarle Sound and tributaries: (including ~~but not limited to~~, Chowan River, excluding and Currituck Sound and its tributaries):

- (1) From January 1 through May 31, no gill net shall be used which has a mesh length less than three inches in Albemarle Sound and tributaries, between the mouth of Roanoke, Middle, Eastmost and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds.
- (2) From June 1 through September 30, no gill net shall be used with a mesh length less than five inches in the Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds, except gill nets may be used with a mesh length not exceeding of three inches or less with the float line visible and floating at the water's surface, and reaching no further than 200 yards from the shoreline. Gill nets with a mesh length not exceeding three inches shall be and attended by the fisherman who shall not be more than 100 yards from such nets at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three inches or less.
- (3) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches in Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds except attended gill nets as described in (2) of this Rule may be used. Gill nets which has a mesh length between two and one-half inches and four and one-quarter inches must be sunk to the bottom, set in no less than eight feet of water, and be no more than 25 meshes deep.

.0402 ATLANTIC OCEAN

- (4) From October 1 through April 30, it shall be unlawful to take, transport or possess aboard a vessel flounder taken with a trawl in the Atlantic Ocean until

the secretary, acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources, shall open the season by proclamation. The secretary is further empowered at his discretion to impose any or all of the following restrictions:

- (a) specify number of days;
- (b) specify areas;
- (c) specify means and methods of taking;
- (d) specify time period;
- (e) specify minimum size;
- (f) limit quantity;
- (g) require provision for statistical and biological data.

No trawl with a cod end (tail bag) mesh length of less than four and one half inches and less than 30 meshes long may be used to take flounder in a directed flounder fishery. It shall be considered a directed flounder fishery when the catch consists of 60 percent or more flounder.

.0404 CURRITUCK SOUND AND ITS TRIBUTARIES

- (3) From January 1 through May 31, no gill net shall be used which has a mesh length less than three inches.
- (4) From June 1 through September 30, no gill net shall be used with a mesh length less than five inches, except gill nets with a mesh length of three inches or less and attended by the fisherman who shall not be more than 100 yards from such nets at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three inches or less.
- (5) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches and set within 300 yards of the shoreline, except attended gill nets as described in (4) of this Rule.

SECTION .0500 - OTHER FISHING DEVICES

.0504 EEL: CRAB: FISH: SHRIMP POTS

- (a) (2) Pots may be used from From May 1 through October 31, it shall be unlawful to use any pots in the following internal coastal fishing waters of North Carolina except pots may be used north and east of the Highway 58

Bridge at Emerald Isle in areas described in this Rule.

(a) (2) (E) (v) In that area bound by a line beginning at a point on the southeast shore of Indian Island 35deg. 21' 32" N 76deg. 38' 40" W running 184deg. M 300 yards to a point 35deg. 21' 23" N 76deg. 38' 38" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35deg. 21' 32" N 76deg. 39' 47" W; thence 013deg. M 300 yards to a point on the west shore of Indian Island 35deg. 21' 40" N 76deg. 39' 45" W.

(vi) Along the north shore of Indian Island beginning at a point on the east end 35deg. 21' 39" N 76deg. 38' 36" W to a point on the east end 35deg. 21' 39" N 76deg. 38' 36" W to a point on the west end 35deg. 21' 40" N 76deg. 39' 45" W from the shoreline to no more than 50 yards from shore.

(vii) In that area bound by a line beginning at a point at the six foot depth contour south of Hickory Point 35deg. 21' 33" N - 76deg. 41' 39" W; thence easterly following the six foot depth contour to a point off the east end of Indian Island 35deg. 21' 42" N - 76deg. 38' 04" W; thence 270deg. M to a point on the east end of Indian Island 35deg. 21' 38" N - 76deg. 38' 36" W; thence following the shoreline of Indian Island to a point on the west end 35deg. 32' 37" N - 76deg. 39' 40" W; thence 293deg. M toward Daymarker #1 to a point at the six foot depth contour 35deg. 21' 46" N - 76deg. 40' 16" W; thence following the six foot depth contour in a westerly direction to a point off Long Point 35deg. 22' 42" N - 76deg. 42' 44" W; thence 233deg. M to a point on shore 35deg. 22' 24" N - 76deg. 43' 05" W.

(viii) Beginning at a point on shore near Long Point 35deg. 22' 29" N - 76deg. 43' 25" W, running 001deg. M to a point 300 yards offshore 35deg. 22' 39" N - 76deg. 43' 26" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35deg. 22' 39" N - 76deg. 43' 59" W; thence 209deg. M to a point on shore 35deg. 22' 30" N - 76deg. 44' 03" W.

(ix) In that area on the south side of Pamlico River bound by a line beginning at a point on Hickory Point 35deg. 21' 44" N 76deg. 41' 36" W running 115deg. M to Beacon #4 at the mouth of South Creek 35deg. 21' 28" N 76deg. 40' 37" W; thence running 304deg. M 1800 yards to a point in Pamlico River 300 yards offshore 35deg. 21' 53" N 76deg. 41' 35" W; thence running westerly parallel to the shoreline at a distance of 300 yards to a point in Pamlico River 35deg. 22' 33" N 76deg. 42' 59" W; thence running 242deg. M to a point on shore near Long Point 35deg. 22' 28" N 76deg. 43' 06" W. Beginning at a point on shore 35deg. 22' 30" N - 76deg. 44' 27" W, running 355deg. M to a point offshore 35deg. 22' 40" N - 76deg. 44' 31" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35deg. 22' 53" N - 76deg. 45' 00" W; thence running 251deg. M to a point on shore 35deg. 22' 46" N - 76deg. 45' 14" W.

(x) On the south side of Pamlico River bound by a line beginning at a point on shore 35deg. 22' 30" N 76deg. 44' 23" W running 352deg. M to a point in Pamlico River 35deg. 22' 40" N 76deg. 44' 26" W; thence running westerly parallel to the shoreline at a distance of 300 yards to a point in Pamlico River 35deg. 22' 58" N 76deg. 45' 21" W; thence running 224deg. M to a point on shore 35deg. 22' 53" N 76deg. 45' 27" W. Beginning at a point on shore 35deg. 22' 54" N - 76deg. 45' 43" W; running 003deg. M to a point offshore 35 deg. 23' 03" N - 76deg. 45' 43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gum Point 35deg. 25' 09" N - 76deg. 45' 33" W; running 210deg. M to a point on the south shore 35deg. 23' 28" N - 76deg. 46' 26" W.

(xi) On the south side of Pamlico River bound by a line beginning at a point on shore 35deg. 22' 07" N

76deg. 45' 45" W, running 00deg. M 300 yards to a point in Pamlico River 35deg. 23' 03" N 76deg. 45' 45" W, thence running westerly parallel to the intersection of a line beginning on the north shore at Gum Point 35deg. 25' 09" N 76deg. 45' 33" W running 210deg. M to a point on the south shore 35deg. 23' 28" N 76deg. 46' 26" W.

SECTION .0900 - CLAMS

.0902 PROHIBITED AREAS

(b) The secretary, acting upon the advice of the director, is empowered to close specified areas for the taking of clams, oysters, scallops, and mussels for as long as he deems advisable in order to protect the populations of shellfish or public health.

SECTION .1100 - OYSTERS

.1111 TAKING OYSTERS/CLAMS AND MUSSELS FROM PROHIBITED POLLUTED AREAS

It shall be unlawful for any person to take, attempt to take, possess, sell, or offer for sale, any oysters, clams or mussels taken from areas which have been designated as prohibited (polluted) by proclamation by the secretary. The secretary shall issue such proclamation upon notice by the Division of Health Services of the Department of Human Resources that criteria for approved shellfish harvest areas have not been met. The secretary may reopen any such closed area upon notification from the Division of Health Services that criteria for approved shellfish harvest areas have been met.

Copies of these proclamations and maps of these areas are available at the Division of Marine Fisheries, 3411 Arendell St., Morehead City, NC 28557, 919 726-7021.

No person shall take or attempt to take, any oysters or clams or possess, sell, or offer for sale any oysters or clams taken from the following polluted areas:

(1) In the Albemarle and Currituck Sound Areas:

(a) Currituck Sound:

All those waters in Currituck Sound upstream of a line across the sound beginning at a point on the east shore at 36deg. 09' 36"

N — 75deg. 49' 15" W, thence in a straight line to a point on the west shore at 36deg. 12' 25" N — 75deg. 46' 05" W, to include all creeks and tributaries;

(b) North River. All waters upstream of a line drawn from a point on the west shore of North River at 36deg. 14' 06" N — 75deg. 57' 03" W, thence across the river through ICWW Beacon #159 to a point on the east shore at 36deg. 14' 50" N — 75deg. 55' 42" W, to include all tributaries upstream from said line;

(c) Pasquotank River. All waters upstream of a line beginning on the southwest shore 36deg. 12' 42" N — 76deg. 06' 39" W, thence to the north east shore at 36deg. 14' 15" N — 76deg. 04' 54" W at Miller Point;

(d) Little River and Flatty Creek. All waters upstream from a line beginning on Stevenson Point at 36deg. 06' 15" N — 76deg. 11' 42" W, thence to a point on the east shore of Flatty Creek at 36deg. 08' 13" N — 76deg. 06' 16" W;

(e) Albemarle Sound. All waters upstream from a straight line across the sound beginning at a point on the north shore at 36deg. 01' 22" N — 76deg. 27' 47" W, thence to the south shore at 35deg. 58' 26" N — 76deg. 26' 09" W;

(f) Alligator River. All those waters upstream from a line beginning near the mouth of Goose Creek at 35deg. 50' 30" N — 76deg. 03' 44" W, thence across the river to a point at 35deg. 50' 30" N — 75deg. 58' 44" W by mouth of Milltail Creek. All those waters of Morris Pritchett Marina on Highway No. 64 will remain closed;

(g) Colington Area. All those waters east of a line beginning on Shellbank Point at 36deg. 03' 22" N — 75deg. 44' 30" W, thence to channel marker #2 at 36deg. 01' 10" N — 75deg. 45' 50" W, thence to Mann Point at 35deg. 58' 18" N — 75deg. 40' 04" W;

(h) Perquimans River. All waters upstream of a straight line beginning on the north shore at 36deg. 09' 52" N — 76deg. 23' 32" W, thence to the south shore

at 36Deg. 00' 42" N - 76Deg. 24' 14" W;

(i) Yeopim River. All waters upstream of a straight line beginning at a point on Drummond Point at 36Deg. 04' 07" N - 76Deg. 24' 26" W; thence to the east shore at 36Deg. 05' 00" N - 76Deg. 22' 40" W;

(j) Bull Bay. All waters upstream of a straight line beginning at a point on the west shore of Bull Bay at 35Deg. 50' 10" N - 76Deg. 23' 00" W; thence to a point on the east shore at 35Deg. 50' 42" N - 76Deg. 14' 41" W.

(2) In the Roanoke Sound Area:

(a) All waters in Shallowbag Bay and its tributaries southwest of a straight line from Baum Point to Ballast Point;

(b) All those waters within the harbor at the Oregon Inlet fishing center;

(c) All the waters within a line beginning at the south side of the mouth of Broad Creek and running to channel marker F+ R "10"; thence to channel marker R "8"; thence due southwest to a point on the shore; thence along the shore in a northerly direction to the point of beginning, to include Mills Creek and its tributaries;

(d) All those waters around the Villa Condominium STP Outfall beginning at a point 35Deg. 57' 54" N - 75Deg. 30' 46" W; thence 200 yards in a southwesterly direction to a point in the sound at 35Deg. 57' 48" N - 75Deg. 30' 50" W; thence 400 yards in a southeasterly direction to a point in the sound at 35Deg. 57' 30" N - 75Deg. 30' 39" W; thence in a northeasterly direction to a point on shore at 35Deg. 57' 45" N - 75Deg. 30' 36" W;

(e) All those waters in Roanoke Sound bounded by a line beginning at a point on the east shore near Whalebone at 35Deg. 54' 30" N - 75Deg. 36' 10" W; thence in a westerly direction 2700 yards to a point in the sound at 35Deg. 54' 02" N - 75Deg. 37' 40" W; thence in a southerly direction 2150 yards to a point at 35Deg. 53' 04" N - 75Deg. 37' 11" W; thence in an easterly direction 2200 yards to the shore at 35Deg. 53' 26" N -

75Deg. 36' 00" W; to include all creeks and tributaries;

(f) All those waters bounded by a line beginning at a point on Ballast Point at 35Deg. 54' 33" N - 75Deg. 30' 40" W; thence in a straight line to the east side of the causeway draw bridge at 35Deg. 53' 40" N - 75Deg. 30' 07" W; thence to Channel Marker #24 at 35Deg. 53' 22" N - 75Deg. 37' 50" W; thence across the channel to marsh at 35Deg. 53' 20" N - 75Deg. 37' 55" W; thence across John's Creek in a northerly direction along shore back to the point of beginning. This will close Pirates Cove and all other tributaries within said boundary.

(3) In Groatan Sound Area:

(a) All waters within a line beginning at a point on the shore at 35Deg. 53' 56" N - 75Deg. 41' 36" W; thence WSW 800 yards to a point in the sound at 35Deg. 53' 30" N - 75Deg. 41' 53" W; thence 1,975 yards to a point on Sand Point at 35Deg. 53' 03" N - 75Deg. 40' 54" W; to include all tributaries;

(b) All waters within a line beginning at a point near Baum Point at 35Deg. 50' 40" N - 75Deg. 39' 44" W; thence 775 yards to marker "1" at 35Deg. 50' 26" N - 75Deg. 40' 00" W; thence 850 yards to a point on an island at 35Deg. 50' 05" N - 75Deg. 39' 56" W; thence 975 yards to a point on the shore at 35Deg. 50' 16" N - 75Deg. 39' 26" W to include all creeks and tributaries within said boundary;

(c) All waters upstream of a line beginning at a point near north shore of Spencer Creek at 35Deg. 51' 45" N - 75Deg. 44' 53" W; and thence 250 yards in an easterly direction to a point at 35Deg. 51' 45" N - 75Deg. 44' 43" W; thence south 1,500 yards to a point 35Deg. 50' 50" N - 75Deg. 44' 43" W; thence 250 yards west to a point on shore at 35Deg. 50' 50" N - 75Deg. 44' 53" W;

(d) All those waters upstream of a line across the mouth of Manns Harbor beginning at a point on the north shore at 35Deg. 54' 36" N - 75Deg. 46' 02" W; thence in a straight line to a point on the south shore at 35Deg.

- 54° 28' N - 75Deg. 46° 06' W;
- (e) All those waters near the south end of Roanoke island north and east of a line beginning at a point at 35Deg. 49° 36' N - 75Deg. 37° 00' W; thence in a southerly direction to a point at 35Deg. 49° 20' N - 75Deg. 37° 00' W; on marsh island; thence in a southwesterly direction to a point at 35Deg. 49° 03' N - 75Deg. 37° 33' W; thence northwesterly to a point on marsh at 35Deg. 49° 24' N - 75Deg. 39° 12' W; thence northerly to a point at 35Deg. 50° 14' N - 75Deg. 39° 28' W; to connect with the Baum Creek closure.
- (4) In the Stumpy Point Area. Beginning at a point on the west shore at 35Deg. 41° 40' N - 75Deg. 46° 33' W; thence in a straight line to a point in the bay at 35Deg. 41° 30' N - 75Deg. 46° 18' W; thence in a straight line to a point in the Bay at 35Deg. 42° 05' N - 75Deg. 45° 30' W; thence in a straight line to a point in the Bay at 35Deg. 41° 28' N - 75Deg. 44° 42' W; thence to a point off Drain Point at 35Deg. 40° 56' N - 75Deg. 44° 45' W; thence to a point on shore at Drain Point at 35Deg. 40° 58' N - 75Deg. 44° 28' W; thence along the shore back to the point of beginning.
- (5) In the Outer Banks Area.
- (a) All of the Rodanthe Boat Harbor within a line drawn across the mouth of the harbor;
- (b) All those waters in Salvo Creek bounded by a line drawn across mouth of creek;
- (c) All those waters within Avon Harbor bounded by a line drawn from Beacon No. 8 to westernmost tip of north shore.
- (6) In the Engelhard Area.
- (a) In Far Creek. All those waters upstream from a line drawn from the eastern point of Gibbs Point at 35Deg. 29° 37' N - 75Deg. 57° 42' W; across Far Creek to a point 35Deg. 31° 21' N - 75Deg. 57° 17' W;
- (b) In Pains Bay. All those waters upstream from a straight line drawn across the Bay beginning at a point on the east shore at 35Deg. 35° 10' N - 75Deg. 40° 45' W; thence to a point on the west shore at 35Deg. 35° 26' N - 75Deg. 49° 12' W;
- (c) In Otter Creek. All those waters in Otter Creek upstream from a straight line drawn from a point on the east shore at 35Deg. 33° 10' N - 75Deg. 55° 00' W; thence to a point on the west shore at 35Deg. 33° 14' N - 75Deg. 55° 14' W;
- (d) Berrys Bay. All those waters upstream of a straight line beginning at a point on shore at 35Deg. 32° 10' N - 75Deg. 56° 24' W; thence in a westerly direction to a point at 35Deg. 32° 03' N - 75Deg. 56° 51' W.
- (7) In the Hyde County Area.
- (a) Middletown Creek Area. All those the waters bounded by a line beginning at a point on the shore at 35Deg. 28° 33' N - 75Deg. 59° 4 0' W; thence 350 yards ESE to a point in the sound at 35Deg. 28° 32' N - 75Deg. 59° 30' W; thence 1450 yards SSW to a point at 35Deg. 27° 50' N - 75Deg. 59° 35' W; thence WNW 300 yards to a point on shore at 35Deg. 27° 50' N - 75Deg. 59° 46' W;
- (b) All those waters in Wysocking Bay; upstream off a straight line drawn from a point on the northeast shore at 35Deg. 26° 08' N - 76Deg. 03° 10' W; thence across the Bay to a point on the southwest shore at 35Deg. 25° 44' N - 76Deg. 03° 27' W;
- (c) In Swan Quarter Bay, beginning at a point on land at 35Deg. 24° 2 0' N - 76Deg. 20° 46' W; thence in a southeasterly direction to a point at channel marker "8," 35Deg. 23° 55' N - 76Deg. 20° 30' W; thence in an easterly direction to a point on the shore at 35Deg. 24° 0 1' N - 76Deg. 20° 16' W;
- (d) In Rose Bay. All those waters bounded by a line beginning at a point on the shore at 35Deg. 26° 16' N - 76Deg. 24° 10' W; thence 300 yards in a WSW direction to a point in the bay at 35Deg. 26° 10' N - 76Deg. 24° 19' W; thence 825 yards in a SSE direction to a point in the bay at 35Deg. 25° 52' N - 76Deg. 23° 59' W; thence 300 yards ENE to a point on the shore at 35Deg. 25° 54' N - 76Deg. 23° 49' W; thence along the shore back to the point of beginning;

- (e) In Oyster Creek. All waters upstream from a line across the creek beginning at a point on the east shore at 35Deg. 23¹ 10^u N - 76Deg. 18¹ 49^u W; thence to the west side at 35Deg. 23¹ 10^u N - 76Deg. 18¹ 56^u W;
- (f) All waters bounded by a line beginning at a point on shore near North Bluff Point at 35Deg. 21¹ 14^u N - 76Deg. 06¹ 46^u W; thence in a straight line to a point off shore at 35Deg. 20¹ 57^u N - 76Deg. 06¹ 36^u W; thence in a straight line to a point at 35Deg. 21¹ 21^u N - 76Deg. 05¹ 57^u W; thence in a straight line to the shore at 35Deg. 21¹ 36^u N - 76Deg. 06¹ 00^u W; to include all the waters in the canals.
- (8) In the Pungo River Area-
- (a) All waters in Pungo Creek and Pantego Creek, upstream of a line across the river beginning at a point on the north shore at 35Deg. 32¹ 24^u N - 76Deg. 35¹ 28^u W; thence to a point on the south shore at 35Deg. 30¹ 19^u N - 76Deg. 37¹ 43^u W;
- (b) In all the waters upstream from a straight line beginning at Grassy Point 35Deg. 25¹ 34^u N - 76Deg. 35¹ 14^u W; thence through channel marker "2" to the south shore of Wright Creek at 35Deg. 24¹ 40^u N - 76Deg. 35¹ 06^u W;
- (c) All waters upstream in the Pungo River from a line across the river beginning at a point on the north shore at 35Deg. 32¹ 10^u N - 76Deg. 30¹ 11^u W; thence to the south shore at 35Deg. 30¹ 14^u N - 76Deg. 29¹ 29^u W; to include all creeks and tributaries to the Alligator River prohibited area boundary.
- (9) In Pamlico River-
- (a) All of the waters of Pamlico River and its tributaries upstream from a line beginning at Gousin Point 35Deg. 25¹ 00^u N - 76Deg. 40¹ 26^u W; thence 202Deg. (M) to a point on Hickory Point 35Deg. 21¹ 43^u N - 76Deg. 41¹ 38^u W;
- (b) All those waters in North Creek, upstream from a line across the mouth of the creek beginning at a point on the east bank at 35Deg. 24¹ 34^u N - 76Deg. 39¹ 32^u W; thence through beacon #1 to a point on the west shore at 35Deg. 24¹ 57^u N - 76Deg. 40¹ 39^u W; to include all tributaries;
- (c) All those waters of Oyster Creek upstream from a line beginning at a point at 35Deg. 19¹ 32^u N - 76Deg. 32¹ 53^u W on the north shore; thence to a point at 35Deg. 19¹ 16^u N - 76Deg. 32¹ 54^u W on the south shore.
- (10) In the South Creek Area. All of the waters of South Creek and its tributaries upstream from a line beginning at Hickory Point 35Deg. 21¹ 43^u N - 76Deg. 41¹ 38^u W; thence 143Deg. (M) to Reed Point 35Deg. 21¹ 00^u N - 76Deg. 40¹ 53^u W.
- (11) In the Bay River Area-
- (a) All waters in Bay River upstream of a straight line beginning at a point on the north shore at 35Deg. 09¹ 05^u N - 76Deg. 41¹ 56^u W; thence to a point on the south shore at 35Deg. 08¹ 42^u N - 76Deg. 41¹ 29^u W; and all those waters in Smith Creek, Vandemere Creek, and Bay River upstream of a straight line beginning at a point on the southwest shore of Smith Creek at 35Deg. 10¹ 23^u N - 76Deg. 40¹ 16^u W; thence to a point on the east side of Vandemere Creek at 35Deg. 10¹ 50^u N - 76Deg. 39¹ 58^u W;
- (b) All those waters in Bear Creek upstream of a line drawn from a point 35Deg. 11¹ 58^u N - 76Deg. 37¹ 06^u W on the south shore proceeding to a point 35Deg. 12¹ 07^u N - 76Deg. 37¹ 09^u W on the north shore;
- (c) All waters in the Intracoastal Waterway near Hobucken bounded on the north by a line beginning at a point on the east shore at 35Deg. 15¹ 18^u N - 76Deg. 35¹ 42^u W; thence across the canal to a point on the west shore at 35Deg. 15¹ 18^u N - 76Deg. 35¹ 44^u W; and bounded on the south by a line beginning on the east shore at 35Deg. 12¹ 50^u N - 76Deg. 35¹ 20^u W; thence to the west shore at 35Deg. 12¹ 46^u N - 76Deg. 35¹ 32^u W; to include all of Gale Creek, and all waters in Jones Bay upstream of a line beginning at a point on the north shore at 35Deg. 14¹ 25^u N - 76Deg. 34¹ 44^u W; thence across the bay to a point on the south shore at 35Deg. 14¹ 12^u N - 76Deg. 34¹ 44^u W.

- W, to include all of the Hobucken Marina.
- (12) In the Oriental Area.
All waters upstream of a line from Windmill Point at 35Deg. 01' 03" N — 76Deg. 42' 08" W, thence proceeding northeasterly to point at 35Deg. 01' 36" N — 76Deg. 40' 56" W, on Whittaker Point, to include Greens Creek, Kershaw Creek, Smith Creek, Camp Creek, Oriental Harbor, and Whittaker Creek.
- (13) In the Neuse River Area:
(a) All waters upstream from a line across the mouth of Clubfoot Creek beginning at a point 34Deg. 55' 20" N — 76Deg. 45' 09" W, thence to a point 34Deg. 54' 50" N — 76Deg. 45' 40" W on the opposite shore;
(b) All waters upstream of State Road 1302 bridge, in Dawson Creek;
(c) All waters in the Neuse River upstream from a straight line beginning at 34Deg. 56' 21" N — 76Deg. 48' 45" W, thence to a point 34Deg. 57' 51" N — 76Deg. 48' 13" W on Wilkinson Point;
(d) All waters in South River upstream of a straight line drawn from a point on the west shore of South River at 34Deg. 56' 10" N — 76Deg. 33' 25" W, thence across the river to a point at 34Deg. 56' 22" N — 76Deg. 32' 55" W to include all tributaries;
(e) All those waters in Pierce Creek upstream from a straight line across the mouth of the Creek beginning at a point on the west shore at 35Deg. 02' 14" N — 76Deg. 39' 40" W, thence to the east shore at 35Deg. 02' 27" N — 76Deg. 39' 34" W.
- (14) In the Hatteras Area:
(a) All waters within a boundary beginning at a point on land west of the Hatteras Ferry Landing at 35Deg. 12' 30" N — 75Deg. 42' 24" W, thence to a point in the ferry channel at 35Deg. 12' 37" N — 75Deg. 42' 26" W, thence to a point on shore at 35Deg. 12' 39" N — 75Deg. 42' 08" W;
(b) All waters in creek beginning at a point near mouth at 35Deg. 13' 15" N — 75Deg. 41' 40" W on the west end and proceeding to a point on east end at 35Deg. 13' 35" N — 75Deg. 40' 51" W, near entrance to Sandy Bay;
(c) All waters upstream of

- a line beginning at a point on the north shore at 35Deg. 13' 18" N — 75Deg. 40' 42" W, thence to the south shore at 35Deg. 13' 10" N — 75Deg. 40' 42" W, to include all creeks and tributaries.
- (15) In the Cedar Island-Ocracoke Area:
(a) Cedar Island Area. All waters within the Cedar Island Ferry Harbor;
(b) Ocracoke Area. In any of the waters of Silver Lake.
- (16) In the Core Sound Area:
(a) All waters upstream of a line beginning on shore at 34Deg. 52' 33" N — 76Deg. 20' 44" W to a point in Core Sound at 34Deg. 52' 36" N — 76Deg. 20' 40" W, thence to a point on the north shore at 34Deg. 52' 41" N — 76Deg. 20' 48" W, to include all waters of Willis Texaco Marina;
(b) All waters within the harbor at Luther Smith and Sons' Fish House at Atlantic;
(c) All waters within the harbor at Clayton Fulcher's Fish House at Atlantic;
(d) All waters upstream of a line from the east shore at 34Deg. 53' 00" N — 76Deg. 19' 57" W to a point on the west shore at 34Deg. 53' 03" N — 76Deg. 20' 02" W, to include all of the waters of Atlantic Boat Harbor;
(e) All waters upstream of a straight line across Williston Creek beginning at a point on the north shore at 34Deg. 47' 12" N — 76Deg. 30' 05" W, thence to the south shore at 34Deg. 46' 52" N — 76Deg. 30' 17" W;
(f) All waters upstream from a line across Middens Creek beginning at a point on the north shore at 34Deg. 45' 32" N — 76Deg. 30' 48" W, thence to a point on the south shore at 34Deg. 45' 16" N — 76Deg. 30' 54" W;
(g) All waters upstream of a line beginning at a point on the west shore of Smyrna Creek at 34Deg. 48' 07" N — 76Deg. 20' 56" W, thence in a straight line to a point on the east shore at 34Deg. 48' 13" N — 76Deg. 20' 38" W;
(h) All waters upstream of a line across Wade Creek beginning at a point on the north shore at 34Deg. 46' 17" N — 76Deg. 30' 41" W, thence to the south shore at

34Deg. 46¹ 10ⁿ N - 76Deg. 30¹ 42ⁿ W;

(i) All those waters in the Knuckles Landing Harbor upstream from a line beginning on the north side of entrance channel at 34Deg. 42ⁿ 34ⁿ N - 76Deg. 35¹ 07ⁿ W; thence across channel through Marker "2", to a point on the south shore at 34Deg. 42¹ 33ⁿ N - 76Deg. 35¹ 07ⁿ W;

(j) All those waters at Goats Landing upstream of a line beginning at a point on the shore at 34Deg. 42¹ 21ⁿ N - 76Deg. 35¹ 07ⁿ W; thence in a southerly direction to a point on shore at 34Deg. 42¹ 13ⁿ N - 76Deg. 35¹ 08ⁿ W.

(17) In the Nelson Bay Area, Off Gore Sound:

(a) In any of the waters north and east of a line drawn 307Deg. (M) from the foot of the U.S. Coast Guard dock to the western side of Nelson Bay to include Mingo Creek, Salter Creek, and the Salter Creek Canal to the Long Bay entrance;

(b) In Broad Creek. All waters upstream of a straight line beginning at a point on the north shore at 34Deg. 52¹ 44ⁿ N - 76Deg. 24¹ 30ⁿ W; thence across the creek to a point at 34Deg. 52¹ 36ⁿ N - 76Deg. 24¹ 27ⁿ W on the south shore;

(c) Lewis Creek. All waters upstream of a straight line beginning at a point on the north shore at 34Deg. 51¹ 53ⁿ N - 76Deg. 24¹ 38ⁿ W; thence in a straight line to a point on the south shore at 34Deg. 51¹ 42ⁿ N - 76Deg. 24¹ 38ⁿ W;

(d) Willis Creek. All waters upstream of a line beginning at a point on the north shore at 34Deg. 51¹ 08ⁿ N - 76Deg. 24¹ 36ⁿ W; thence in a straight line to a point on the south shore at 34Deg. 50¹ 55ⁿ N - 76Deg. 24¹ 41ⁿ W.

(18) North River Area. All those waters upstream of a line beginning on the east shore at 34Deg. 40¹ 05ⁿ N - 76Deg. 36¹ 26ⁿ W; thence across the river to a point on the west shore at 34Deg. 47¹ 49ⁿ N - 76Deg. 37¹ 14ⁿ W.

(19) In the Morehead City-Beaufort-Newport River Areas:

(a) Beaufort Area. All the waters enclosed by a line beginning at a point 34Deg. 42¹ 22ⁿ N - 76Deg. 40¹ 49ⁿ W and proceeding along east

shore of Radio Island, in a north and east direction, to the west end of the Beaufort Bridge; thence along bridge to Beaufort mainland; thence along the north shore of Taylor Creek to Lemnoxville Point; thence in a northwesterly direction to the head of Turner Creek; thence in an easterly direction to point 34Deg. 43¹ 41ⁿ N - 76Deg. 37¹ 20ⁿ W; thence 097Deg. (M) 450 yards to a point 34Deg. 43¹ 40ⁿ N - 76Deg. 37¹ 04ⁿ W; thence 175Deg. (M) 2150 yards to a beacon at 34Deg. 42¹ 08ⁿ N - 76Deg. 36¹ 45ⁿ W; thence 291Deg. (M) 900 yards to a point on Garrot Island at 34Deg. 42¹ 14ⁿ N - 76Deg. 37¹ 16ⁿ W; thence west along south shoreline of Garrot Island crossing mouths of all creeks on Garrot Island and proceeding along south shore of Taylor Creek and Town Marsh to a point 34Deg. 42¹ 23ⁿ N - 76Deg. 40¹ 32ⁿ W on west end of Bird Shoal; thence 270 Deg. (M) 500 yards to the point of beginning;

(b) Morehead City Area. All the waters enclosed by a line beginning at a point on the shore at 34Deg. 43¹ 08ⁿ N - 76Deg. 43¹ 28ⁿ W and running 106Deg. (M) 475 yards to a point 34Deg. 42¹ 53ⁿ N - 76Deg. 43¹ 28ⁿ W; thence 105Deg. (M) 2,350 yards to a point 34Deg. 42¹ 43ⁿ N - 76Deg. 42¹ 04ⁿ W on northwestern end of Spoil Island; thence in a southeasterly direction following shoreline to a point located 34Deg. 41¹ 58ⁿ N - 76Deg. 40¹ 47ⁿ W on Fort Macon; thence 358Deg. (M) 750 yards to a point on Radio Island at 34Deg. 42¹ 22ⁿ N - 76Deg. 40¹ 49ⁿ W; thence along shoreline in a northwesterly direction to east end of Newport River bridge; thence west to Morehead City mainland; thence south and west along shoreline back to the point of beginning;

(c) Newport River Area:

(i) Beginning at a point on westside of Grab Point Channel at 34Deg. 44¹ 21ⁿ N - 76Deg. 42¹ 27ⁿ W; thence across channel to a point on the east shore at 34Deg. 44¹ 20ⁿ N - 76Deg. 42¹ 13ⁿ W; thence southerly along shore, crossing mouths of creeks

to the southernmost point of the Newport Marshes at 34Deg. 43' 48" N — 76Deg. 41' 43" W; thence across ICWW to southern tip of Phillips Island at 34Deg. 43' 43" N — 76Deg. 41' 21" W; thence in a straight line to the east end of the Newport River Bridge; thence westerly along the bridge to the mainland; thence proceeding north along the shoreline of the yacht basin, Galico Creek, and Willis Creek back to the point of beginning.

(ii) All the waters of the Newport River west of a line beginning at a point on the south shore 34Deg. 44' 45" N — 76Deg. 45' 02" W; thence 356Deg. (M) 2,130 yards to a point on the north shore 34Deg. 45' 47" N — 76Deg. 45' 12" W;

(iii) All the waters of Harlowe Creek north of a line beginning at a point on the west shore 34Deg. 46' 41" N — 76Deg. 43' 28" W; thence 060Deg. (M) 460 yards to a point on the east shore 34Deg. 46' 49" N — 76Deg. 43' 15" W;

(iv) Gore Creek Area. All those waters bounded on the south by a line beginning at 34Deg. 46' 53" N — 76Deg. 41' 17" W; on the west shore; thence to a point at 34Deg. 46' 53" N — 76Deg. 41' 00" W; on the east shore; and bounded on the north by a line beginning at a point on the east shore of Adams Creek at 34Deg. 55' 03" N — 76Deg. 39' 28" W; thence in a straight line through marker #11 to a point on the west shore at 34Deg. 55' 09" N — 76Deg. 40' 00" W; to include the ICWW and all tributaries;

(v) Town Creek Area. All those waters enclosed by a line beginning at a point approximately 500 yards NE of Gallant Point at 34Deg. 44' 12" N — 76Deg. 40' 04" W; thence 1000 yards to Channel Marker #1 at 34Deg. 44' 11" N — 76Deg. 40' 40" W; thence 1000 yards to the west end of the draw bridge over Gallant Channel at 34Deg. 43' 21" N — 76Deg. 40' 13" W; thence east along bridge to the Beaufort mainland; thence easterly following shoreline of

Town Creek back to the point of beginning.

(d) Peletier Creek Area.

All the waters enclosed by a line beginning at a point on shore 34Deg. 43' 32" N — 76Deg. 47' 07" W; thence 187Deg. (M) 375 yards to a point 34Deg. 43' 18" N — 76Deg. 47' 07" W; at north side of ICWW; thence 099Deg. (M) 1,650 yards to a point located 34Deg. 43' 17" N — 76Deg. 46' 04" W; thence 007Deg. (M) 300 yards to a point on shore 34Deg. 43' 26" N — 76Deg. 46' 04" W; including all of Peletier Creek;

(e) Spooners Creek Area. All the waters enclosed by a line beginning at a point on the shore at 34Deg. 43' 31" N — 76Deg. 48' 20" W; thence 182Deg. (M) 300 yards to a point at 34Deg. 43' 38" N — 76Deg. 48' 20" W; thence 093Deg. (M) 550 yards to a point at 34Deg. 43' 38" N — 76Deg. 48' 00" W; thence 004Deg. (M) 350 yards to a point at 34Deg. 43' 31" N — 76Deg. 48' 00" W to include all of Spooners Creek.

(20) In Bogue Sound—

Atlantic Beach Area.

(a) Atlantic Beach Area.

(i) Beginning at a point on the west shore of Moonlight Bay at 34Deg. 42' 42" N — 76Deg. 44' 31" W; thence in a straight line to a point at the south end of the Atlantic Beach Bridge at 34Deg. 42' 40" N — 76Deg. 44' 15" W; to include all of Moonlight Bay and Causeway Canal on the west side of the causeway; and on the east side of the causeway, West Canal, Central Canal, East Canal, Money Island Slough, Anchorage Marina, 8 1/2 Marina, and Triple Ess Marina.

(ii) All those waters upstream from a point near the west end of Pond Drive on Atlantic Beach at 34Deg. 42' 21" N — 76Deg. 44' 46" W; thence in a straight line 200 yards in a westerly direction to a point on the shore at 34Deg. 42' 21" N — 76Deg. 44' 54" W;

(b) In Goose Creek. Upstream from a line drawn from a point on the east shore 34Deg. 41' 51" N — 77Deg.

00° 32' W to a point on the west shore 34Deg. 41° 50' N — 77Deg. 00° 45' W.

(c) In Broad Creek: Upstream from a line drawn from the east bank at a point 34Deg. 43° 10' N — 76Deg. 56° 30' W, extending to a point on the west bank at 34Deg. 43° 06' N — 76Deg. 56° 35' W.

(d) Jumping Run Creek Area. Beginning at a point on the shore 34Deg. 43° 37' N — 76Deg. 52° 20' W, thence 184Deg. (M) 200 yards to a point 34Deg. 43° 30' N — 76Deg. 52° 20' W, thence 095Deg. (M) 450 yards to a point 34Deg. 43° 30' N — 76Deg. 52° 04' W, thence 006Deg. (M) 275 yards to a point on the shore 34Deg. 43° 38' N — 76Deg. 52° 04' W, to include all of Jumping Run Creek.

(e) Soundview Creek Area. All waters upstream of a line across the mouth of the Soundview Creek.

(f) Salter Path. South of a line beginning at a point on the shore 34Deg. 41° 26' N — 76Deg. 52° 42' W, thence 170 yards to a point 34Deg. 41° 31' N — 76Deg. 52° 42' W, thence 1,650 yards to a point in the sound at 34Deg. 41° 31' N — 76Deg. 53° 40' W, thence 140 yards to a point on the shore at 34Deg. 41° 27' N — 76Deg. 53° 40' W.

(g) Hunting Island Creek Area. All waters upstream from a line beginning at a point 34Deg. 41° 07' N — 77Deg. 02° 20' W on the east shore, thence in a straight line, 400 yards, to a point on island in center of creek at 34Deg. 41° 05' N — 77Deg. 02° 35' W, thence in a straight line, 275 yards, to a point on the west shore at 34Deg. 41° 12' N — 77Deg. 02° 40' W.

(h) All waters within the harbor at Roger Jones Fish Company.

(i) All waters upstream from a line across the mouth of Gull Harbor.

(j) All waters within the Pine Knoll Shores area upstream of lines drawn across the mouths of McNeill Inlet and Hoffman Inlet.

(k) All waters bounded by a line beginning at a point 34Deg. 42° 07' N — 76Deg. 46° 10' W on the west shore, thence in a straight line to a point on the east shore at 34Deg. 42° 07' N — 76Deg.

45° 55' W, to include all waters of the bay. (A bay on Bogue Banks near Hoop Pole Creek.)

(21) In the White Oak River Area.

(a) All waters upstream of a line across the White Oak River beginning at a point on the west shore at 34Deg. 43° 34' N — 77Deg. 07° 50' W, thence in a straight line to a point at 34Deg. 43° 52' N — 77Deg. 06° 51' W, on the east shore. This includes Holland Mill Creek, Hargetts Creek, Godfrey Branch, and all other tributaries. In Pettiford Creek, from its origin to a point one mile downstream from the No 58 bridge over said creek, in Stevens Creek, from its origin to the mouth, and beginning at a point on Mt. Pleasant at 34Deg. 42° 03' N — 77Deg. 06° 50' W, thence in a straight line to a point on the northern end of Jones Island at 34Deg. 41° 54' N — 77Deg. 06° 30' W, thence in a straight line to eastern end of Highway 24 bridge at Swansboro 34Deg. 41° 08' N — 77Deg. 06° 50' W, thence to a point on the southwest shore of ICWW at 34Deg. 40° 13' N — 77Deg. 08° 00' W, near Beacon #49, ICWW, thence across the ICWW to a point on the shore at 34Deg. 40° 18' N — 77Deg. 08° 05' W.

(b) All waters in Starkey Creek upstream from a straight line across the mouth of the creek.

(c) All waters within the Swansboro Yacht Basin.

(d) All those waters in Queen Creek upstream of a line beginning at a point on the east shore at 34Deg. 41° 03' N — 77Deg. 09° 43' W, thence in a straight line to the west shore at 34Deg. 40° 49' N — 77Deg. 10° 00' W.

(e) All those waters in Dicks Creek upstream of a straight line beginning at a point on the south shore at 34Deg. 39° 51' N — 77Deg. 09° 10' W, thence in a straight line to the north shore at 34Deg. 40° 09' N — 77Deg. 09° 20' W.

(22) Bear Creek Area. All those waters upstream from a line drawn across the creek beginning at a point on the north shore at 34Deg. 38° 42' N — 77Deg. 12° 33' W, thence to the south shore at 34Deg. 38° 27' N — 77Deg. 12° 40' W.

(23) In the New River-Sneads Ferry Area:

(a) Fannie Creek and Wheeler Creek Area: All waters of Fannie Creek and Wheeler Creek south of a line drawn from the northwest shore of Fannie Creek, at 34Deg. 34' 18" N - 77Deg. 23' 39" W; thence in a straight line to a point on Poverty Point, at 34Deg. 34' 07" N - 77Deg. 23' 05" W.

(b) Wilkins Bluff: All waters bounded by a line beginning at a point at 34Deg. 34' 37" N - 77Deg. 21' 55" W; thence in a straight line to a point at 34Deg. 34' 26" N - 77Deg. 22' 00" W in the bay; thence to a point at Wilkins Bluff at 34Deg. 34' 13" N - 77Deg. 21' 40" W; thence north along the shore line to the point of beginning.

(c) In Everett Creek and its tributaries south and west of a line drawn from a point on the west shore 34Deg. 34' 18" N - 77Deg. 24' 55" W; thence 094Deg. (M), 550 yards to a point on the east shore 34Deg. 34' 18" N - 77Deg. 24' 35" W.

(d) Stones Bay:

(i) All waters bounded by a line beginning at a point on the west shore at 34Deg. 35' 16" N - 77Deg. 26' 05" W; thence 675 yards in a northeasterly direction to a point in the Bay at 34Deg. 35' 31" N - 77Deg. 25' 51" W; thence 500 yards in a northerly direction to a point 34Deg. 35' 45" N - 77Deg. 25' 51" W; thence 800 yards in a northwesterly direction to a point on shore at 34Deg. 35' 52" N - 77Deg. 26' 17" W; thence along the shore in a southerly direction to point of beginning.

(ii) Stones Creek: All waters upstream of a line near the mouth of Stones Creek beginning at a point on the south shore at 34Deg. 36' 33" N - 77Deg. 26' 44" W; thence to a point on the north shore at 34Deg. 36' 52" N - 77Deg. 26' 36" W.

(e) New River: All waters upstream of a line drawn across New River beginning at a point on the west shore at 34Deg. 39' 18" N - 77Deg. 22' 55" W; thence through Channel Marker #42 to the east shore at 34Deg.

39' 44" N - 77Deg. 21' 29" W.

(f) All waters of Bumps Creek upstream of a line drawn 221Deg. (M) from a point on the east side of the mouth of Bumps Creek 34Deg. 32' 25" N - 77Deg. 22' 25" W; thence running 280 yards to a point on the west side of the mouth of Bumps Creek 34Deg. 32' 19" N - 77Deg. 22' 30" W.

(g) Fullard Creek and Charles Creek: All waters upstream of a straight line drawn from a point on the east shore of Fullard Creek at 34Deg. 32' 02" N - 77Deg. 22' 44" W; thence to a point on the west shore at 34Deg. 32' 13" N - 77Deg. 22' 51" W; to include all of Charles Creek.

(h) Hurst Beach Area:

Beginning at a point on the north shore of the Intracoastal Waterway 34Deg. 34' 44" N - 77Deg. 15' 54" W; thence 120 yards at 140Deg. (M), to a point on the south shore 34Deg. 34' 43" N - 77Deg. 15' 52" W; thence in a southerly direction along the south shore to a point 34Deg. 33' 36" N - 77Deg. 17' 28" W; thence 110 yards at 336Deg. (M), to a point on the north shore 34Deg. 33' 38" N - 77Deg. 17' 29" W; thence along the north shore to the point of beginning, to include the Intracoastal Waterway and its tributaries.

(i) Browns Creek Area: All those waters upstream from a line beginning at a point on the west shore of the Creek at 34Deg. 37' 06" N - 77Deg. 13' 03" W; thence to a point on island at 34Deg. 37' 10" N - 77Deg. 12' 58" W; thence to a point on the north shore at 34Deg. 37' 13" N - 77Deg. 13' 03" W.

(j) Frenchs Creek: All waters bounded by a line beginning on the shore south of Frenchs Creek at 34Deg. 38' 05" N - 77Deg. 20' 33" W; thence in a northwesterly direction to a point in the river at 34Deg. 39' 10" N - 77Deg. 21' 10" W; thence in an easterly direction to the shore at 34Deg. 39' 15" N - 77Deg. 20' 58" W; thence along the shore back to the point of beginning.

(24) In Mill Creek

(Alligator Bay). Beginning at a point on the shore in

- Alligator Bay 34Deg. 30¹ 42ⁿ N - 77Deg. 25¹ 05ⁿ W; thence 225Deg. (M) 780 yards to a point on the shore 34Deg. 30¹ 24ⁿ N - 77Deg. 25¹ 23ⁿ W; to include all the waters upstream of this line.
- (25) In Stump Sound Area:
- (a) All those waters in King Creek upstream of a line drawn from a point on the north shore at 34Deg. 28¹ 48ⁿ N - 77Deg. 29¹ 45ⁿ W; thence in a straight line to a point on the south shore at 34Deg. 28¹ 38ⁿ N - 77Deg. 29¹ 44ⁿ W.
- (b) All those waters bounded on the northeast by a line beginning at a point at 34Deg. 27¹ 08ⁿ N - 77Deg. 30¹ 22ⁿ W; near the end of Utopia Street off Hwy. #210; thence to a point near ICWW at 34Deg. 27¹ 37ⁿ N - 77Deg. 31¹ 03ⁿ W; thence following the south shore of the ICWW in a southwesterly direction; crossing all tributaries; to a point on the shore at 34Deg. 26¹ 13ⁿ N - 77Deg. 32¹ 35ⁿ W; thence across the ICWW to a point on the mainland at 34Deg. 26¹ 22ⁿ N - 77Deg. 32¹ 47ⁿ W; thence proceeding in a southwesterly direction along the shoreline; crossing Hwy. 210 Bridge to the south shore at ICWW; thence in a northeasterly direction; following the shoreline back to the point of beginning; to include all waters within said boundary;
- (c) All waters upstream of a line beginning at a point on shore at 34Deg. 25¹ 49ⁿ N - 77Deg. 32¹ 58ⁿ W; near Hwy. 210 Bridge at Surf City; thence across Bay to a point at 34Deg. 25¹ 45ⁿ N - 77Deg. 33¹ 07ⁿ W.
- (26) In Virginia Creek. All waters upstream of a line beginning at a point on the northeast shore at 34Deg. 25¹ 27ⁿ N - 77Deg. 36¹ 00ⁿ W; thence across the Creek to the southwest shore at 34Deg. 25¹ 09ⁿ N - 77Deg. 36¹ 15ⁿ W; to include all of Mullet Run Creek.
- (27) In the Wrightsville Beach Area:
- (a) In all of the waters of Page and Fibbs Creek north and west of a line drawn from a point on the east shore of Page Creek 34Deg. 16¹ 50ⁿ N - 77Deg. 46¹ 43ⁿ W; thence 224Deg. (M) 400 yards to a point on the west shore of Page Creek 34Deg. 16¹ 40ⁿ N - 77Deg. 46¹ 53ⁿ W;
- (b) In Middle Sound within 200 feet of Harrelson's Marina;
- (c) All those waters in Middle Sound and the ICWW bounded on the southwest by a straight line beginning at Money Point 34Deg. 11¹ 58ⁿ N - 77Deg. 49¹ 27ⁿ W; thence to a point on the northwest shore of Banks Channel at 34Deg. 12¹ 03ⁿ N - 77Deg. 48¹ 08ⁿ W and bounded on the northeast by a line beginning at a point 34Deg. 13¹ 14ⁿ N - 77Deg. 47¹ 21ⁿ W; thence in a straight line to 34Deg. 13¹ 24ⁿ N - 77Deg. 47¹ 22ⁿ W; thence in a straight line to the east shore of the Intracoastal Waterway at 34Deg. 13¹ 50ⁿ N - 77Deg. 47¹ 57ⁿ W; near ICWW Fl Beacon #125; thence in a northeasterly direction along the shoreline across the mouth of Stokley Cut and proceeding along the shoreline in a northeasterly direction to 34Deg. 14¹ 42ⁿ N - 77Deg. 47¹ 10ⁿ W; thence in a straight line to 34Deg. 14¹ 47ⁿ N - 77Deg. 47¹ 17ⁿ W; to include Bradley Creek and all other tributaries;
- (d) All waters in Johnson Marina upstream of the mouth of the marina.
- (28) In Masonboro Sound Area:
- (a) Beginning at a point on the mainland at 34Deg. 08¹ 36ⁿ N - 77Deg. 51¹ 41ⁿ W; near ICWW Marker #139; thence in a straight line to ICWW Marker #139 at 34Deg. 08¹ 35ⁿ N - 77Deg. 51¹ 37ⁿ W; thence in a northeasterly direction following southeast side of ICWW channel to a point approximately 350 yards northeast of ICWW Marker #136 at 34Deg. 09¹ 37ⁿ N - 77Deg. 50¹ 59ⁿ W; thence in a straight line to mainland at 34Deg. 09¹ 42ⁿ N - 77Deg. 51¹ 05ⁿ W; thence southerly along mainland shoreline back to the point of beginning. This is to include Purviance (Whiskey) Creek, Channel Haven, and all other tributaries within said boundary;
- (b) All the waters upstream of a line beginning at a point on the northeast shore of Hewletts Creek at 34Deg. 11¹ 18ⁿ N - 77Deg. 50¹ 50ⁿ W; thence in a straight line to a point on the southwest

shore at 34Deg. 11¹ 07ⁿ N —
77Deg. 50¹ 56ⁿ W.

(29) In the Myrtle Grove Sound Area:

(a) All those waters south and west of a straight line drawn from a point on the beach at 34Deg. 04¹ 00ⁿ N — 77Deg. 52¹ 49ⁿ W; thence across the sound through IC WW Marker #157, to a point on the mainland at 34Deg. 04¹ 07ⁿ N — 77Deg. 53¹ 20ⁿ W; to include all of Snow s Gut and the Carolina Beach Boat Basin;

(b) All those waters within an area beginning at a point on Peden Point at 34Deg. 07¹ 37ⁿ N — 77Deg. 52¹ 08ⁿ W; thence to a point on the east side of the ICWW at 34Deg. 07¹ 35ⁿ N — 77Deg. 52¹ 04ⁿ W; thence southerly along the east side of the ICWW Channel to a point at 34Deg. 06¹ 02ⁿ N — 77Deg. 52¹ 36ⁿ W; thence back to the mainland at 34Deg. 06¹ 03ⁿ N — 77Deg. 52¹ 43ⁿ W; to include Everett Creek and all other tributaries within said boundaries.

(c) All those waters within the Carolina Inlet Marina from the entrance to the headwaters.

(30) In the Cape Fear River and Southport Area: All those waters north and west of a line beginning at Federal Point at 33Deg. 57¹ 34ⁿ N — 77Deg. 56¹ 42ⁿ W; thence in a west-northwesterly direction to Fl. Beacon at 33Deg. 57¹ 42ⁿ N — 77Deg. 57¹ 08ⁿ W; thence in a southwest erly direction to Fl. Beacon #16ⁿ at 33Deg. 55¹ 29ⁿ N — 77Deg. 59¹ 36ⁿ W; thence in a west-southwesterly direction to Fl. Beacon #14Aⁿ at 33Deg. 54¹ 43ⁿ N — 78Deg. 00¹ 58ⁿ W; thence to a point near Fort Caswell at 33Deg. 53¹ 45ⁿ N — 78Deg. 01¹ 10ⁿ W; and all waters in the Intracoastal Waterway, Elizabeth River, Dutchman Creek, and all tributaries to a line across the ICWW beginning at a point on the south shore at 33Deg. 55¹ 28ⁿ N — 78Deg. 08¹ 04ⁿ W; thence to the north shore at 33Deg. 55¹ 33ⁿ N — 78Deg. 08¹ 03ⁿ W.

(31) In the Lockwoods Folly-Shallotte River Area:

(a) Lockwoods Folly River: All those waters upstream from a line beginning at a point on the east shore at 33Deg. 56¹ 15ⁿ N — 78Deg.

12¹ 45ⁿ W; thence to the west shore at 33Deg. 56¹ 11ⁿ N — 78Deg. 13¹ 16ⁿ W; to include all tributaries;

(b) All those waters in the Shallotte River upstream of a line drawn across the river beginning at a point on the west shore at 33Deg. 56¹ 34ⁿ N — 78Deg. 22¹ 05ⁿ W; thence to the east shore at 33Deg. 56¹ 39ⁿ N — 78Deg. 21¹ 49ⁿ W;

(c) Ocean Isle Beach: All waters upstream (south) of a straight line drawn from a point at 33Deg. 53¹ 49ⁿ N — 78Deg. 25¹ 27ⁿ W; thence to a point at 33Deg. 53¹ 50ⁿ N — 78Deg. 25¹ 29ⁿ W; to include all tributaries;

(d) Long Beach: All waters upstream (east) from a straight line beginning at Pinner Pt. at 33Deg. 55¹ 18ⁿ N — 78Deg. 11¹ 41ⁿ W; thence in a southerly direction to a point at 33Deg. 55¹ 05ⁿ N — 78Deg. 11¹ 41ⁿ W on the south shore of Davis Creek to include all tributaries;

(e) All waters in the Intracoastal Waterway bounded on the northeast by a straight line drawn from a point at 33Deg. 55¹ 26ⁿ N — 78Deg. 11¹ 33ⁿ W; on the south shore; thence to the north shore at 33Deg. 55¹ 28ⁿ N — 78Deg. 11¹ 38ⁿ W; and bounded on the southwest by a straight line beginning at 33Deg. 55¹ 09ⁿ N — 78Deg. 11¹ 53ⁿ W; on the south shore; thence to the north shore at 33Deg. 55¹ 13ⁿ N — 78Deg. 11¹ 55ⁿ W.

(32) In the Calabash Area:

All waters west of a line drawn from a point on the south shore of the ICWW at 33Deg. 53¹ 14ⁿ N — 78Deg. 29¹ 08ⁿ W; thence through Beacon #10¹ to a point on the north shore of the ICWW at 33Deg. 53¹ 18ⁿ N — 78Deg. 29¹ 09ⁿ W; and all waters north of a line drawn in Jinks Creek from a point on the west shore at 33Deg. 52¹ 48ⁿ N — 78Deg. 29¹ 50ⁿ W; to a point on the east shore at 33Deg. 52¹ 51ⁿ N — 78Deg. 29¹ 45ⁿ W. This includes the waters of Calabash Creek, Boneparte Creek, Deep Backwater Creek, Salt Boiler Creek, Blane Creek, the Big Narrows, a portion of Jinks Creek, and the ICWW to the South Carolina line.

SECTION .1500 - STRIPED BASS

.1501 COMMERCIAL SEASON
AND EQUIPMENT

(a) In internal coastal waters, it shall be unlawful to take striped bass using commercial fishing equipment except during the open season which shall be from November 15 through March 31 that the secretary, acting upon the advice of the sirector, based on reasonable and prudent management of marine and estuarine resources, may be proclamation, open and close the season between October 1 and April 30. The secretary is further empowered at his discretion, to impose any or all of the following restrictions:

- (1) specify number of days;
- (2) specify areas;
- (3) specify means and methods which may be employed in taking;
- (4) specify time period;
- (5) limit the quantity and size
- (6) require submission of statistical and biological data.

.1502 HOOK-AND-LINE FISHING

(a) It shall be unlawful for any person to possess more than three take striped bass taken from coastal waters by hook-and-line except during the open season as established in 15 NCAC 3B .1501 in any one day.

(b) Striped bass taken by hook-and-line fishing operations may not be sold.

(c) Striped bass taken in compliance with this Section may be possessed and transported at any time.

.1505 SIZE LIMIT

(a) Effective October 1, 1985, it shall be unlawful to possess striped bass harvested from the internal coastal waters of North Carolina less than 14 inches long (total length). Such fish which do not meet the minimum size limit shall immediately be returned to the waters where taken regardless of condition of the fish.

(b) Effective October 1, 1986, it shall be unlawful to possess striped bass harvested from the internal coastal waters of North Carolina less than 16 inches long (total length). Such fish which do not meet the minimum size limit shall immediately be returned to the waters where taken regardless of condition of the fish.

(c) It shall be unlawful to possess striped bass imported from other states less than 14 inches long (total length). effective October 1, 1985, nor

less than 16 inches long (total length) effective October 1, 1986.

WILDLIFE RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10F .0305(a)(4). The purpose of the proposed regulation is to add the portion of the Intracoastal Waterway within 100 yards of Tanglewood boat ramp in Brunswick County to those waters on which boats are limited to no-wake speed.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: G.S. 75A-3; 75A-15.

The public hearing will be conducted at 9:00 a.m. on August 18, 1986 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 19, 1986, to 5:00 p.m. on September 19, 1986. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury Street, Archdale Bldg., Raleigh, NC 27611.

SUBCHAPTER 10F - MOTORBOATS AND
WATER SAFETY

SECTION .0300 - LOCAL WATER
SAFETY REGULATIONS

.0305 BRUNSWICK COUNTY

(a) Regulated Areas.
This Rule applies to the waters and portions of waters described as follows:

- (4) Intracoastal Waterway:

(D) Tanglewood Area Boat Ramp. That portion of the Intracoastal Waterway within 100 yards of the Tanglewood Area boat ramp located on the north side of the said waterway opposite Holden Beach.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

TITLE 21 - LICENSING BOARD

CPA EXAMINERS

Notice is hereby given in accordance with G.S. 150B-12 that the CPA Examiners intends to adopt regulations cited as 21 NCAC 8G .0212 and .0408 and amend 21 NCAC 8G .0407. The purpose of the proposed regulations is: .0212 - to adopt by reference professional accountancy standards promulgated by the national professional membership society in order to promote uniformity of standards throughout the nation; .0407 and .0408 - to establish a requirement for continuing education in accountancy laws of North Carolina.

The proposed effective date of this action is: .0212 - November 1, 1986; .0407 - January 1, 1988; .0408 - January 1, 1987.

Statutory Authority: G.S. 55B-12; 93-12(8b); 93-12(9).

The public hearing will be conducted at 9:00 a.m. on August 14, 1986 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, N.C. 27605.

Comment Procedures: Any person interested in this rule may present written or oral comments relevant to the action proposed at the Public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by August 11, 1986. Written statements not presented at the public hearing should be delivered to the Board offices not later than 9:30 a.m., September 15, 1986.

CHAPTER 8 - CPA EXAMINERS .0212 ATTESTATION STANDARDS

(a) A person admitted to practice as a certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant unless he has complied with the applicable attestation standards.

(b) The Statements on Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants are hereby

adopted by reference as amended through September 30, 1986, and shall be considered attestation standards for the purposes of 21 NCAC 8G .0212(a).

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 at cost, which approximates two dollars (\$2.00).

.0407 EXEMPTION AND SUBSEQUENT REINSTATEMENT

(b) Any applicant for reinstatement must furnish to the Board evidence of satisfactory completion of 40 hours of acceptable CPE courses during the twelve-month period immediately preceding the licensee's application for reinstatement to active status. Eight of the required hours must be credits derived from a course in North Carolina Accountancy Law and Accountancy Regulations (including the Code of Ethics contained therein). Any CPE course hours used to satisfy the reinstatement may also be used to satisfy the CPE renewal requirement.

.0408 REQUIRED COURSES ON ACCOUNTANCY LAW AND REGULATIONS

Eight of the hours required for each three year period of licensure must be credits derived from courses in North Carolina Accountancy Law and Accountancy Regulations (including The Code of Ethics contained therein).

N C BOARD OF OCCUPATIONAL THERAPY

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Occupational Therapy intends to amend and repeal regulations cited as 21 NCAC 38 .0104, .0201, .0202, .0204, .0302 and .0303. The purpose of the proposed regulations is to amend and repeal regulations to conform with recent changes to American Occupational Therapy Association guidelines and to update according to current practice.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 90-270.

The public hearing will be conducted at 3:30 p.m. on August 18, 1986 at Suite 1921, Center Plaza Building, 411 Fayetteville Street Mall, Raleigh, N.C.

Comment Procedures: Data, opinions and arguments concerning these rules must be submitted by August 15, 1986 to the North Carolina Board of Occupational Therapy, P.O. Box 2280, Raleigh, N.C. 27605, Attn. Charles Wilkins.

CHAPTER 38 -OCCUPATIONAL THERAPY

.0104 RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) The Model Administrative Procedures for Rulemaking and Hearings, codified as Title 22, Subchapters 2B and 2C of the NCAC, Effective September 29, 1980 as amended February 1, 1986, are hereby adopted by reference to apply to actions of the North Carolina Board of Occupational Therapy.

(b) The definitions contained 22 NCAC 2A .0005 are adopted by reference and shall apply to the North Carolina Board of Occupational Therapy with the following modifications:

(4) "Examination" means the certification examination administered by the American Occupational Therapy Association Certification Board.

(c) Copies of 22 NCAC, Subchapters 2B and 2C, and 22 NCAC 2A .0005 may be inspected at the agency address. Copies may also be obtained from the Administrative Procedures Section of the Attorney General's Office, 10 E. Jones Street, Raleigh, N.C. 27602 Office of Administrative Hearings, Raleigh, N.C.

.0201 APPLICATION PROCESS

Each applicant, including those trained outside the United States or its territories, for an occupational therapist or occupational therapist assistant license shall complete an application form provided by the board. This form shall be submitted to the board and shall be accompanied by:

(5) a form provided by

the board containing signed statements preferably from at least two (2) residents of the State of North Carolina attesting to the applicant's good moral character; and

.0204 FILING FEES

(b) Fees are as follows:

(1) a request for an initial application for licensure as an occupational therapist, occupational therapist assistant or provisional licensee is ten dollars (\$10.00);

(2) consideration of the application for issuance of a license or re-issuance of a license is one hundred dollars (\$100.00);

(3) annual renewal of a license is fifty dollars (\$50.00);

(4) late renewal of a license is an additional fifty dollars (\$50.00) twenty-five dollars (\$25.00);

(5) issuance of a provisional license is thirty five dollars (\$35.00), this thirty five dollars (\$35.00) shall apply towards the one hundred dollar (\$100.00) fee for a permanent license in (b)(2) of this Paragraph provided the applicant pays the additional sixty-five dollars (\$65.00) within the period before their provisional license is revoked;

(6) for copies of board rules and licensure standards, charges not exceeding the actual cost of printing and mailing.

.0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license who is currently certified by the American Occupational Therapy Association and is in good standing with the board shall apply for same and shall submit the required fee.

(b) Show proof of such continuing education efforts as may be required by the board, if any.

(c) Any person who engages in any occupational therapy activities governed by the occupational therapy law while their license is lapsed will be subject to the penalties prescribed in the law.

(d) Licenses lapsed in excess of 24 months shall not be renewable. Persons whose licensed have been lapsed in excess of 24 months and who

desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

(d) Failure to renew the license within thirty days after the expiration date shall result in a lapsed license. Persons whose licenses have lapsed and who desire to be licensed shall apply for a new license and shall meet all the requirements then existing.

(e) Inactive status may be granted upon written request to the board and upon the payment of any fee set by the board.

.0303 PROVISIONAL LICENSE

An applicant for a provisional license must have completed the educational course work and field work experience requirement of the license for which they apply, must have made application to take the certification exam administered by the American Occupational Therapy Association Certification Board and must have filed their application with the board in accordance with G.S. 90-270.70 and these Rules. The provisional license shall be valid for nine months from date of issuance or until revoked by the board, whichever occurs first. A provisional license shall not be issued to an applicant who has failed the examination in this State or another jurisdiction.

N.C. BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Pharmacy intends to amend regulations cited as 21 NCAC 46 .1503 and .2001 and adopt 21 NCAC 46 .2201-.2203. The purpose of the proposed regulations is to: .1503-increase minimum required experience levels of licensure applicants from 600 hours to 640 hours to meet national standards; .2001-updates 21 NCAC .2001, which adopts by reference 22 NCAC Subchapter 2C and part of 22 NCAC 2A .0005; .2201 - whereby registered nurses employed by a health department may dispense certain prescription drugs and/or devices; .2202 - to set out training standard for health department nurses who dispense medication pursuant to G.S. 90-85.34.1 and 21 NCAC 46 .2201; .2203 - is to list drugs and devices which may be dispensed by registered nurses employed by

health departments pursuant to G.S. 90-85.34.1.

The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 90-85.6; 90-85.34.1.

The public hearing will be conducted at 2:00 p.m. on August 19, 1986 at the Institute of Pharmacy, 109 Church St., Chapel Hill, N.C. 27514.

Comment Procedures: Persons desiring to present oral data, views, or arguments must submit a written summary thereof at least 10 days prior to the hearing date. Presentations of up to 10 minutes will be allowed during the hearing and written comments will also be received for 30 days after the hearing. All such written comments will be incorporated into the hearing record.

.1503 EXPERIENCE IN PHARMACY

An applicant for license must show that he has received 1500 hours of practical experience under the supervision of a licensed pharmacist which has been acquired after the satisfactory completion of two years of college work, ~~600~~ 640 hours of which may be acquired concurrent with pharmacy college attendance in clinical pharmacy programs or demonstration projects which have been approved by the board.

.2001 ADMINISTRATIVE HEARING

(a) Subchapter 2C of the Model Administrative Procedures for Administrative Hearing Procedures, codified as Title 22, NCAC, effective ~~September 29, 1980~~ February 1, 1986, are hereby adopted by reference. In applying 22 NCAC, Subchapter 2C to this board, the definitions contained in 22 NCAC 2A .0005 shall apply as modified herein:

- (1) "Agency" means the North Carolina Board of Pharmacy.
- (2) "Agency Address" means: North Carolina Board of Pharmacy, Post Office Box H, Carrboro, North Carolina 27510.
- (3) "Agency Head"
 - (A) In the context of final agency decisions, "agency head" means the board.
 - (B) In the context of the board granting administrative authority, "agency head" means the

executive director of the board.

(b) Copies of 22 NCAC Subchapter 2C and 22 NCAC 2A .0005 are on file in the board's office and may be inspected in that office or at the Office of Administrative Hearings, Raleigh, N.C. Copies may be obtained for a charge to be determined by each office. Copies may be obtained from the board or from the Administrative Procedures Section of the Attorney General's Office, 10 East Jones Street, Raleigh, North Carolina, at a charge of four dollars (\$4.00).

.2201 MEDICATION IN HEALTH DEPARTMENTS

A registered nurse employed by a local health department may dispense prescription drugs and/or devices under the following conditions:

- (a) Drugs and/or devices may be dispensed only to bona fide health department patients;
- (b) No drugs and/or devices may be dispensed except during health department clinics. All drugs and/or devices dispensed must relate to the conditions or diseases for which the clinic is being held;
- (c) The health department shall employ a pharmacist-manager who shall be responsible for developing and supervising a system of control and accountability of all drugs administered in or dispensed from the health department;
- (d) Only drugs and/or devices listed in Section .2203 may be dispensed by a health department registered nurse;
- (e) All drugs and/or devices dispensed pursuant to G.S. s. 90-85.34.1 and these rules shall be prepackaged in suitable safety-closure containers, where appropriate, and shall be properly labelled (including necessary auxiliary labels) by the pharmacist-manager so as to provide information necessary for use and all other information required by state and federal law;
- (f) The pharmacist-manager and registered nurse shall comply with all provisions of state and federal laws governing the dispensing of medications;
- (g) A suitable and perpetual record of drugs and/or devices dispensed shall be

maintained by the pharmacist-manager. The pharmacist-manager shall verify the accuracy of the records at least weekly, and where health department personnel dispense to 30 or more patients in a 24-hour period, the pharmacist-manager shall verify the accuracy of the records within 24 hours after dispensing occurs;

(h) All drugs and/or devices shall be stored according to federal requirements as set out in the most recent United States Pharmacopoeia.

.2202 TRAINING OF HEALTH DEPARTMENT NURSES AND PHARMACIST-MANAGER

No registered nurse may dispense drugs or devices nor may the pharmacist-manager perform any duties pursuant to G.S. s. 90-85.34.1 prior to satisfactory completion of training acceptable to the Board. The Board may also require registered nurses and the pharmacist-manager to complete in-service training at appropriate intervals.

Proposed curricula for initial and/or supplemental in-service training for registered nurses and/or pharmacist-managers employed by health departments must be submitted to the Board for its approval no later than 60 days prior to the date training is to commence. No registered nurses or pharmacist-managers may be enrolled in any such proposed training course until written Board approval is obtained. Initial training must include, but need not be limited to, instruction in labelling and packaging of prescription drugs and devices.

Proposals for initial and supplemental in-service training courses shall be sent to the Board's offices, in writing, and shall include the following information:

- (a) description of topics or courses to be covered;
- (b) instructor for each topic or course, and his or her qualifications and credentials;
- (c) anticipated duration of each topic or course;
- (d) location of training;
- (e) cost of program, if any, to participants.

.2203 DRUGS TO BE DISPENSED

Pursuant to G.S. s. 90-85.34.1,

registered nurses employed by local health departments may dispense the following drugs and/or devices during clinics conducted by the health department:

- (a) Anti-tuberculosis drugs, as defined by Facts and Comparisons, or as recommended by the Tuberculosis Control Branch of the North Carolina Division of Health Services, during clinics for the treatment and/or control of tuberculosis;
- (b) Anti-infective agents recommended by the United States Centers for Disease Control, for the purpose of treatment and control of sexually-transmitted diseases, during health department clinics for sexually-transmitted diseases;
- (c) Natural or synthetic hormones used for the prevention of pregnancy and/or contraceptive devices when dispensed during health department birth control clinics;
- (d) Vitamin and mineral supplements;
- (e) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions;
- (f) Over-the-counter drugs or preparations.

Regardless of the provisions set out above, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S. Code s. 801, et seq., or regulations enacted pursuant to that Act, 21 CFR s. 1300, et seq., or by the North Carolina Controlled Substances Act, G.S. s. 90-85.6, G.S. s. 113.8, may be dispensed by registered nurses pursuant to G.S. s. 90-85.34.1.

STATE BOARD OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Community Colleges intends to adopt and amend regulations cited as 23 NCAC 2C .0301 and 23 NCAC 2C .0305. The purpose of the proposed regulations is to: 2C .0301 - to separate the general admission statement from services made available to persons less than 18 years old and set forth admission procedure for the emancipated

minor; 2C .0305 - sets forth the types of services available to persons less than 18 years old and the conditions under which these services may be provided.

The proposed effective date of this action is December 1, 1986.

Statutory Authority: N.C.G.S. 115D-5.

The public hearing will be conducted at 10:00 a.m. on August 28, 1986 at the Third Floor Conference Room, Education Building, Raleigh, NC 27603-1712.

Comment Procedures: Any interested person may present written or oral statements relevant to proposed rules 23 NCAC 2C .0301 and 23 NCAC 2C .0305. A time limit of ten minutes per person may be imposed for oral presentations depending upon the number of persons making presentations. Individuals who plan to make oral presentations must give their remarks in writing to the hearing officer. Written statements not to be presented at the hearing should be directed before August 25, 1986, to the following address: Bobby L. Anderson, Hearing Officer, Department of Community Colleges, State Education Building, Raleigh, North Carolina 27603-1712.

TITLE 23 - COMMUNITY COLLEGES

SUBCHAPTER 2C - INSTITUTIONS: ORGANIZATION AND OPERATIONS

.0301 ADMISSION TO INSTITUTIONS

(a) Each institution shall maintain an open door admission policy to all applicants who are high school graduates or who are at least 18 years of age. Student admission and placement shall be determined by the officials of each institution. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older.

(b) The state board shall encourage individuals to complete high school before seeking admission to an institution.

(c) A minor, 16 years old, or older, may be considered a student with special needs and may be admitted to an appropriate program at an institution if the local public or private educational agency

determines that admission to the program is the best educational option for the student and is approved by the institution. This requirement may be waived if the student has been out of school at least six months and his application is supported by a notarized petition of his parent, legal guardian or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the students.

(d) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to appropriate courses concurrently under the following conditions and other appropriate provisions of this Rule:

(1) Upon recommendation of the chief administrative school officer and the approval of the president of the institution;

(2) Upon approval of the student's program by the principal of the school and the president of the institution; and

(3) Upon certification by the principal that the student is taking at least three high school courses and is making appropriate progress toward graduation.

(e) College level courses taken at an institution shall earn college credit and may earn credit toward high school graduation if appropriate.

(f) High school students shall not displace adults but may be admitted any quarter on a space-available basis to any curriculum or continuing education course. Once admitted, they shall be treated the same as all other students.

(g) Institutions shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(h) An institution may approve the enrollment of high school students only when no more than five percent of the enrollment from that high school is or has been enrolled in post-secondary education during the regular ten month public school year. Exceptions to this maximum will require approval of the State Board of Education.

.0305 EDUCATION SERVICES

FOR MINORS

(a) The State Board shall encourage individuals to complete high school before seeking admission to an institution.

(b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at an institution if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of such student to the program is approved by the institution. This requirement may be waived if the student has been out of school at least six months and his application is supported by a notarized petition of his parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.

(c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to appropriate courses concurrently under the following conditions:

(1) Upon recommendation of the chief administrative school officer and the approval of the president of the institution;

(2) Upon approval of the student's program by the principal of the school and the president of the institution; and

(3) Upon certification by the principal that the student is taking at least three high school courses and is making appropriate progress toward graduation.

(d) High school students, taking courses pursuant to paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any quarter on a space-available basis to any curriculum or continuing education course. Once admitted, they shall be treated the same as all other students.

(e) Unless specifically authorized by state law, institutions shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(f) An institution may

make available to persons of any age non-remedial, enrichment courses during the summer quarter. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the institution or high school.

(g) At the request of the Director of a training school having custody of juveniles committed to the Division of Youth Services, Department of Human Resources, an institution

may make available to such juveniles any course offered by that institution if they meet the course admission requirements. The Director's request shall include his approval for each juvenile to enroll in the course. Courses made available to such juveniles shall follow the approval process for immured groups as set forth in rule 2E.0403

FINAL RULES

When the text of any adopted rule differs from the text of that rule as proposed, the text of the adopted rule is published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 -CORRECTIONS

SUBCHAPTER 2B -INMATE CONDUCT RULES: DISCIPLINE

SECTION .0100 -GOOD TIME AND GAINED TIME .0104 PROCEDURE

(a) Recording sentence reduction credits. Good time will be computed automatically on the inmate's record. Gain time, meritorious time, and restored good time awards must be initiated by the unit superintendent or institution head upon the designated reduction credit form and shall be approved as provided in Paragraphs (b) and (c) in this Rule. Transfers automatically terminate regular and fair sentence gain time status for inmates in the custody of the Division of Prisons. Meritorious time awards will be accumulated and recorded on an hour-for-hour basis and submitted monthly in whole days, except such credits may be authorized for an exemplary act at a rate not to exceed 30 days for each act. A whole day is defined as eight hours. In the case of inmates confined to local confinement facilities, pursuant to court commitment, the sheriff or administrator of a local confinement facility shall establish procedures for granting, approving, and documenting sentence reduction credits. In the case of inmates confined to local confinement

facilities, pursuant to a contractual agreement with the Department of Correction, the sheriff or administrator shall forward recommendations for granting sentence reduction credits to the Division of Prisons' designated approving authority as listed in .0104(b). The Division of Prisons' approving authority will either approve, modify, or disapprove the award. All Division of Prisons' authorized credits shall be recorded upon the sentence reduction credit form.

History Note: Statutory
Authority G.S. 148-11;
148-13; 15A-1340.7;
Eff. February 1, 1982;
Amended Eff. August 1, 1986;
September 1, 1983.

TITLE 19A - TRANSPORTATION

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0300 - PLANNING AND RESEARCH

.0312 MATCHING - PL FUNDS

The federal share payable on account of work performed using PL funds shall be 85 percent. The remaining 15 percent is local money provided by the urbanized area and may be in the form of "like work".

History Note: Statutory
Authority 23 U.S.C. 104(f);
23 U.S.C. 134;
G.S. 136-18(12);
143B-350(f),(g);
Eff. July 1, 1978.
Amended Eff. August 1, 1986.

.0412 REST AREAS AND WELCOME CENTERS - AUTHORITY

History Note: Statutory
Authority G.S. 136-89.59;
Eff. July 1, 1978;
Repealed Eff. August 1, 1986.

.0413 APPROVAL FOR USE - REST AREAS: WELCOME CENTERS

History Note: Statutory
Authority G.S. 136-89.59;
Eff. July 1, 1978;
Repealed Eff. August 1, 1986.

.0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS

It shall be unlawful, within any scenic overlook, rest area, or other designated parking area on the primary and secondary roads and highways of

the state, for any person, firm or corporation to erect tents, booths, or structures of any kind for camping or any other activity; to create loud music or other objectionable noise; to solicit contributions, names, support or for any other purpose; to conduct or participate in public or private auctions and other ceremonies; to distribute tracts, pamphlets, favors or any material, product or literature; to erect displays, signs, or carry on any commercial activity; to use public address systems; to distribute or use alcoholic beverages; to engage in disorderly conduct or use vulgar, obscene or profane language; or, to commit any nuisance producing a material annoyance, inconvenience, hurt, discomfort, or that is dangerous to the life, property and welfare of the traveling public.

History Note: Statutory
Authority G.S. 136-18(9);
136-125;
Eff. July 1, 1978;
Amended Eff. August 1, 1986.

SECTION .0800 - SOLICITATION OF CONTRIBUTIONS FOR RELIGIOUS PURPOSES AT REST AREAS

.0801 PERMIT TO
SOLICIT CONTRIBUTIONS
In recognition of the
right of citizens to the free
exercise of religion which
includes the right to solicit
for contributions for religious
purposes, and in recognition of
the State of North Carolina's
legitimate concern for the
safety and well-being of the
traveling public, all
solicitation of contributions
for religious purposes along
North Carolina's interstate
highway system or in highway
rest areas, wayside parks, and
visitor welcome centers on all
of North Carolina's highways
shall be in accordance with
these Regulations. All other
forms of solicitation are
prohibited.

History Note: Statutory
Authority G.S. 20-175;
136-18;
Eff. November 1, 1984;
Amended Eff. August 1, 1986.

.0802 PERMITS REQUIRED
(a) All organization desiring
to solicit under the provisions
of this Section must first

obtain a permit from the
Department of Transportation for
the stated purpose of allowing
their members to solicit at
designated areas on the state
highway system.

(b) Written requests for
permits for religious
solicitation shall be sent to
the Office of the State Highway
Administrator of the North
Carolina Department of
Transportation.

(c) Written requests must
include all of the following:

- (1) copy of certificate
showing that the applicant
is exempt from federal
income tax as a religious,
educational or charitable
organization as provided in
26 USC 501(c)(3) together
with the applicant's tax
exemption number;
- (2) a statement indicating
the locations where the
organization intends to
solicit contributions;
- (3) the name and address
of each individual
authorized to solicit for
the applicant;
- (4) the name of an officer
of the applicant, together
with an address, to whom the
permit is to be sent and
complaints are to be
directed.
- (5) if the request for a
permit is from a
non-religious educational or
charitable organization; a
detailed written description
of the organization's past
efforts serving and
promoting the safety of the
traveling public.

(d) When all the
appropriate information required
in Paragraph (c) of this Rule
has been provided by the
applicant, a permit shall be
issued by the State Highway
Administrator, or his duly
authorized representative, and
said permit will be effective
for a period of six months from
the date of issuance.

(e) Each permit issued
shall describe the activity
authorized, the specific
location at which such activity
be conducted, and the period of
time for which the permit is
issued.

History Note: Statutory
Authority G.S. 20-175;
136-18;
Eff. November 1, 1984;
Amended Eff. August 1, 1986;
September 1, 1985.

.0803 SOLICITATION

RESTRICTIONS AND REQUIREMENTS

(a) Any member of an organization duly permitted under these Regulations actually engaged in soliciting contributions must provide and prominently display an identification tag or badge containing all of the following information:

- (1) a photograph;
- (2) name;
- (3) organization; and
- (4) DOT permit number.

(b) While actually engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.

(c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities between the hours of 9:00 a.m. and 5:00 p.m. each calendar day, provided, however, that no solicitation shall be allowed at any time on legal holidays, state or federal.

(d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.

(e) Individual solicitors are restricted from soliciting inside any building or within a distance of fifty feet of the following areas:

- (1) entrances to or on stair rails;
- (2) doors of public circulation;
- (3) restrooms;
- (4) phone booths;
- (5) motor vehicles; and
- (6) a queue or line or persons waiting for a service at any of the above listed areas.

(f) Individual solicitors may not use utility services provided at highway rest areas or visitor centers for the furtherance of solicitation activities.

(g) A permittee shall be limited to one individual solicitor actually engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.

(h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.

(i) Individual solicitors

shall not harass persons by demanding, threatening or intimidating conduct.

(j) While individual solicitors may solicit donations for religious paraphernalia from the general public which shall be used in the furtherance of their religion, the individual solicitors must inform the person solicited if a minimum donation is required.

(k) All transfers of money or funds, either resulting from the sale of printed matter or donations solicited from a person acting pursuant to a permit issued by the State Highway Administrator or his duly authorized representative, shall take place in or at location specifically identified in the permit.

(l) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.

(m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.

(n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.

(o) No more than two organizations, one religious and one charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

History Note: Statutory
Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. August 1, 1986;
September 1, 1985.

.0804 REVOCATION OF PERMIT

(a) Any of the following shall be grounds for revoking a permit issued under the provisions of these Regulations:

- (1) failure to renew the license issued to the organization;
- (2) loss of federal income tax exemptions;
- (3) violations of the restrictions on solicitations contained in Rule .0803 of this Section;
- (4) substantiated complaints of harassment of travelers by individual solicitors;
- (5) any action which adversely affects the health or safety of the traveling public;
- (6) fraud or

misrepresentation in
application on the part of
the permittee.

(b) Any organization which
applies for a permit for
solicitation and is refused such
a permit, or any organization
which has its permit revoked,
may make a written appeal within
30 days of the department's

decisions to the Secretary of
Transportation whose decisions
shall be final.

History Note: Statutory
Authority G.S. 20-175; 136-18;
Eff. November 1, 1984;
Amended Eff. August 1, 1986;
September 1, 1985.

NORTH CAROLINA ADMINISTRATIVE CODE

LIST OF RULES AFFECTED

EDITION X, NO. 4

EFFECTIVE: July 1, 1986

AGENCY	ACTION TAKEN
<u>AGRICULTURE</u>	
2 NCAC	
43F .0003	Amended
48A .0611	Amended
48D .0003	Amended
52B .0501	Amended
.0505	Adopted
.0601	Amended
52D .0001	Amended
<u>HUMAN RESOURCES</u>	
10 NCAC	
4C .0102	Amended
.0202	Amended
.0402	Amended
7A .0207	Repealed
.0208	Adopted
7D .0405	Amended
8C .1106	Amended
.1203	Amended
.1207	Amended
8D .0101-.0102	Amended
.0201-.0207	Amended
.0301-.0302	Amended
.0307-.0308	Amended
.0401	Amended
.0403-.0404	Amended
.0406-.0408	Amended
.0502	Amended
.0506	Amended
.0510	Amended
.0513-.0515	Amended
.0601-.0602	Amended
.0606-.0607	Amended
.0701	Amended
.0703	Amended
.0801-.0804	Amended
.1003-.1005	Amended
.1101	Amended
.1202-.1203	Amended
.1206-.1211	Amended
8G .0601	Amended
10A .0303	Amended
.0310	Amended
.0443	Amended
.0445	Amended
.0457	Amended
.0465-.0466	Amended
.0473	Amended
.0503	Amended
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.1313	Amended
.2115	Amended
.2123	Amended
.2203	Amended
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10F .0029	Amended
.0032-.0035	Amended

	45H	.0202	Amended
<u>INSURANCE</u>			
11	NCAC	4	.0113 Amended
			.0116 Amended
			.0118 Adopted
			.0320 Adopted
			.0416 Amended
			.0418 Amended
			.0421 Amended
			.0423 Amended
	5	.0101-.0104	Amended
		.0201-.0202	Amended
		.0301-.0303	Amended
		.0401-.0402	Repealed
		.0501	Amended
		.0503	Amended
	6	.0101	Amended
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	10	.0101	Amended
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		.0516	Adopted
<u>NATURAL RESOURCES AND COMMUNITY DEVELOPMENT</u>			
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		10B	.0115 Amended
			.0202-.0211 Amended
			.0214 Amended
		10C	.0305 Amended

		10D	.0002-.0003	Amended
		10F	.0308	Amended
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16	NCAC	1A	.0001-.0002	Amended
			.0003-.0005	Adopted
		1B	.0101-.0109	Repealed
			.0201-.0202	Repealed
			.0301-.0311	Repealed
		1C	.0001-.0002	Repealed
		2		Repealed
		5		Repealed
		6		Adopted
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			.3202	Amended
		6C	.0122	Adopted
			.0301-.0304	Adopted
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			.0215	Amended
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			.0217	Amended

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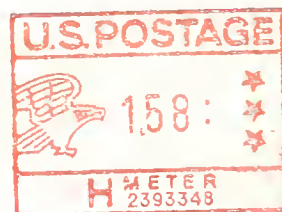
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