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# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: JUNE 15, 1988**

**Volume 3 • Issue 6 • Pages 185-266**



# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-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 fifty 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 24 issues.

Requests for subscriptions 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 the time and place of the public hearing; 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; a reference to the Statutory Authority for the action 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.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, 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 with the Office of Administrative Hearings for publication in the NCAC.

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 180 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) Single pages may be obtained 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) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC 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*  
 (March 1988 - March 1989)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
03/15/88	02/24/88	03/02/88	04/14/88	07/01/88
04/04/88	03/11/88	03/18/88	05/04/88	08/01/88
04/15/88	03/25/88	04/01/88	05/15/88	08/01/88
05/02/88	04/11/88	04/18/88	06/01/88	09/01/88
05/16/88	04/27/88	05/03/88	06/15/88	09/01/88
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12/15/88	11/23/88	12/02/88	01/14/89	04/01/89
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01/16/89	12/27/88	01/03/89	02/15/89	05/01/89
02/01/89	01/10/89	01/17/89	03/03/89	06/01/89
02/15/89	01/26/89	02/02/89	03/17/89	06/01/89
03/01/89	02/08/89	02/15/89	03/31/89	07/01/89
03/15/89	02/21/89	03/02/89	04/14/89	07/01/89

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

*VOTING RIGHTS ACT FINAL DECISION LETTERS*

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*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

WBR:SSC:TGL:jmc  
DJ 166-012-3  
T5490-5491  
T9424

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

May 16, 1988

Richard J. Rose, Esq.  
Poyner and Spruill  
P.O. Box 353  
Rocky Mount, North Carolina 27802-0353

Dear Mr. Rose:

This refers to the two annexations (Ordinance Nos. 0-87-63 and 0-88-5) and the designation of the annexed areas to Wards 4 and 5 for the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 15, 1988.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

*VOTING RIGHTS ACT FINAL DECISION LETTERS*

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U.S. Department of Justice  
Civil Rights Division

WBR:SSC:TGL:jmc:dvs  
DJ 166-012-3  
T5933

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

May 20, 1988

David A. Holec, Esq.  
City Attorney  
P.O. Box 1388  
Lumberton, North Carolina 28359

Dear Mr. Holec:

This refers to the procedures for conducting the May 31, 1988, special election for the City of Lumberton in Robeson County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 21, 1988.

The Attorney General does not interpose any objection to the change in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

By:

Gerald W. Jones  
Chief, Voting Section

**TITLE 1 - DEPARTMENT OF  
ADMINISTRATION**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Administration intends to adopt regulations cited as 1 NCAC 30E .0101 - .0402.*

*The proposed effective date of this action is October 1, 1988.*

*The public hearing will be conducted at 9:00 a. m. on July 18, 1988 at Large Conference Room, State Construction Office, Legislative Office Building, Room 403, 300 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Any interested person may present his or her views and comments either in writing prior to or at the hearing or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Becky Barbee, Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27603-8003, (919) 733-7232.*

**CHAPTER 30 - ADMINISTRATION - STATE  
CONSTRUCTION**

**SUBCHAPTER 30E - STATE BUILDING  
COMMISSION DESIGNER EVALUATION  
PROCEDURES**

**SECTION .0100 - GENERAL PROVISIONS**

**.0101 AUTHORITY**

The State Building Commission, hereinafter referred to as SBC, is a statutory body, empowered by Public Law to perform a multiplicity of duties with regard to the State's Capital Facilities development and management program. In the specific area of State capital improvement project designer evaluation, the SBC is empowered to develop procedures for accomplishment of such evaluation.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0102 POLICY**

It is the policy of the SBC to evaluate designers for capital improvement projects as defined in G.S. 143-135.27 based on criteria contained herein. Further, it is considered of paramount importance that every State capital improvement project receive a professional design which is

timely, of highest professional quality, and in keeping with the project scope. It is to this end that individual designer performance on State capital improvement projects should be fairly and consistently evaluated and used as a factor in designer selection for future work.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0103 DEFINITIONS**

For purposes of this Subchapter, the following definitions shall apply:

- (1) "Capital Projects Coordinator" means the individual authorized by each funded agency to coordinate all capital improvement projects and related matters with the State Construction Office and to represent that agency on all matters presented to the SBC. The individual so designated for purposes of these rules may have other titles within the individual's agency but shall carry out the duties assigned herein to the Capital Projects Coordinator. Whenever the Capital Projects Coordinator is referenced herein, it shall be understood to include a designated assistant or representative. Concerning evaluation of designers, the Capital Projects Coordinator is responsible for the agency's evaluation of each phase of the project as well as the overall designer evaluation.
- (2) "Project Designer" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice architecture, engineering, landscape architecture or surveying in the State of North Carolina. The designer shall be responsible for the performance of all his consultants. Accordingly, the evaluation of the project designer will include evaluation of the work of all consultants who are included in the designer's contract with the funded agency.
- (3) "Funded Agency" means the department, agency, authority or office that is named in the legislation appropriating funds for the design and/or construction project.
- (4) "Owner's Representative" is an individual appointed by the using agency to represent the using agency on all user-related matters. The owner is the representative of the using agency as defined in Rule .0103(9) of Subchapter 30D - State Building Commission Designer Selection Procedures.
- (5) "Professional Services" means those services within the scope of the practice of architecture, engineering, landscape architecture or surveying as defined by the public laws of North Carolina.

- (6) "Scope Statement" means a written description of the capital project that is to be designed. Normally the scope statement shall reflect the written project description as contained in the project cost estimate validated by the State Construction Office.
- (7) "Evaluation Form" is the form to be used for all designer evaluations. The form shall be developed and approved by the State Building Commission and is the only approved document for this purpose; it may be reproduced by the agencies as required.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**SECTION .0200 - PROJECT INFORMATION**

**.0201 PROJECT DESCRIPTION**

It shall be the responsibility of each Capital Projects Coordinator, for each Capital Improvements project as defined in G.S. 143-135.27 requiring professional services, to provide the State Construction Office with a written description of the professional services desired, the scope of work, schedule requirements, amount of authorized funds and other appropriate information. Particular emphasis will be placed on a determination as to whether the designer's services are to include items such as programming, modeling, special presentations or other requirements beyond specific facility design. This requirement data shall be incorporated in the designer's professional services contract and will serve as key elements against which the designer performance will be evaluated.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0202 DESIGN CONTRACT**

It shall be the responsibility of the Office of State Construction to insure that both the Capital Projects Coordinator and the designer have a clear mutual understanding of design requirements for the project and key elements of these requirements are included in the professional services contract between the agency and the designer.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**SECTION .0300 - EVALUATION OF DESIGNERS**

**.0301 DESIGN PHASES**

Definitions:

- (1) "Pre-Design Phase" is the description of the provision of professional services prior to actual design. If a firm scope of the work is not known, the design agreement may be

written in such a manner as to require project programming assistance by the designer, followed by agency approval of a designer-proposed project scope, prior to commencement of actual design. In evaluating design services during this phase, the Capital Projects Coordinator may wish to receive input from the Owner's representative.

- (2) "Design Phase" involves preparation of the actual design. The Capital Projects Coordinator must maintain active involvement during the design process in order to be able to evaluate the designer's response to owner requirements, the consistency of owner requirements, external design requirements driven by insurance or environmental considerations, etc., the technical design itself, designer/owner response to review comments, adherence to design schedule, and quality of cost estimate, as well as adherence of the cost estimate to the project budget. In general, the evaluation of this phase is to encompass the efficiency and effectiveness of the designer in adherence to the project scope statement. Included is an evaluation of subconsultants if utilized. The subconsultant performance will also be considered in evaluation of the principal designer. The Capital Projects Coordinator, in preparing the evaluation of the design phase, may wish to receive input from the Owner's representative as well as the State Construction Office.

- (3) "Bidding-Construction Phase" encompasses the process for provision of professional services for bidding, award, and construction of the project. As the job progresses past contract award, the Capital Projects Coordinator must maintain a continuing awareness of designer performance during the period of construction including the shop drawing review process, payment processing, change order management, and field administration including project cost control. The Capital Projects Coordinator or owner's representative should attend the monthly construction progress meetings. The Capital Projects Coordinator must be capable of discerning the degree to which change orders are precipitated by design errors or omissions. The Capital Projects Coordinator must be capable of determining how well the designer provides general administration of the performance of construction contracts, including inspection and continuous liaison of the work to insure compliance with plans and specifications

during the construction process. At the completion of the project, the Capital Projects Coordinator must ensure that the project designer has completed all required close-out actions. The Capital Projects Coordinator will be responsible for preparation of the Bidding-Construction Phase evaluation. Assistance will be sought from the Owner's representative and the State Construction Office in preparation of the evaluation for this phase of the project.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0302 OVERALL JOB PERFORMANCE**

The Capital Projects Coordinator shall determine the designer's overall performance for the completed project. The overall rating is intended to reflect the effectiveness of the design in achieving the predetermined project scope in a timely, cost effective manner. The evaluation shall encompass the designer's management approach to the project including cooperation of the designer's staff, communication with the Capital Projects Coordinator and Owner's representative, timeliness of action, and performance of consultants. The Capital Projects Coordinator may invite input from the Owner's representative and the State Construction Office. All prime contractors will be offered the opportunity to provide an assessment of the designer at job completion. The Capital Projects Coordinator shall be responsible for the final overall rating. This summary evaluation shall not necessarily reflect a precise numerical averaging of scores for the Pre-design, Design, and Bidding-Construction phases but will be generally representative of those scores. To be timely and useful, designer evaluation data will be accumulated within 30 days of submission of the final report. Prior to completion of the final designer evaluation, the Capital Projects Coordinator shall submit the proposed evaluation to the designer for comment. Comments received from designers may be considered by the Capital Projects Coordinator. At this stage, the Capital Projects Coordinator shall prepare the final designer evaluation and provide a copy to the designer. The form approved by the SBC shall be used for this purpose.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0303 POST OCCUPANCY EVALUATION**

The designer evaluation process allows for a second evaluation to be conducted within 36 months of the completion of a capital project if design-related latent defects are discovered. A

separate procedure of the State Building Commission may require a formal post-occupancy evaluation within 12 months of a building completion. The data from the 12 month post-occupancy evaluation can be used as a substitute for the follow-up designer evaluation if the Capital Projects Coordinator so determines.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0304 INTERIM DESIGNER EVALUATION**

The designer may request preparation of an interim evaluation form by the Capital Projects Coordinator or the Coordinator may elect to prepare an interim evaluation if so desired. This interim evaluation is intended to reflect performance to date and should be used as a guidance device for correction of performance prior to the final evaluation.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0305 SUBMISSION OF FINAL REPORT**

The Capital Projects Coordinator shall submit the completed final evaluation to the Office of State Construction with a copy to the designer. The designer shall have the opportunity to comment on the evaluation to the Office of State Construction with a copy to the Capital Projects Coordinator. Such comments on the final evaluation shall become a part of the final evaluation record. It is imperative that the final designer evaluation be completed and presented to the State Construction Office for all capital projects within 60 days of the final report. If the evaluation is not completed within the prescribed time frame, the State Building Commission may elect to process no further design awards for an agency until the evaluation is complete.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

**.0306 REPORT COMPILATION**

The Office of State Construction will be responsible for maintaining designer evaluation data. The data maintained shall be on an individual job basis and also cumulative by the designer. Data will be made available on request to individual designer preselection committees. The data maintained by the State Construction Office will reflect performance history for a period of five years. All evaluation data on completed projects in excess of five years of age will be removed from State Construction Office files and will not be used as a factor in the cumulative evaluation.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

SECTION .0400 - POST-EVALUATION PROCEDURES

.0401 AWARDS PROGRAM

Capital Projects Coordinators who consider that designer performance on a completed Capital Improvement Project merits special recognition may nominate the designer for a certificate of Design Merit. Nominations will be made by the Capital Projects Coordinator to the Office of State Construction who will screen the nominees and will in turn make appropriate recommendations to the State Building Commission. The State Construction Office may also initiate award recommendations. The SBC will consider all nominations and make final approval of all awards. The State Building Commission shall arrange for presentation of the certificates at a suitable ceremony during a time and place of its own choosing; however, these presentations will normally be made during the annual State Construction Conference. The State Construction Office shall provide staff support to the State Building Commission for this program.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

.0402 APPEALS OF ASSIGNED EVALUATIONS

If a design firm considers that the assigned evaluation is improper and the opportunity to provide rebuttal comments for the record is insufficient to resolve the assigned rating, the designer may appeal the rating to the Office of State Construction. The State Construction Office will appoint and convene a rating panel of three professional State employees of which at least one member is a licensed professional architect or engineer to hear the appeal and render a decision. The hearing shall involve at a minimum the Capital Projects Coordinator and the Owner's representative as well as representatives of the designer and is open to the public. The State Construction Office hearing panel shall issue a report to the State Building Commission of the hearing and the decision reached. If the Capital Projects Coordinator or designer desires further recourse, the State Construction Office panel decision may be appealed directly to the State Building Commission, which will render a decision. A formal appeal may be made to the Office of Administrative Hearings pursuant to N.C.G.S. 150B.

*Statutory Authority G.S. 143-135.25; 143-135.26.*

TITLE 4 - DEPARTMENT OF COMMERCE

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Milk Commission intends to renumber regulations cited as 4 NCAC 7 .0508 as .0513, .0506 as .0514, .0509 as .0515, .0510 as .0516, .0511 as .0517, .0512 as .0518, .0513 as .0519, .0514 as .0520; amend .0501, .0503, .0504; Repeal .0505; amend .0507; adopt new rule .0506, .0508, .0509, .0510, .0511, .0512; amend .0513, .0514, .0515, .0516 and .0517.*

*The proposed effective date of this action is November 1, 1988.*

*The public hearing will be conducted at 10:00 a.m. on July 26, 1988 at Jane S. McKimmon Center, North Carolina State University, (Corner Western Blvd. and Gorman Streets), Raleigh, North Carolina.*

*Comment Procedures: Data, opinions and arguments concerning these amendments, adoptions and repeals must be submitted by July 26, 1988, to the North Carolina Milk Commission, 430 N. Salisbury Street, Raleigh, NC 27611, Attention Grady Cooper, Jr., Executive Secretary.*

CHAPTER 7 - MILK COMMISSION

SECTION .0500 - MARKETING REGULATIONS

.0501 DEFINITIONS

*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) "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 (\$.01) per quart.
- (6) "Base" for a producer means the average deliveries of a producer for a designated pe-

## PROPOSED RULES

ried 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," "commission," "distributor," "health authorities," "licensee," "market," "milk," "person," "producer," "sanitary," "subdistributor," "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 280 degrees F. (138 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 milk product, and contains less than six 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 nonrefrigerated 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 two 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 1 milk.
- (12) "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.
- (13) "Marketing agent" means a business entity, licensed under the provisions of Rule .0503(g)(9) or a cooperative association acting on behalf of nonmembers, that enters into a contractual agreement with Grade A producers to market the raw milk of such producers. A marketing agent may, subject to the terms of the contract, collect the amounts due producers from the sale of their milk to North Carolina pool plants, and make such deductions from producers as are authorized by these rules.
- (14) "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.
- (15) "Regulated Plant" means a fluid milk plant located in North Carolina operated by a handler that is approved by a duly constituted health regulatory agency for the processing or packaging of Grade A milk.
- (16) "Pool Plant" or "Pool Cooperative" except as provided in (16)(b) of this Rule, means:
- (a) Any regulated plant or cooperative association that is operated as a licensed handler in North Carolina.
- (b) The term "pool plant" shall not mean any of the following plants:
- (i) A producer-handler plant;
- (ii) a governmental agency plant;
- (iii) A plant located outside the State of North Carolina; or,
- (iv) A marketing agent which is not a cooperative association, as defined in (13) of this Rule and licensed under Rule .0503(g)(9).
- (17) "Regulated and Unregulated Nonpool Plants and Handlers" shall be defined as follows:
- (a) "Regulated Nonpool Plant and Handler" means any milk or filled milk receiving or processing plant that is licensed to distribute milk in North Carolina, but is exempt from the pooling provisions of these Rules. The following categories of regulated nonpool plants are further defined as follows:
- (i) "Out of state distributor" means a licensed distributor whose plant is located outside North Carolina;
- (ii) A "producer-handler" as defined in Paragraph (19) of this Rule;
- (iii) A "marketing agent" as defined in Rule .0503(g)(9) and Paragraph (13) of this Rule; and
- (iv) A "governmental agency plant" means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area.
- (b) "Unregulated Nonpool Plant and Handler" means any milk receiving or processing plant not required to be licensed to distribute milk in North Carolina and which is engaged solely in the manufacture of non-grade A products.

- (18) "Handler" means:
- (a) a distributor or subdistributor as defined in Article 28B, Chapter 106-266.6(4) of the General Statutes of North Carolina;
  - (b) a person who operates one or more regulated or unregulated plants;
  - (c) a cooperative association which markets the milk of its member producers for the account of the association pursuant to Paragraphs (21), (22) and (23) of this Rule;
  - (d) a producer-handler.
- (19) "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 and pool plants;
  - (c) whose receipts of fluid milk products from pool plants does 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;
  - (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.
- (20) "Constructively Received" is defined as occurring when North Carolina baseholder milk which by contractual obligation would ordinarily be received by one handler, but which by mutual agreement of the parties, in order to result in a savings of hauling or other charges is not physically received by such handler, but is diverted directly to and actually received by another handler which is a party to said agreement. Under this definition, the milk thus shipped would be deemed to be constructively received by the first handler although physically received by the second handler.
- (21) "Baseholding Producer":
- (a) Except as provided in (b) of this Paragraph, "baseholding producer" means a producer who holds a North Carolina Milk Commission base that has been established or acquired in accordance with Rule .0516 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 Paragraph (18) of this Rule; or
    - (iii) diverted from a pool plant in accordance with Paragraph (22) of this Rule.
  - (b) "Baseholding Producer" shall not include:
    - (i) a producer-handler as described in Paragraph (19) of this Rule;
    - (ii) a governmental agency operating a plant exempt pursuant to Paragraph (17)(a)(iv) of this Rule; or
    - (iii) a North Carolina producer whose milk is delivered to an unregulated handler or whose milk qualifies for pooling in another pool, provided however, this provision does not eliminate from the North Carolina pool the volume of baseholding milk for a North Carolina plant which is regulated by a federal or another state order.
- (22) "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;
  - (b) received by a regulated handler described in Paragraph (18) 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 for the account of the handler described in Paragraph (18) 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; or
    - (iii) a handler described in Paragraph (18) of this Rule that is not a cooperative as-

sociation may divert for its account any baseholding producer 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 or constructively received at or diverted from pool plants as producer milk of such handler in each month of August through November and January and February.

(c) Described in (a) through (d) of Paragraph (22) which is disposed of by pool plants or pool cooperatives, subject to the following conditions:

(i) That not less than 70 percent of the total quantity of baseholding producer milk is disposed of or sold as Class I milk in the months of September through November and January.

(ii) That not less than 50 percent of the total quantity of baseholding producer milk is disposed of or sold as Class I milk in each of the other months.

(23) "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 volume of milk that does not meet the following requirements:

(i) in any month that the total quantity of base holding producer milk disposed of in Class I by a pool plant or pool cooperative is less than 70 percent in the months of September through November, and January, and less than 50 percent in each of the other months. The volume of nonqualifying base holding producer milk shall be determined in accordance with (ii) of this Paragraph. The volume of base holder producer milk to which the percentage is applicable is the volume physically or constructively received at such plant or diverted from such plant under the provisions of Paragraph (22) of this Rule.

(ii) In any month, when the Class I sales for a pool plant or pool cooperative compared to the volume of base holding producer milk defined above does not meet the 70 percent and 50 percent criteria, the handler shall disqualify a volume of milk and base in order to qualify the remaining milk received at this pool by such handler. When the Class I utilization of a plant or a handler group is less than 70 percent or

50 percent for the respective months, then the volume of Class I is divided by the applicable percentage to determine the volume of milk which will remain in the pool. To determine the amount of base which may remain in the pool computations, make such adjustment in base as required by the procedure as outlined in Rule .0512(a).

(b) Any milk diverted in excess of the limits prescribed in Paragraph (22)(d)(ii) or (iii) of this Rule shall be nonqualifying baseholding producer milk. The diverting handler shall designate the volume of deliveries that shall be nonqualifying baseholding producer milk. If the handler fails to make such designation, then the commission shall make such designation using the procedure outlined in Rule .0512(a).

(c) Any milk produced by a baseholding producer that qualifies for pooling in another pool shall not be included in the North Carolina pool, provided however, this provision does not eliminate from the North Carolina pool the volume of milk for a North Carolina plant which is regulated by a federal or another state order.

(24) "Other source milk" means all skim milk and butterfat contained in or represented by:

(a) receipts by a regulated plant, as defined in Paragraph (15) of this Rule, of packaged fluid milk products and bulk raw milk specified in Rule .0504, from any source other than baseholding producers or other pool plants, described in Paragraph (16) of this Rule;

(b) 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

(c) 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.

Statutory Authority G.S. 106-266.6; 106-266.8(3)(7).

.0503 DISTRIBUTOR LICENSES

(a) No distributor, 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 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 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 new existing distributor~~ to extend the territory of a licensed distributor 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, 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. A person or firm engaged in receiving, pasteurizing, proc-

essing, 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 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. 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, shall be licensed as a restricted general distributor and must hold a license for each county or specified territory in which distribution is to be made.
- (3) Non-processing General Distributor. A person or firm whose principal business is the distribution, to the retail and wholesale trade, milk which is processed by a general distributor under the label of the non-processing general distributor.
- (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; or a person or firm who holds a general distributor's license and also distributes fluid milk products which are processed by another general distributor, 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 will be made.
- (5) Limited Subdistributor. A person or firm who has an agreement or arrangement to purchase from a specified general distributor either at such general distributor'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 of UHT Milk. A person or firm engaged in the processing of ultra high temperature milk as defined in Rule .0501 ~~(8)(e)~~ (9) of this Section for sale to other milk distributors, wholesalers, brokers, or retail outlets for distribution to consumers. A milk distributor, 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. ~~and who can substantiate the volume of the product sold in North Carolina and that such volume has been classified and paid at the North Carolina Class I price as required by Rule .0507(h) of this Section.~~ A milk distributor, wholesaler, broker, or retail outlet purchasing the product for redistribution may be required to file a report with the commission and the processor-distributor from whom the purchases are made when it is necessary in order to identify the volume sold in North Carolina.
- (7) Processor-Distributor of Ultra Pasteurized Milk. A person or firm engaged in the processing of ultra pasteurized milk, as defined in Rule .0501 ~~(8)(f)~~ (10) of this Section, for sale to other milk distributors, wholesalers, brokers, or retail outlets for distribution to consumers. A milk distributor, 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. ~~and who can substantiate the volume of the product sold in North Carolina and that such volume has been classified and paid at the North Carolina Class I price as required by Rule .0507(h) of this Section.~~ A milk distributor, wholesaler, broker, or retail outlet purchasing the product for redistribution may be required to file a report with the commission and the processor-distributor from whom the purchases are made when it is necessary in order to identify the volume sold in North Carolina.
- (8) Cooperative Marketing Association. A business entity engaged in the marketing of its owner-members' raw milk to other licensed North Carolina distributors.

(9) Marketing Agent. A business entity, which is not a cooperative association, that enters into a contractual agreement with North Carolina base holding producers to market the milk of such producers to other licensed North Carolina distributors.

~~(h) Licenses issued to distributors located in other states shall be issued subject to their agreeing to follow the policies of the commission which are applicable to distributors located in North Carolina.~~

*Statutory Authority G.S. 106-266.8(7)(11); 106-266.9; 106-266.10.*

**.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, lowfat 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, filled milk (milk portion only), reconstituted milk, and 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 .0506(e)~~ Rule .0508 of this Section. Any excessive loss computed which is to be paid as Class I to producers shall be paid in ~~the producer payroll~~ 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.

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(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 North Carolina 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) (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 .0506(e)(1) Rule .0508(a) 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.

(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. The classified use of the milk shall be reported to the shipper by the fourth day of the following month and payment made by the ninth day of the following month.

(2) Transfer or diversion of bulk milk from producers or associations of producers from a pool plant to a nonpool 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).

(3) Transfers of packaged milk from a pool plant to another pool plant or nonpool plant shall be classified and priced by the packaging distributor according to the commission announced prices as determined in accordance with Rule .0507.

(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.

(f) Weight Factors. 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

Butterfat Content

Weight Per Quart

<u>(3.25% min.)</u>	<u>2.15</u>
<u>(1-2%)</u>	<u>2.155</u>
<u>(.5-1%)</u>	<u>2.16</u>
<u>(0-.99%)</u>	<u>2.16</u>
<u>(0-.99%)</u>	<u>2.16</u>
<u>(3.25%)</u>	<u>2.00</u>
<u>(1-2%)</u>	<u>2.00</u>
<u>(4.0%)</u>	<u>2.00</u>
<u>(6% and above)</u>	<u>1.95</u>
<u>(10-17%)</u>	<u>2.13</u>
<u>(18-28%)</u>	<u>2.11</u>
<u>(29-32%)</u>	<u>2.09</u>
<u>(33-39%)</u>	<u>2.08</u>
<u>(40-49%)</u>	<u>2.06</u>

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 nonmilk ingredients provided the difference is substantiated by filing an attachment to the report.

*Statutory Authority G.S. 106-266.8(3)(7)(10).*

**.0505 RULES OF CLASSIFICATION  
(REPEALED)**

*Statutory Authority G.S. 106-266.8(3)(7)(10).*

**.0506 DETERMINATION OF EQUALIZATION  
PAYMENTS**

(a) Each handler shall obtain a supply of milk for its Class I and Class IA fluid sales from North Carolina base holding producers or from associations, handlers or marketing agents which purchase milk from North Carolina baseholding producers. In the event that a handler purchases other source milk, the commission shall determine in the manner outlined below whether and in what amount a handler shall make an equalization payment to the producer settlement fund.

(1) A handler who is not receiving a sufficient volume of fluid milk from North Carolina base holding producers or associations, handlers or marketing agents purchasing milk from North Carolina base holding producers, to meet its Class I and Class IA needs shall notify the commission by telephone of its requirements for additional milk.

(2) Upon receipt of such notice the commission shall determine if milk is available from North Carolina base holding producers, handlers, producer associations or marketing agents purchasing milk from North Carolina base holding producers for delivery to such handler. In making this determination, the commission shall:

(A) Contact handlers, producer associations and marketing agents known or considered likely to have milk available from North Carolina baseholding producers, to determine whether such handlers, producer associations or marketing agents are willing to, and can reasonably supply the additional milk requirements of the handlers not receiving a sufficient volume for Class I or Class IA needs from North Carolina baseholding producers.

(B) Consider the supply requirements of the sources contacted, the location of the available milk and the economic feasibility of transferring the available milk.

(3) Should the commission be unable to locate a supply of North Carolina base holding producer milk to cover the additional needs of a handler for its Class I and Class IA sales, the commission shall issue a waiver for the volume requested within 36 hours following receipt of the notice of need.

(4) Should a handler fail to notify the commission of its need for additional milk in accordance with (a)(1) of this Rule, or if the commission determines that milk is available from North Carolina producers and declines to issue a waiver, then such handler shall pay into an equalization fund on the volume of milk not covered by purchases from North Carolina baseholding sources and for which a waiver was not obtained in accordance with the following procedure:

(A) On the volume of fluid milk purchased from other sources for Class I and Class IA sales, the handler shall pay into the producer settlement fund the difference between the announced Class I or Class IA price, as applicable, and the weighted average or blend price for North Carolina baseholding producers' milk as computed in accordance with the pooling computations, multiplied by the volume of Class I and Class IA sales not supplied by milk purchased from sources supplied by North Carolina baseholding producers.

(B) On the volume of milk reconstituted for Class I and Class IA sales, the handler shall pay into the producer settlement fund the difference between the Class I or Class IA price, as applicable, and the Class II price multiplied by the column of Class I and Class IA sales not supplied by milk purchased from sources supplied by North Carolina baseholding producers.

(b) All equalization payments shall be remitted by the handlers to the commission for deposit in the producer settlement fund within ten days after notification from the commission of the amount due and shall be included in the pool computations as outlined in Rule .0511(a)(4).

*Statutory Authority G.S. 106-266.8(3)(7).*

**.0507 MINIMUM CLASS PRICES AND  
BUTTERFAT DIFFERENTIALS**

(a) Class I price for North Carolina Sales. Effective August 4, 1986, the minimum Class I price to be ~~paid North Carolina producers and/or associations of producers 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 five

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dollars (\$5.00) 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 Proce-

dures 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 ~~distributor 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 fifty-one percent 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 by the Virginia Milk Commission for milk containing three and one-half percent 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 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) (3) 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.
- ~~(5) (4) Adjustment.~~ The prices for milk sold in other states or markets shall be adjusted ~~downward~~ for the purposes of auditing to the price agreed upon and announced by the cooperative groups of producers selling milk in the markets affected.
- (c) Class IA Price. The price to be paid North Carolina producers or North Carolina associ-

~~ations 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 ~~Rule .0505(d) Rule .0504(d)(1)~~ of this Section. Further, the Executive Secretary is authorized to announce the minimum prices to be paid ~~processors 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 made to producers, the Class IA payment is to 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 paid producers accounted to the pool for the product pounds classified as Class II shall be a weighted average price per hundredweight of the prices which are computed in accordance with the following provisions: 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.~~

~~(1) The price to be applied for the product pounds of bulk milk sold as Class II to another Grade A fluid milk plant shall be the price received. However, the selling plant may make such deduction as provided for in .0505(d)(1) and (3) of this Section but in no case shall the resulting price be less than the Class II price announced monthly by the Milk Commission.~~

~~(2) The price to be applied to the product pounds of bulk milk sold to a company operating a non-grade A plant (hereinafter referred to as a manufacturing plant) for the manufacturing of by-products only, shall be the price received; provided, a~~

maximum receiving and handling allowance of ten cents (\$0.10) per hundredweight may be deducted when such milk is actually received in the plant of the shipper. No receiving or handling allowance shall be deducted from the price received on sales to a manufacturing plant when such milk is diverted directly from farm routes to a manufacturing plant. Further, no receiving or handling allowance shall be permitted on the sale or transfer of Class II milk between plants of the same company. Further, on the sale or transfer of milk to a manufacturing plant the actual additional transportation costs may be applied to such sales. However, in computing the necessary additional transportation, a distributor 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.

On shipments of milk from a North Carolina producer pool to a plant located outside the State of North Carolina, the selling distributor shall classify as Class I all such shipments except when the shipping distributor obtains from the out-of-state purchaser a certification as to the actual use and disposition of such milk and when such certification is filed with the Milk Commission monthly report.

- (3) The price to be applied for the remaining product pounds in Class II shall be the three and one-half percent price determined by computing the simple average of the Minnesota-Wisconsin price series for manufacturing milk and a butter-powder price series determined in accordance with the procedure specified in this Subsection:

(A) The price to be used for the Minnesota-Wisconsin price series shall be the three and one-half percent price announced by the United States Department of Agriculture, Statistical Reporting Service, Crop Reporting Board, for the average price received by farmers for manufacturing milk in the Minnesota-Wisconsin area for the previous calendar month.

(B) The price to be used for the butter-powder price series shall be determined in accordance with the following procedure:

- (i) Multiply by 4.2 the average of the Chicago butter price for Grade A (92 score) bulk creamery butter as reported

by the United States Department of Agriculture in the previous month, using the mid-point of any range as one price.

- (ii) Multiply by 8.2 the weighted average price per pound for earload lots of non-fat dry milk solids (spray process), for human consumption f.o.b. manufacturing plants in the Chicago area, as published by the United States Department of Agriculture for the monthly period ending on the 25th of the preceding month.

- (iii) From the sum of the result of Paragraphs (i) and (ii) of this Subsection deduct a differential of one dollar and twenty-five cents (\$1.25). (This differential shall be adjusted in June of each year based upon the annual percent of change in the Producer Price Index (formerly Wholesale Price Index), as computed and published by the United States Department of Labor for March.)

The adjustment shall be computed and announced in June each year and shall apply to the price announced for July each year. The first adjustment under this Rule shall apply to the price announced for July 1985.

- (C) Compute a simple average of the Minnesota-Wisconsin price series and the butter-powder price series rounded to the nearest cent (.005 shall be rounded to the next full cent); based upon the information from the sources specified and in accordance with the procedure outlined. The three and one-half percent price thus computed shall be announced by the 15th of the month and shall apply to deliveries made during the next succeeding month or accounting period.

(4) (c) 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 (\$0.001) (0.0005 shall be rounded to the next 1/10 cent).

In making payments 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 distributor handler shall pay breed producers a minimum of twenty cents (\$0.20) 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) Minimum Price to be Paid by a Distributor for Class IA Milk. The minimum prices to be paid by the purchasing distributor to other distributors 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 is located.

(i) Minimum Price for Milk Sold in Established Marketing Areas. Each distributor 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.

Statutory Authority G.S. 106-266.8(7)(10).

.0508 PLANT SHRINKAGE

(a) To compute the plant loss or shrinkage for each month 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 condensed milk 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 in-

ventories; milk solids in reconstitution; the weight of any unusual loss which is allowable as provided for in Paragraph (b) of this Rule; transfer 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.

*Statutory Authority G.S. 106-266.8(3)(7).*

**.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 .0506, .0511, .0512 and .0513 of this Section from which the commission shall make all payments pursuant to Rules .0506, .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.

*Statutory Authority G.S. 106-266.8(3)(7).*

**.0510 HANDLER AND PRODUCER PAYROLL REPORTS**

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

- (1) The base of each qualified base holder in accordance with Rule .0516(c)(2) and the 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) The transfer and diversion of all bulk milk and milk products not reported in Paragraph (a)(3) including such diverted milk designated by the handler under the provisions of Rule .0501(23)(b) and the value received for this volume.
- (5) The handling and hauling charges incurred in the movement of bulk milk from one pool plant to another pool plant subject to the provisions of Rule .0513(f).
- (6) Inventories at the beginning and end of the month of all fluid milk products and other products specified in this Rule, when so requested.

(b) On or before the sixth day of the following month, each producer association shall report to

the commission on the forms furnished by the commission, the following information:

- (1) The base for each qualified base holder in accordance with Rule .0516(e)(2) and the 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 including such diverted milk designated by the handler under the provisions of Rule .0501(23)(b) and the value received for such milk.
  - (3) The handling and hauling charges incurred from one pool producer association to another pool plant or pool producer association subject to the provisions of Rule .0513(f).
- (c) On or before the fifth 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 day of the following month.
- (d) On or before the eighteenth day of the following 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.

*Statutory Authority G.S. 106-266.8(3), (5), (7), (12), (14).*

**.0511 UNIFORM CLASS I AND CLASS II PRICES: POOL OBLIGATION AND BLEND PRICE**

(a) After receiving the preliminary utilization reports filed by the handlers and associations of producers under the provisions of Rule .0510 of this Section, the commission shall determine the volume of qualifying North Carolina baseholding producer milk to remain in the pool, as defined by Rule .0501(22) and (23) of this Section. (illustration - 70% month. Production of 1,000,000 pounds. Class I 600,000 pounds. Divide 600,000 pounds of Class I by .70 to determine the volume of milk to remain in the pool. Volume of milk to remain in the pool would be 857,142 pounds.)

(b) After determining the volume of qualifying North Carolina baseholding producer milk, the commission shall determine uniform prices for Class I and Class II milk containing 3.5 percent butterfat as follows:

- (1) Calculate the value of qualifying North Carolina baseholding milk classified as Class I and IA for each handler. For purposes of these calculations, Class I and IA shall be combined in accordance with the provisions of Rule .0507(c).
- (2) Calculate the value of qualifying North Carolina baseholding producer milk classified as Class II milk for each handler.
- (3) For any handler which is also regulated under a federal milk marketing order, or another state 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, or any amount above the North Carolina pool value for any difference in the Class I and Class II allocation paid under the requirements of a state order, 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 or any amount received above the North Carolina pool value for any difference in the Class I and Class II allocation paid under the requirements of a state order.
- (4) For each handler, add to or deduct from each respective class any amount owed to, or credit due from the North Carolina pool for previous months resulting from any corrections or adjustments or amounts owed for equalization payments under Rule .0506.
- (5) For each handler, deduct from the value for the respective classes any handling or hauling charges incurred by a handler or cooperative in transferring or diverting Class I, IA or Class II bulk milk from one pool plant to another. The handling and hauling charges applicable are those outlined in Rule .0513(f).
- (6) Combine the values in Paragraphs (a)(1) through (a)(5) of this Rule to determine the Class I value, the Class II value and the total pool obligation for each handler.
- (7) Aggregate the values and volumes for Class I and Class II for all qualifying North Carolina producer milk for all pool handlers to determine the total pool volume and value for Class I and Class II milk.
- (8) 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.
- (9) Divide the value determined for Class I and Class II for all qualifying North Carolina baseholding producer 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.
- (10) Subtract not less than four cents (\$.04) per hundredweight but not more than five cents (\$.05) per hundredweight from the average price per hundredweight for Class I and Class II milk determined in Paragraph (a)(9) of this Rule as a reserve for the producer settlement fund.
  - (c) The results of the computations in (b) 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 qualifying North Carolina baseholding producer milk as allocated and determined in accordance with the procedures outlined in Rules .0511, .0512 and .0513 of this Section.
  - (d) To determine the pool blend price or weighted average price for calculating an obligation to the pool for equalization payments under Rule .0506, divide the combined value by the combined volumes as determined in Paragraph (c) of this Rule.

*Statutory Authority G.S. 106-266.8(3)(7)(10).*

**.0512 COMPUTATION OF SETTLEMENT FUND AMOUNTS**

(a) After the commission has determined the volume of North Carolina baseholding producer milk to remain in the pool under the provisions of Rule .0511(a), the commission shall determine for each handler or association the amount of base which will be used in the pool settlement computations by dividing the volume of qualifying North Carolina baseholding producer milk by the total qualifying North Carolina bases in accordance with Rule .0516(e)(2) to determine the percentage of base to remain in the pool computations. (illustration - Qualifying North Carolina baseholding producer volume = 857,142 lbs. from Illustration in Rule .0511(a). Base = 1,000,000 pounds. Divide 857,142 pounds of qualifying North Carolina baseholding producer volume by 1,000,000 lbs. of base = 85.7142%. To determine the amount of qualifying North Carolina producer base to remain in the pool, multiply 1,000,000 pounds x .857142 = 857,142 lbs. of base to remain in the pool.)

(b) After making the calculations required by Rule .0501(23) in accordance with Paragraph (a) of this Rule, determine the volumes of milk utilized in Class I and the volumes utilized in Class II for all handlers as outlined in Rule .0511. The Class I and Class II volumes utilized shall be allocated among all handlers or associations of producers using the following procedure:

- (1) Aggregate the total bases for each handler or association of producers determined in accordance with Paragraph (a) of this Rule and Rule .0516(e)(2); the total being the qualifying base for such month.
- (2) 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.
- (3) Subtract the Class I volume from the total qualifying North Carolina baseholding producer volume purchased by each handler to determine the Class II volume.

(c) After determining the allocation of Class I and Class II milk allocated to each handler or association, apply the Class I and Class II uniform prices determined in Rule .0511(c) of this Section to these volumes to determine the value of the qualifying North Carolina baseholding producer milk for each handler or association.

(d) The value of qualifying North Carolina baseholding producer milk of each handler or association as determined in (c) of this Rule shall be compared to the value of the pool obligation as computed in Rule .0511(b)(6) 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 association by the ninth day following the end of the month. Such payment shall be made to the commission by the eleventh day following the end of the month.

*Statutory Authority G.S. 106-266.8(3)(7)(10).*

**.0513 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.

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

- (1) The monthly uniform price per hundredweight to be paid producers for milk classified as Class I and Class II allocation.
- (2) A schedule showing the Class I and Class II allocations of the producer receipts and other source milk and the amounts due producers in each Class.
- (3) The monthly blend or average price is determined by Rule .0511(c).

(b) On or before the eleventh day following the end of each month, any handler or association of producers whose net utilization of all baseholding milk on 3.5 percent butterfat basis exceeds the statewide pool blend prices and blend classification, shall make payments to the commission as computed in Rule .0512(d) of this Section.

(c) On or before the thirteenth day following the end of each month, the commission shall pay from the settlement fund to any handler or association of producers an amount that will bring the value of the qualifying North Carolina

baseholding producer milk of that handler or association of producers up to the uniform value of the statewide pool.

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

(e) After notification to the handler of the uniform Class II price and prior to payment to producers, adjustments shall be made in the value due for Class II by determining a revised Class II price to reflect any differences between the announced Class II price and the price received for milk sold to:

- (1) a nongrade A plant for use in the manufacture of nongrade A products,
- (2) a Grade A manufacturing plant, which does not process fluid milk, for use in the manufacture of butter, cheese, powder or other manufactured products.

No adjustment shall be made from the announced Class II price for any milk sold or transferred to any plant which also processes fluid milk which will result in a price less than the announced Class II price.

The handling and hauling charges permitted shall be determined in accordance with Rule .0513(f) of this Rule.

(f) Certain handling and hauling charges on the sale or transfer of bulk milk to a pool or nonpool plant may be deducted by the handler or association of 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 or a Grade A nonpool 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 nongrade A plant (herein referred to as a manufacturing plant) for the manufacturing of nongrade A products only, or to a Grade A manufacturing plant, which does not process fluid milk, for use in the manufacturing of butter, cheese, powder or other manufactured products. 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.

## PROPOSED RULES

(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 fifteenth 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 Paragraphs (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 a 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 the 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 assign-

ments 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, if provided, 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 hundredweight.

Deductions defined in this Paragraph are not permitted on the volume of North Carolina baseholding producer milk sold as Class I or IA in packaged form in out of state markets. Deductions applicable to such sales are defined in Paragraph (m) of this Rule.

(m) Deductions or credits permitted for out of state packaged sales. The commission, after considering the service charges in effect in such state or federal order area shall also announce a maximum deduction or credit which may be allowed.

(n) Prior to receiving a reimbursement under (l) of this Rule from an association of producers, or a business entity marketing milk on behalf of producers, a written contract containing the provisions specified in (o) 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 (o) 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.

(o) The contract required in (n) 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 (producer business entity marketing milk on behalf of producers); and that (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) field services - cents per hundredweight,
- (B) testing for butterfat, bacteria and antibiotics - cents per hundredweight,
- (C) preparing and compiling receipts, payrolls, filing reports and preparing checks - cents per hundredweight,
- (D) cost savings to an association or an individual producer resulting from the receiving of milk on the basis of producer weights and tests - cents per hundredweight,
- (E) cost savings to an association or an individual producer resulting from receiving milk on a uniform basis - 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 4 NCAC 7 .0512(1)."

Statutory Authority: G.S. 106-266.8(3)(7)(10); 106-266.12.

.0514 COMPUTATION OF MILK IN EACH CLASS

(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
	<u>32,000</u> (28,000)	<u>36,000</u>

Class I	Class IA	Class II
15,536	1,071	1,393
8,286	572	142
5,178	257	465
3,000		
<u>32,000</u> (20,000)	<u>2,000</u>	<u>2,000</u>
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 equals 96.97%

This percent should be applied to each producer's base; however, we find that producer No. 4 did not deliver 96.97% of his base... (1,848 pounds) which he is entitled to in Class I. Therefore, producer No. 4 is given all of his milk at Class I and a new percentage must be obtained so that the 1,848 pounds (1,848 - 3,000 equals 1,848) of Class I milk may be divided between the other producers. This is obtained by subtracting the pounds No. 4 is given in Class I from the total Class I sales. The base of No. 4 is subtracted from the total bases (Example: 33,000 - 5,000 equals 28,000).

A new percentage is obtained by dividing the new Class I total by the new base total (Example: 20,000 divided by 28,000 equals 103.57%). This percent will then apply to each producer's base (except those eliminated, as was producer No. 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:

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1	15,000	×	103.57	equals	15,536	pounds
2	8,000	×	103.57%	equals	8,286	pounds
3	5,000	×	103.57%	equals	5,178	pounds
4	5,000	×	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 equals 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 No. 4.

1	15,000	×	7.14%	equals	1,071	pounds
2	8,000	×	7.14%	equals	572	pounds
3	5,000	×	7.14%	equals	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	Weight Per Quart
Milk	2.15
Creamed Buttermilk(whole)	2.15
Flavored Milk or Milk Drink(net)	2.00
Skim Milk	2.16
Buttermilk	2.16

Product	Weight Per Quart
Cream (10-17%)	2.13
Cream (18-21%)	2.11
Cream (22-32%)	2.09
Cream (33-39%)	2.08
Cream (40-42%)	2.06

To compute the product pounds of eggnog, 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 re-

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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 bascholding producer deliveries (including 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
	<u>33,000</u>	<u>36,000</u>
	(28,000)	

Class I	Class II
<u>15,536</u>	<u>2,464</u>
8,286	714

5,178	822
<u>3,000</u>	
32,000	<u>4,000</u>
(29,000)	
96.97%	
<u>103.57%</u>	

To obtain the Class I usage percent, divide total Class I sales by total base.

Example:

$$32,000 \text{ divided by } 33,000 = 96.97\%$$

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	pounds
2	8,000	x	103.57%	=	8,285	pounds
3	5,000	x	103.57%	=	5,178	pounds
4	5,000	x	determined		3,000	pounds

Total Class I                      32,000 pounds

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

(b) Exception. The method of allocating classification outlined in (a) of this Rule shall apply to all producers, except that a cooperative association of producers, may petition the Milk Commission for approval of a different method of allocating classification to its members. Such petition shall include a complete copy of the method to be used and must demonstrate that all members of the association are treated equitably according to the plan or method of distribution applicable to such association.

Statutory Authority G.S. 106-266.8(3)(7)(10).

.0515 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.

Statutory Authority G.S. 106-266.8(3)(7).

.0516 USE AND ESTABLISHMENT OF CLASS I 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 115 percent of the specified percentage of the base for the previous year, the base history for all three years shall be adjusted to 115 percent of 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.

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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.

(e) **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 20th 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 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 acquire. 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 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.

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.

(a) Milk supplied by North Carolina base holding producers shall at all times be included in the highest classification before milk received from other sources is classified. No Class I or

Class IA milk shall be purchased, received, handled or obtained from any sources other than North Carolina base holders without obligation to pay equalization payments unless it is established that North Carolina base holding milk is not available.

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

- (1) Beginning Base. Effective (date to be the effective date of pooling regulations), 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 shipping on that day or the average of his daily production for the base months in effect for the plant or association to which such producer ships, whichever is greater. The base for a producer who has inactive base status, shall be the base held on (effective date of pooling regulations). The first recomputation of base after the effective date of the pooling regulations shall be January 1, 1989.
- (2) Effective (date to be effective date of pooling regulations), for each producer who regularly supplies milk or has a contractual obligation to supply milk to a North Carolina plant who does not hold a North Carolina base on such date, a base shall be calculated for pooling purposes for such producer regardless of where he lives, based on the average production for the four previous months, or September through December 1987.
- (3) For any producer who enters the North Carolina market for pooling purposes after (date to be effective date of pooling regulations), in order to qualify as a pool participant under Rule .0501(22), such producer must purchase base from an existing producer, unless such producer meets the criteria for a new producer under (b)(1) of this Rule.
- (4) Base Building Period. The base building period shall be September through December each year.
- (5) Determination of Average Daily Production. To compute the average daily production, 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

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but applies only to established base holding producers who are off the market for a period of time during the base building period.

The average daily production 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 not less than 91 days.

(6) 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 of the previous calendar year plus 12%.

(7) Determination of Base for Subsequent Years. For 1989 and subsequent years, the total base requirements shall be determined and this total base requirement shall be allocated to existing active base holders as a percentage of the previous years base provided the new base cannot exceed the average production for such producer during the base forming period. 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. The maximum loss provision contained in Paragraph (h)(1) of this Rule applies after the computations are made for individual producers. In the event of an increase, the maximum loss applies to the previous year's base. In the event of a decrease, the maximum loss applies after the decrease has been computed for an individual producer.

(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.

(c) 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 in this Paragraph shall be calculated under the following plan:

- First Month - No Base
- Second Month - 25% of the daily average of first month's deliveries
- Third Month - 50% of the daily average of the first and second months' deliveries
- Fourth Month - 75% of the daily average of the first, second and third months' deliveries
- Fifth Month - 100% of the daily average of the first four months' deliveries

The daily average shall be computed by dividing the deliveries by the corresponding number of days of production. 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 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 has less than one percent ownership, either directly or indirectly nor has been an officer or director of a corporation, nor has had a debtor of 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 (g)(4) of this Rule.

(d) Use of Base or Base Plan.

(1) The producer base plan as defined in this Rule shall be the base plan used for pooling purposes and shall be used by all handlers, associations or marketing agents in settlement with producers. Any association which wishes to settle with producers on bases computed under an association plan shall petition the commission for approval to settle with producers under a different base plan and shall file such plan and computations with the commission.

(2) Producers agreeing to have their milk marketed by a marketing agent or who markets as individual producers to a handler shall participate in the North Carolina pool as individual producers and the base in effect or the base as adjusted in accordance with (c) of this Rule shall be used when making settlement with such producers.

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

(1) Adjustment of Base during Payment Period. When a producer is off the market during a payment period because the milk of such producer does not meet the requirements of the local and state laws and regulations or fails to meet the handlers prepublished quality requirements, the base of 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 the producer for such payment period.

(2) Use of Average Daily Base for Payment purposes. All handlers or associations of producers shall use the daily average base in effect for individual producers by multiplying this average times the number of days milk is included in a monthly payment period to determine the base to be used for each producer for the allocation of classes during such payment period. However, should the monthly base of any producer be greater than production, the monthly base shall be reduced to equal the production for that producer prior to reporting his base to the pool for pool computations for that month.

(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 such producer transfers to another pool handler or association of producers. A producer who transfers from one pool handler or association of producers to another pool 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 is not a member of an association and who has established a base as an independent producer shall be entitled to continue to ship all his milk to the handler 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 and meets the handlers prepublished quality requirements.

(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 six 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 Paragraph.

If the base is transferred during this six 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.

Should a producer fail to transfer his base within the allotted time, then such base shall become null and void unless it is substantiated by written authorization from the courts that such base is involved in an estate settlement. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have six months from (date to be effective date of pooling regulations), to transfer base under the provisions of this Paragraph.

The provisions of this Paragraph 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 Paragraph.

- (8) Exception. The provisions outlined in this Paragraph (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 36 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 Paragraph.

(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 ten 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 ten 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 judgement 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.

*Statutory Authority G.S. 106-266.8(3)(7).*

**.0517 PLANT RECORDS AND INSPECTION OF RECORDS**

(a) Books and Records to be Maintained. Each distributor handler, association of producers and marketing agent 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) 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 handlers' or associations of producers' 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 handler's or an association of producers' 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.

Statutory Authority G.S. 106-266.8(5), (7), (12), (14).

**TITLE 10 - DEPARTMENT OF HUMAN RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend regulations cited as 10 NCAC 8C .0901, .1106, and .1204.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 1:30 p.m. on July 18, 1988 at Archdale Building, Hearing Room (ground floor), 512 North Salisbury Street, Raleigh, North Carolina.

**Comment Procedures:** Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral comments (no more than ten minutes for oral) on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.

**CHAPTER 8 - HEALTH: PERSONAL HEALTH**

**SUBCHAPTER 8C - NUTRITION AND DIETARY SERVICES**

**SECTION .0900 - WIC PROGRAM FOOD PACKAGE**

**.0901 ALLOWABLE FOODS**

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, food and nutrition service:

- (3) eggs other than grade A large or extra large fresh eggs;
- (8) all formulas other than standard milk-based iron fortified infant formulas, unless the WIC program contracts for a specific formula that will be listed on the WIC food instrument, or unless a physician prescribes the a formula and documents the presence of a specific set of medical conditions condition, fulfilling WIC program requirements for provision of the reason for the specific formula prescribed, and the duration of its use; The conditions which must be met to allow use of each type of formula shall be set forth in the North Carolina WIC Program Manual;

Statutory Authority G.S. 130A-361.

**SECTION .1100 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM**

**.1106 AUTHORIZED WIC VENDORS**

(b) In order to participate in the WIC program, the vendor shall:

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- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current prices, or less than the current prices, for the eligible food items provided and shall not charge or collect sales taxes for the eligible items provided;
- (16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods ~~must~~ shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

Food Item  
Milk

Cheese  
Cereals

Eggs

Juices

Dried Peas  
and Beans  
Infant  
Fruit Juice  
Infant  
Cereal

Infant  
Formula

Type of Inventory  
Whole fluid: gallon  
and half gallon

-and-

Skim/lowfat fluid:  
gallon or half gallon  
Nonfat dry: quart  
package

-or-

Evaporated: 12 oz.  
can  
2 types  
4 types (minimum  
box size 7 oz.)  
Grade A, large or  
extra-large: white  
or brown  
Orange juice must be  
available in 2 types.  
A second flavor must  
be available in 1  
type. The types are:  
12 oz. frozen, 46 oz.  
can, 64 oz. container

2 types  
2 juices; 4.2 oz.  
jars  
2 cereal grains;  
8-oz. boxes (one  
must be rice)

2 types;  
or 1 type contracted  
for by the WIC program  
and designated on  
the food instrument;  
13-oz. concentrate

Quantities Required

Total of 6 gallons  
fluid milk

Total of 5 quarts  
when reconstituted

Total of 6 pounds  
Total of 12 boxes

6 dozen

6 of each type  
in stock

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3 one-pound bags  
30 jars  
6 boxes  
62 cans

For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac Special Care 24, Similac 60/40, Similac (Low-Iron), Enfamil (Low-Iron), SMA Low Iron, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, and Enfamil Premature Formula. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.

(27) Not be employed, by the state or local WIC program or have a spouse, child, or parent or sibling who is employed by the state or local WIC program, and not have an employee who is employed, or has a spouse, child, parent or sibling who is employed by the state or local WIC program. For purposes of the preceding sentence, the term "vendor" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a ten percent interest in the partnership, corporation, or other legal entity.

(29) Not charge or collect sales taxes for the eligible items provided.

(c) An authorized WIC vendor may be disqualified from the WIC program for violation of 10 NCAC 8C .1106(b) or violation of any other state and federal WIC program rules for a period not to exceed three years. An authorized WIC vendor shall be disqualified from the WIC Program upon disqualification from another USDA, FNS Program for a period not to exceed that of the other disqualification. The authorized WIC vendor shall be given 45 days written notice of any adverse action which affects his participation in the WIC program. The vendor appeals procedure shall be in accordance with 10 NCAC 8C .1200. When a vendor commits a violation of the WIC program rules, he will be assessed sanction points as set forth below:

- (1) 2.5 points; stocking WIC approved foods outside of manufacturer's expiration date;
- (2) 5 points:
  - (A) failure to attend annual vendor training;
  - (B) failure to submit price reports twice a year or within seven days of request by agency;
  - (C) requiring participants to purchase specific brands when more than one WIC-approved brand is available;
  - (D) providing unauthorized foods (as listed in the vendor agreement);
  - (E) allowing substitutions for foods listed on WIC food instrument(s);
  - (F) failure to stock minimum inventory.
- (3) 7.5 points:
  - (A) failure to properly redeem (e.g., not completing date and purchase price on WIC food instrument(s) before obtaining participant's signature);
  - (B) discrimination (separate WIC lines, denying trading stamps, etc.);
  - (C) issuing rainchecks;
  - (D) requiring cash purchases to redeem WIC food instrument(s);
  - (E) contacting WIC participants in an attempt to recoup funds for food instrument(s).
- (4) 15 points:
  - (A) charging more than current shelf price for WIC-approved foods;
  - (B) charging for foods in excess of those listed on WIC food instrument(s);
  - (C) failure to allow monitoring of store by WIC staff when required;
  - (D) failure to provide WIC food instrument(s) for review when requested;
  - (E) failure to provide store inventory records when requested by WIC staff;
  - (F) nonpayment of a claim made by state agency;
  - (G) sending for payment any food instrument(s) accepted by any other store;
  - (H) intentionally providing false information on vendor records (application, price list, WIC food instrument(s), monitoring forms).
- (5) 20 points:
  - (A) providing cash credit for WIC food instrument(s);
  - (B) providing non-food items or alcoholic beverages for WIC food instrument(s);
  - (C) charging for food not received by the WIC participant.
- (6) Once a vendor accumulates 15 points, he is subject to disqualification. All earned points are retained on the vendor file for a period of one year or until the vendor

is disqualified as a result of those points. If a vendor commits a violation within six months of reauthorization after a disqualification period, ten points in addition to those earned from the violation will be assigned; if after six months, but within one year of the reauthorization date after a disqualification period, five points in addition to those earned from the violation will be assigned.

(7) The period of disqualification is determined by the nature of the violation(s), the number of violations and past disqualifications. The formula used to calculate the vendor's disqualification period is: number of points of the worst offense multiplied by 18 days. Additional points totalling above 15 will be multiplied by 18 days and added to the disqualification period.

(f) Notwithstanding Paragraph (e) of this Rule, an authorized WIC vendor shall be disqualified from the WIC program upon disqualification from another USDA, FNS Program for a period not to exceed that of the other disqualification.

(g) The authorized WIC vendor shall be given 15 days written notice of any adverse action which affects his participation in the WIC program. The vendor appeals procedure shall be in accordance with 10 NCAC 8C .1200.

(h) The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph(b)(23) of this Rule.

(i) North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.

(j) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment for WIC food instruments accepted by a non-authorized WIC vendor, a current WIC vendor agreement need only be signed by the vendor and the state agency. The vendor may request such one-time payment directly from the state agency. The vendor shall sign a statement indicating that he has provided foods as prescribed on the food instrument, charged current shelf prices and verified the identity of the participant. For the purposes of effecting such a

WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any WIC vendor agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.

Statutory Authority G.S. 130A-361.

SECTION .1200 - WIC PROGRAM ADMINISTRATIVE APPEALS

.1204 NOTIFICATION OF THE RIGHT TO AN ADMINISTRATIVE APPEAL

(b) A local WIC agency or potential local WIC agency shall be given 30 60 days notice of any adverse action which affects its participation in the WIC program.

Statutory Authority G.S. 130A-361.

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Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to amend regulations cited as 10 NCAC 10A .2115, .2121, .2122, .2123, .2124, .2126, .2127, .2128, .2129, .2130, .2131, .2132; and repeal regulations cited as 10A .2117, .2120.

The proposed effective date of this action is January 1, 1989.

The public hearing will be conducted at 1:30 p.m. on August 17, 1988 at Archdale Building, Hearing Room (ground floor), 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rules by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3134. Written comments on these rule changes may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on these rule changes may be presented at the public hearing. Notice should be given to Mr. Barkley at least three days prior to the public hearing if you desire to speak.

CHAPTER 10 - HEALTH SERVICES: ENVIRONMENTAL HEALTH

SUBCHAPTER 10A - SANITATION

## PROPOSED RULES

### SECTION .2100 - RULES GOVERNING THE SANITATION AND SAFETY OF MIGRANT HOUSING

#### .2115 PERMITS

(a) A completed application for a permit for migrant housing shall be made to the appropriate local health department at least 30 days prior to the proposed time of occupancy.

(b) No permit to operate migrant housing shall be issued until an inspection of the migrant housing is conducted by the division and it has been determined that the migrant housing is in compliance with all the requirements of these Rules. The inspection will be made within 30 days after receipt of the completed application.

(c) A permit to operate migrant housing will be valid until December 31 of the current calendar year unless it is revoked. ~~or canceled.~~

(d) A permit may be revoked in accordance with G.S. 130A-23 when a violation exists which may be harmful to the health or safety of the migrants. A permit shall be revoked in accordance with G.S. 130A-23 upon receipt of a sanitation classification of disapproved. When a permit has been revoked, the migrant housing operator may apply for a new permit and the division will reinspect the migrant housing within a reasonable time after receipt of the application, but not more than a period of 30 days. No new permit shall be issued until the migrant housing has been reinspected and found to comply with the rules of this Section.

(e) No person shall occupy or cause to be occupied any migrant housing until a valid permit is posted at the site of the migrant housing. In interpreting this requirement, a permit shall be required when 13 or more migrants are housed on the same tract of land or contiguous tracts of land and the housing is controlled by the same migrant housing operator.

(f) A person whose permit is denied ~~suspended,~~ or revoked may appeal that decision in accordance with G.S. 150B and 10 NCAC 1B.

*Statutory Authority G.S. 130A-239.*

#### .2117 REINSPECTIONS (REPEALED)

*Statutory Authority G.S. 130A-239.*

#### .2120 PLAN REVIEW (REPEALED)

*Statutory Authority G.S. 130A-239.*

#### .2121 SITE

(a) ~~All sites used for migrant housing shall be adequately drained. The housing shall be located so that drainage from and through the housing~~

~~area will not endanger any domestic or public water supply or interfere with the proper functioning of sanitary sewage systems.~~ All sites shall be graded and ditched, if needed, in order to render them reasonably free from depressions in which water may collect and become a health hazard.

(b) The grounds and open areas surrounding the buildings shall be maintained in a clean and sanitary condition free from rubbish, debris, waste paper, garbage, refuse, and other solid or liquid waste. ~~by the migrant housing operator, crew leader, and migrants.~~

(c) Migrant housing buildings in which food is prepared and served or where sleeping quarters are located shall be at least 300 feet from any livestock quartering areas under the migrant housing operator's control.

*Statutory Authority G.S. 130A-239.*

#### .2122 BUILDINGS

(a) Every building shall be constructed in a manner which will provide protection against the elements.

(b) Excluding closet floor space, each ~~Each~~ room used for sleeping purposes shall contain at least 50 square feet of floor space for each occupant except for children two years of age or younger sleeping in the same room with their parent or parents.

(c) At least a seven foot ceiling shall be provided in all buildings except manufactured housing. Except in manufactured housing, no floor space where the ceiling height is less than seven feet shall be counted towards minimum square footage requirements for rooms used for sleeping purposes.

(d) Beds, cots, or bunks, and suitable storage facilities, such as wall lockers for clothing and personal articles, for each occupant, shall be provided in every room used for sleeping purposes. Such beds or similar facilities shall be spaced not closer than 36 inches, both laterally and end to end, and shall be elevated at least 12 inches from the floor. If double-deck bunks are used, they shall be spaced not less than 48 inches, both laterally and end to end. The minimum clear space between the lower and upper bunk shall be not less than 27 inches. Triple-deck bunks are prohibited. A bed, cot, or bunk for each occupant shall be provided in a room used for sleeping purposes.

(e) The floors of each building shall be constructed of wood, concrete, or other suitable material. Floors shall be of smooth and tight construction. The walls and ceilings shall be of durable construction, and the floors, walls, and

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ceilings shall be kept clean and in good repair. ~~by the migrant housing operator, crew leader, and the migrants.~~

(f) Wooden floors and floors of fabricated material shall be elevated at all points to prevent dampness and to permit free circulation of air.

(g) ~~Each room in a migrant~~ Migrant housing building shall be provided with screened windows the total area of which shall be not less than one-tenth of the floor area ~~in~~ of each room, excluding closet space. A window shall be an opening to the outside, ~~excluding~~ including doors provided with screens, that can be closed to protect against the elements. At least one-half of each window shall be so constructed that it can be opened for purposes of ventilation. Automatic closing doors may be used instead of screen doors.

~~(h) All exterior openings, excluding openings in privy buildings, shall be effectively screened with 16 mesh material. All screen doors shall be equipped with self closing devices.~~

~~(i) (h) If migrant housing is used during cold weather, heating equipment which maintains a temperature of not less than 65 degrees Fahrenheit in all buildings, excluding privies, shall be provided. Migrant housing operated only between May 1 and September 15 shall be exempt from this requirement. Migrant housing shall be provided with functional heating equipment. To determine the adequacy of the heating equipment, the ratio of the BTU rating of the heating equipment to the total cubic feet of each building shall be no less than ten BTU's per cubic foot or the heating system shall be certified as adequate by a building inspector or a licensed heating contractor or engineer. The heating equipment shall be in place or in storage on the date the permit is issued. Migrant housing operated only between May 1 and September 15 shall be exempt from the requirements of this Paragraph.~~

~~(j) (i) Smoke detectors and alarm devices shall be provided in each building used for sleeping as follows:~~

- ~~(1) Rooms used for sleeping which open to the outside and which have less than 900 square feet of sleeping area shall be exempt. Rooms used for sleeping which open to the outside and are 900 square feet or larger shall have one smoke detector and alarm device per 900 square feet or fraction thereof.~~
- ~~(2) Where rooms used for sleeping open to a common corridor or hall, smoke detectors and alarm devices shall be located approximately 15 feet from the ends of the~~

hall or corridor and at approximately every additional 30 linear feet of hall or corridor.

- ~~(3) Rooms used for sleeping which do not open to a common corridor or to the outside shall have one smoke detector and alarm device for each 900 square feet of floor space or fraction thereof.~~
- ~~(4) Where rooms used for sleeping open to an adjoining room which is the only means of egress, the adjoining room shall have one smoke detector and alarm device for each 900 square feet of floor space or fraction thereof.~~
- ~~(5) Smoke detectors and alarm devices may be direct wire connected to AC power, fixed plug to AC power, or battery operated.~~
- ~~(6) Smoke detectors and alarm devices shall be properly maintained by the migrant housing operator, crew leader, and migrants.~~
- ~~(7) Smoke detectors and alarm devices shall be located on ceilings or interior walls in accordance with installation instructions.~~

~~(k) (j) At least one fire extinguisher shall be provided in each building used for sleeping. Extinguishers shall be located so that they are accessible and within approximately 100 feet of any part of the building used for sleeping. One fire extinguisher shall be provided in each building used for cooking located within 30 feet of a building used for sleeping. Fire extinguishers provided in a cooking area shall have a minimum rating of 5 BC. Fire extinguishers for areas other than cooking shall have a minimum rating of 2A.~~

~~(l) (k) All two-story buildings shall have a stairway and a fire escape, such as a permanently affixed exterior ladder or second stairway.~~

*Statutory Authority G.S. 130A-239.*

### .2123 WATER SUPPLY

(a) The water supply used for drinking, cooking, bathing, and laundry purposes shall be located, constructed, maintained, and operated in accordance with the Commission for Health Services rules governing water supplies. Copies of 10 NCAC 10A .1700 and 10 NCAC 10D .0600 through .2500 as amended through January 1, 1985, may be obtained from the Division of Health Services, Department of Human Resources, P. O. Box 2091, Raleigh, NC 27602-2091. A sample of water shall be collected by the local sanitarian and submitted to the laboratory section of the division for bacteriological examination. Acceptable laboratory results are required before the permit may be issued.

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(b) A water supply system shall be capable of delivering 35 gallons per person per day as certified by a licensed well driller or engineer.

(c) One or more drinking fountains shall be provided for each 100 occupants or fraction thereof and shall be readily accessible to all buildings. The construction of drinking fountains shall comply with ARI Standard 1010-84. Copies of ARI 1010-84 may be obtained from Air-Conditioning and Refrigeration Institute, 1501 Wilson Boulevard, Arlington, Virginia 22209. The wastewater from water fountains shall be disposed of in an approved, sanitary sewage system. Common drinking cups are prohibited.

(d) A hot-water system shall be provided. The hot-water system shall be sized at no less than one kilowatt or 3,300 BTU's per migrant and no less than ten gallons of storage capacity per migrant.

*Statutory Authority G.S. 130A-239.*

### .2124 TOILET FACILITIES

(a) Each toilet room shall be accessible without any person passing through another sleeping room. Toilet rooms shall have a window not less than six square feet in area, opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings shall be screened with 16-mesh material. No fixture, water closet, chemical toilet, or urinal shall be located in a room used for any purpose other than a toilet or bathing facility. Toilet rooms shall be provided with windows as required in Rule .2122 or shall be provided with mechanical ventilation.

(b) A toilet room or privy shall be located within 200 feet of the door of each sleeping room.

(c) When males and females are housed in a migrant housing facility, separate toilet rooms or privies shall be provided for each sex except where a toilet is provided for a family unit. These separate toilet rooms or privies shall be distinctly marked for "men" and for "women" by signs printed in English and in the native language of the persons occupying the migrant housing, or marked with easily understood pictures or symbols. If the facilities for each sex are in the same building, they shall be separated by solid walls or partitions extending from the floor to the roof or ceiling. The number of water closets or privy seats provided for each sex shall be based on the maximum number of persons of that sex which the migrant housing is designed to house at any one time, in the ratio of one such unit to each 15 or fewer persons.

(d) (c) All plumbing fixtures shall be of an approved type and shall be properly installed.

~~(e) Each toilet room shall be properly lighted.~~

~~(f) (d) Privies and toilet rooms shall be kept in a sanitary condition. It shall be the responsibility of the migrant housing operator, crew leader, and migrants to have the toilet rooms and privies cleaned daily. Toilet paper shall be provided by the migrant housing operator or crew leader, in all toilet rooms and privies.~~

~~(g) (e) All toilet waste shall be disposed of in accordance with Rule .2125 of this Section.~~

*Statutory Authority G.S. 130A-239.*

### .2126 LAUNDRY; HANDWASHING; AND BATHING FACILITIES

(a) Laundry, handwashing, and bathing shower facilities shall be provided ~~in housing which has shared facilities, such as barracks or multi-family buildings, these facilities shall be provided in the following ratio:~~

(1) One handwash basin per seven migrants.

(2) Separate showers shall be required for each sex. One shower head for every 10 or fewer migrants. Shower heads shall be placed at least 32 inches apart with a minimum of seven square feet of floor space per shower head. When males and females are housed in a migrant housing facility, separate showers shall be required for each sex. The number of shower heads provided for each sex shall be based on the maximum number of persons of that sex for which the migrant housing is designed to house at any one time in the ratio of one shower head for each ten or fewer persons. Shower heads shall be placed at least 36 inches apart with a minimum of seven square feet of floor space per shower head.

(3) One laundry sink or clothes washing machine for every 30 or fewer persons.

(b) Floors shall be of smooth finish and shall be impervious to moisture. Where necessary, floor drains shall be provided in all baths, shower rooms, or laundry rooms and toilet rooms to remove wastewater and facilitate cleaning. Floor drains shall be properly located, and the floor shall be graded to drain. The walls and partitions of shower rooms and laundry rooms shall be smooth and impervious to the height of splash. Where laundry, handwashing, and shower facilities are located in a building, floors shall be of smooth finish and shall be impervious to moisture, and walls and partitions shall be smooth and impervious to the height of splash. Where laundry and shower facilities are located in a building, floor drains shall be provided and

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properly located, and the floor shall be graded to drain.

~~(e) An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes. Facilities for heating water to a temperature of 110 degrees Fahrenheit shall be provided.~~

~~(d) (c) Adequate facilities for drying clothes, such as clothes lines, shall be provided and conveniently located.~~

~~(e) (d) All laundry rooms, shower rooms, and service buildings shall be kept clean by the migrant housing operator, the crew leader, and migrants. All laundry, handwashing, and shower facilities shall be kept clean.~~

~~(f) (c) All laundry, handwashing, and bathing shower facility wastewater shall be disposed of consistent with Rule .2125 of this Section.~~

~~(f) Laundry, handwashing, and shower facilities shall be located in a building. Migrant housing operated only between May 1 and September 15 shall be exempt from the requirement of this Paragraph.~~

*Statutory Authority G.S. 130A-239.*

### .2127 LIGHTING AND ELECTRICAL OUTLETS

(a) Each habitable room in migrant housing shall be provided with at least one ceiling-type light fixture and at least one separate floor or wall-type electrical receptacle for each 400 square feet of floor space. Laundry and toilet rooms and rooms where people congregate shall contain at least one ceiling or wall-type light fixture. Light levels in toilet and storage rooms, kitchens, and living quarters shall be adequate. All rooms in migrant housing buildings including hallways, shall be provided with at least one ceiling-type or wall-type fixture, and one floor or wall-type electrical receptacle.

(b) Pathways to outside toilet, bathing, and other facilities shall be adequately lighted during all hours of darkness. Light fixtures shall be provided for lighting outside laundry, handwashing, and shower facilities and shall be provided for lighting pathways to laundry, handwashing, and shower facilities, chemical toilets, and privies.

~~(c) All lights, electrical outlets, and visible wiring shall be maintained in a safe and proper working order.~~

*Statutory Authority G.S. 130A-239.*

### .2128 SOLID WASTE DISPOSAL

(a) Impervious, cleanable container(s) with lid(s), approved by the division, shall be provided for the storage of solid waste.

~~(b) Solid waste containers shall be kept clean by the migrant housing operator, crew leader, and the migrants.~~

~~(c) Solid waste containers shall be emptied when full, but not less than once a week.~~

~~(d) All solid waste shall be disposed of in an approved landfill or by a method approved by the division in accordance with state laws and rules.~~

*Statutory Authority G.S. 130A-239.*

### .2129 KITCHEN AND DINING FACILITIES

~~(a) All food preparation and eating areas provided shall be maintained in a clean and sanitary manner by the migrant housing operator, crew leader, and migrants.~~

~~(b) Where central food service facilities are not operated for pay, stove(s), refrigerator(s), table(s), and sink(s), shall be provided for migrants to use in preparing their own food.~~

~~(c) Where central food service facilities are operated for pay, they shall be operated in accordance with: the following: G.S. Chapter 130A, Article 8, Part 6. However, if food is provided for pay only to persons for periods of a week or longer, then the operation is exempt from the requirements of G.S. Chapter 130A, Article 8, Part 6, pursuant to 130A-250.~~

#### ~~(d) Food Service Utensils and Equipment~~

~~(A) Equipment and utensils shall be so constructed as to be easily cleaned and shall be kept in good repair. Surfaces with which food or drink come in contact shall, in addition, be easily accessible for cleaning, and shall be nontoxic, corrosion-resistant, nonabsorbent, and free of open crevices. Disposable articles shall be made from nontoxic materials.~~

~~(B) If single-service eating and drinking utensils are used, they shall be properly stored and handled in order to prevent contamination. If multi-use eating and drinking utensils are used, they shall be washed, rinsed, and sanitized after each use.~~

~~(C) Pots, pans, and other utensils used in the preparation or serving of food or drink, and all food storage utensils, shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.~~

~~(D) No polish or other substance containing cyanide or other poisonous material~~

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shall be used for the cleaning or polishing of eating or cooking utensils.

(E) Cloths used in the kitchen shall be clean. Each disposable item shall be used only once.

(F) Containers and clean utensils shall be stored in a clean place. Containers and clean utensils shall be covered, inverted, stored in tight, clean cabinets, or otherwise stored in such a manner as to prevent contamination. After cleaning and until use, food-contact surfaces of equipment shall be protected from contamination. Utensils shall be handled in such a manner as to prevent contamination.

(G) Disposable utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.

(H) Acceptable facilities for washing pots, pans and other cooking utensils shall be provided. A two-section residential sink is acceptable.

(I) Acceptable storage facilities shall be provided and shall be kept clean and free of vermin.

### (2) Food Supplies

(A) Food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. Only Grade "A" milk may be used.

(B) If non-acid or low-acid home-canned foods are used, they should be boiled for 10 minutes in order to destroy any toxin that may have been produced by bacteria surviving the canning process.

### (3) Food Protection

(A) Foods shall be protected from contamination while being stored, prepared, served, and during transportation. Perishable foods shall be stored at such temperatures as will protect against spoilage. Potentially hazardous food shall be maintained at safe temperatures (45 degrees F. or below; or 140 degrees F. or above) except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 45 degrees F. or below; or quick-thawed as part of the cooking process; or by a method approved by the division. An indicating thermometer shall be located in each refrigerator. Raw fruits

and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual shall not be served again.

(B) Live pets shall not be allowed in any room or area in which food is prepared or stored. Live pets, unless caged and restricted from the immediate eating area, shall not be allowed in any room or area in which food is served.

(C) Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.

(D) Containers of food shall be stored above the floor, on clean racks, shelves, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

### (4) Food Service Persons

(A) Persons, while preparing or serving food or washing equipment or utensils, shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary to remove soil and contamination. After visiting a toilet room, persons shall wash their hands thoroughly in a lavatory and in no case in the kitchen sink. They shall not use tobacco in any form while preparing or serving food.

(B) No person, while infected with a disease in a communicable form, or while a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any capacity in which there is a likelihood of that person contaminating food or food-contact surfaces with pathogenic organisms. If either the migrant housing operator or crew leader has reason to suspect that any food-service person has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the local health department immediately.

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Statutory Authority G.S. 130A-239.

.2130 INSECT: RODENT: AND ANIMAL CONTROL

(a) ~~Every enclosed shelter shall be constructed, equipped, and maintained, so far as reasonably practical, to prevent the entrance or harborage of rodents, insects, and other vermin.~~ A continuing, safe, and effective exterminating program shall be instituted where ~~their presence is detected.~~ the presence of rodents, insects, or other vermin is detected.

(b) ~~If dogs are kept on the premises, it will be the responsibility of the operator, crew leader, or migrant to keep them restrained.~~ Dogs kept on the premises shall be restrained.

Statutory Authority G.S. 130A-239.

.2131 FIRST AID

(a) A first-aid kit ~~approved by the division~~ shall be maintained and made available in the migrant housing for the emergency treatment of injured persons.

(b) ~~The crew leader or his designated representative shall be in charge of the first aid kit.~~ The first-aid kit shall be readily accessible for use at all times.

Statutory Authority G.S. 130A-239.

.2132 REPORTING COMMUNICABLE DISEASE

(a) ~~The migrant housing operator and crew leader shall have the responsibility to report immediately to the local health department the name and address of any individual in the migrant housing known to have or suspected of having a communicable disease.~~

(b) ~~Whenever there shall occur in any migrant housing a case of suspected food poisoning or an unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom, the migrant housing operator and crew leader shall have the responsibility to report immediately the existence of the outbreak to the local health department.~~

Communicable diseases and communicable conditions shall be reported to the local health department in accordance with G.S. 130A, Article 6, Part 1, and 10 NCAC 7A .0100.

Statutory Authority G.S. 130A-239.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-12 that the DHR/Division of Aging intends to amend regulations cited as 10 NCAC 22F .0101, and .0301.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 1:30 p.m. on July 15, 1988 at North Carolina Division of Aging, 1985 Umstead Drive, 2nd Floor, Rm. 297, Raleigh, NC 27603.

Comment Procedures: Written comments concerning the proposed regulations must be submitted by July 15, 1988 to: Mr. Greg Brewer, Division of Aging, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing to Mr. Brewer at the afore-said address, or by calling him directly at (919) 733-3983.

CHAPTER 22 - AGING

SUBCHAPTER 22F - ADOPTION BY REFERENCE

SECTION .0100 - OLDER AMERICANS - PROGRAMS REGULATIONS

.0101 TITLE

45 C.F.R. Part 1321 - Grants for State and Community Programs on Aging, as amended, has been adopted by reference pursuant to G.S. 150B-14(c).

Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14.

SECTION .0300 - ADMINISTRATION OF GRANTS

.0301 TITLE

The following regulations are adopted by reference pursuant to G.S. 150B-14(c):

Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14.

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Notice is hereby given in accordance with G.S. 150B-12 that the DHR/Division of Aging intends to repeal regulations cited as 10 NCAC 22G .0209, and .0307.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 1:30 p.m. on July 15, 1988 at North Carolina Division of Aging, 1985 Umstead Drive, 2nd Floor, Rm. 297, Raleigh, NC 27603.

Comment Procedures: Written comments concerning the proposed regulations must be submitted by July 15, 1988 to: Mr. Greg Brewer, Division of Aging, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing to Mr. Brewer at the aforesaid address, or by calling him directly at (919) 733-3983.

SUBCHAPTER 22G - PROGRAM OPERATIONS

SECTION .0200 - TITLE III: AREA AGENCIES ON AGING

.0209 STATE AGENCY HEARING PROCESS (REPEALED)

Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 45 C.F.R., Chapter XIII, Part 1321.

SECTION .0300 - TITLE III: NON-PLAN AREAS

.0307 TITLE VI OF THE CIVIL RIGHTS ACT (REPEALED)

Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 45 C.F.R., Chapter XIII, Part 1321; 45 C.F.R., Parts 80 and 81.

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Notice is hereby given in accordance with G.S. 150B-12 that the Division of Aging intends to adopt regulations cited as 10 NCAC 22G .0315, and .0316.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 1:30 p.m. on July 15, 1988 at North Carolina Division of Aging, 1985 Umstead Drive, 2nd Floor, Rm. 297, Raleigh, NC 27603.

Comment Procedures: Written comments concerning the proposed regulations must be submit-

ted by July 15, 1988 to: Mr. Greg Brewer, Division of Aging, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing to Mr. Brewer at the aforesaid address, or by calling him directly at (919) 733-3983.

SECTION .0300 - TITLE III: NON-PLAN AREAS

.0315 DUTIES REGARDING DISCRIMINATION

(a) The Division of Aging administers Older Americans Act, state, and other funds in compliance with 45 C.F.R., Parts 80, 84 and 91. Each agency, contractor and subgrantee is required to abide by these provisions, which prohibit discrimination in service delivery and employment in division administered programs on the basis of age, race, color, national origin and handicap.

(b) In carrying out its responsibilities regarding discrimination, the Division of Aging shall perform the following functions:

- (1) Inform and instruct Division of Aging staff regarding their obligations under the aforesaid parts;
- (2) Inform and instruct all agencies and organizations which provide services, financial aid or other benefits under Older Americans Act programs of their necessity to comply with the aforesaid regulations as a condition to initial or continued financial participation in the program;
- (3) Inform beneficiaries, participants, potential beneficiaries and other interested persons that services, financial aid and other benefits of the program must be provided on a nondiscriminatory basis as required by 45 C.F.R., Parts 80, 84 and 91; and of their right to file a complaint with the Division of Aging if there is evidence of discrimination on the basis of age, race, color, national origin or handicap.
- (4) Inform division staff, other agencies on aging, and older persons that referrals may not be made to agencies, institutions, organizations, facilities, individual practitioners, etc. that engage in discrimination;
- (5) Inform all grantees that they shall maintain a current properly executed Form 441 as a part of their official files. A copy of Form 441 is available at the Division of Aging.
- (6) Division of Aging and grantee staff members shall conduct periodic reviews, including on-site visits as appropriate, of the agencies and organizations participating in

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Older Americans Act programs to assure that their practices are in conformity with the Civil Rights Act, state and federal regulations and policies, and executed statements of compliance.

(c) In addition, each agency, contractor and subcontractor that employs 15 or more persons shall:

- (1) adopt grievance procedures that incorporate appropriate due process standards for the prompt and equitable resolution of complaints by recipients of services and employees which allege discrimination in service delivery on the basis of age, race, color, national origin or handicap;
- (2) designate at least one responsible employee to coordinate compliance with this Section; and
- (3) notify recipients of service, applicants for service, applicants for employment and employees that it does not discriminate in admission to or access to, or treatment or employment in, its programs and activities on the basis of age, race, color, national origin or handicap. The notification shall also include an identification of the responsible employee designated pursuant to Subparagraph (2).

*Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 45 C.F.R., Parts 80, 84, 91 and 1321.*

**.0316 EMPLOYMENT DISCRIMINATION: PROCEDURES**

The North Carolina State Office of Administrative Hearings is the designated entity for deferral of all claims alleging race, color, sex, religion or national origin discrimination in employment, or retaliation for opposition to such alleged discrimination, filed by previous and current state employees or applicants for state employment who were or are subject to N.C.G.S. Section 126-16 and Article 8 of Chapter 126, which have been filed within the time limits set forth in N.C.G.S. Section 126-38. Claimants filing pursuant to this Section must follow the procedures contained in 26 NCAC Chapter 4. Claims alleging discrimination on the basis of handicap should also be filed with the EEOC District Director at 5500 Central Avenue, Charlotte, N.C. 28212 within 180 days following the alleged discriminatory action. Employees who do not work for the state, and applicants for non-state employment may also file discrimination claims, but they should do so at their local EEOC office within 180 days following the alleged discriminatory action.

*Statutory Authority G.S. 143B-10; 143B-138; 143B-181.1; 45 C.F.R., Parts 80, 84, 91 and 1321.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Aging intends to adopt regulations cited as 10 NCAC 221 .0101 - .0122, and .0201.*

*The proposed effective date of this action is October 1, 1988.*

*The public hearing will be conducted at 1:30 p.m. on July 15, 1988 at North Carolina Division of Aging, 1985 Umstead Drive, 2nd Floor, Rm. 297, Raleigh, NC 27603.*

*Comment Procedures: Written comments concerning the proposed regulations must be submitted by July 15, 1988 to: Mr. Greg Brewer, Division of Aging, 1985 Umstead Drive, Raleigh, N.C. 27603. Oral comments may be presented at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing to Mr. Brewer at the aforesaid address, or calling him directly at (919) 733-3983.*

**SUBCHAPTER 221 - DIVISION HEARINGS**

**SECTION .0100 - GENERAL**

**.0101 DIVISION HEARINGS IN GENERAL**

(a) The state Division of Aging has established a decision review process whereby certain persons aggrieved by an Area Agency on Aging final decision, who have exhausted local administrative remedies, who can demonstrate injury in fact, and whose petition contains the necessary facts to establish subject matter jurisdiction, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules and other recognized common law principles of judicial economy and restraint.

(b) Pursuant to federal statutes and regulations, the state Division of Aging has also established a decision review process whereby aggrieved Area Agencies on Aging, and eligible applicants denied designation as planning and service areas, may petition the state Division of Aging for a decision review hearing in accordance with and subject to these Rules.

(c) The Rules of Civil Procedure as contained in G.S. 1A-1 and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Vol-

ume of the North Carolina General Statutes shall not apply in any hearings held by the state Division of Aging unless another specific statute or rule provides otherwise. Division of Aging hearings are not hearings within the meaning of G.S. Chapter 150B and will not be governed by the provisions of that Chapter unless otherwise stated in these Rules. Parties may be represented by counsel at all stages of the hearing process.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0102 DEFINITIONS**

Unless otherwise redefined by this Section, the definitions contained in G.S. 150B-2 are incorporated herein by reference pursuant to G.S. 150B-14(c). The following definitions shall apply:

- (1) "Agency" means an Area Agency on Aging as defined in the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.
- (2) "Division" means the North Carolina Division of Aging of the North Carolina Department of Human Resources.
- (3) "File or Filing" means personal delivery, delivery by certified mail, or delivery by licensed overnight express mail of a document or paper to the current acting Assistant Secretary of the North Carolina Division of Aging at 1985 Umstead Drive, Raleigh, N.C. 27603. A document or paper is deemed filed as of the date it is delivered to the Assistant Secretary, or when properly addressed, officially postmarked and accepted for delivery by the United States Postal Service or other licensed express mail service, whichever is earlier. Filings addressed to a person other than the Assistant Secretary, or which fail to be filed within the time periods established by the respective Area Agency, by these Rules, or by the hearing officer, or which otherwise fail to be filed in conformity with these Rules (i.e., no certificate of service) may be considered as improper filings and denied, taken as an admission, or dismissed accordingly. Except for excusable clerical error, good cause and a showing of irreparable harm, an improper filing shall not extend the deadline for filing of documents. All filings shall be submitted on 8 1/2" by 11" paper.
- (4) "Hearing" means an administrative proceeding, requested by written petition, whereby a person aggrieved is given an opportunity to be heard regarding his or her rights, duties or privileges. All hearings shall

be electronically recorded by the hearing officer. Costs of certified transcripts or electronic reproductions shall be borne by the parties requesting same, and shall be paid prior to delivery of same to the parties. Costs shall be determined by the Chief DoA Fiscal Officer at the time of the request.

- (5) "Hearing Officer" means a person designated to preside over a decision review hearing. In the absence of contrary designation, the Division attorney shall be the Hearing Officer for all such hearings.
- (6) "Respondent" means an agency, or in case of discrimination, an agency or service provider, whom a petition has been filed against and who has been served with a copy of same.
- (7) "Serve or Service" means personal delivery, delivery by first class or certified United States Postal Service mail or delivery by licensed overnight express mail, postage prepaid and addressed to the party at his or her last known address. Service by mail or licensed overnight express mail is complete upon placing the item to be served, enclosed in a wrapper addressed to the person to be served, in an official depository of the United States Postal Service or upon delivery, postage prepaid and wrapped in a wrapper addressed to the person to be served, to an agent of the overnight express mail service. For purposes of service on the Division, the Assistant Secretary of the Division shall be the designated agent.
- (8) "Service Provider" means a contractor or subgrantee receiving federal funds to provide service under the Older Americans Act, 42 U.S.C. Sec. 3001 et. seq.

*Authority G.S. 132-6; 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0103 COMMENCEMENT OF A DIVISION HEARING: PETITIONS**

(a) In order to commence an administrative decision review hearing with the Division, a petition must be filed in accordance with these Rules. The petition must be in writing, and must be signed by the aggrieved person submitting the petition or by the person's designated representative. A petition must contain the name, address and phone number of the petitioner, as well as his representative if one is designated. If a representative is designated, notice of meeting dates, requests for information, hearings decisions, etc. will be sent to the representative rather

than the aggrieved person, unless the petition otherwise requests. The party who files a petition shall simultaneously serve a copy of the petition on all other parties and shall file a certificate of service together with the petition. Any petition filed by a party other than an agency shall be verified or supported by affidavit and shall state specific facts which tend to establish that the respondent has substantially prejudiced the petitioner's rights and has failed to act as required by law, rule or procedure.

(b) In addition to any pertinent requirements stated elsewhere in these Rules, a petition filed with the state Division of Aging must contain specific factual allegations which tend to establish that the petitioner is:

- (1) a service provider whose contract or subgrant under an area plan has been terminated by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (2) an eligible applicant who seeks to provide service under an area plan and whose application has been denied or rejected by an Area Agency on Aging in violation of applicable federal or state statutes, rules, policies or procedures, or Area Agency protest procedures; or
- (3) an applicant eligible for designation as a planning and service area in the state whose application has been denied by the state Division of Aging; or
- (4) an Area Agency on Aging whose area plan or plan amendment intends to be disapproved or whose designation intends to be withdrawn by the state Division of Aging; or
- (5) a service recipient who has been discriminated against in violation of federal or state law on the basis of age, race, color, national origin, income, or handicap in regard to delivery of Older Americans Act services by a contractor or subgrantee, or in regard to administration of such services by an Area Agency on Aging.

(c) All petitions shall contain a statement of the relief sought by the petitioner. Petitioners who seek an administrative decision review hearing with the state Division of Aging must so state in their petition. However, the formal hearing process may be waived and informal disposition may be made at any time by the parties regarding any issues in the petition. Issues not addressed in the petition shall not be considered in the state hearing process and shall not be the subject of relief. Issues and facts may be dealt with by stipulation, agreement or consent order at any time

by the parties. Petitions which are improperly filed, or which fail to contain proper subject matter, may be subject to denial of formal review.

(d) Only those persons listed in Paragraph (b) of this Rule may petition for an administrative decision review hearing with the state Division of Aging. Petitioners under Subparagraphs (b)(1), (2) and (5) of this Rule shall file their respective petitions within 30 days following the date on which a final adverse decision has been rendered against them by an Area Agency on Aging. If no petition is filed within the respective 30 day period, the Area Agency's action shall become final. Eligible applicants under Subparagraph (b)(3) and agencies under Subparagraphs (b)(4) of this Rule shall file their petitions within 30 days after notification of denial or intention, respectively. If no petition is filed within the 30 day period, then the Division's action shall become final. Petitioners shall exhaust all available administrative remedies before petitioning the Division of Aging for a decision review hearing.

(e) Decisions or actions taken by the Division which substantially prejudice a person's rights, duties or privileges, but which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and should be submitted in a separate petition to the Office of Administrative Hearings in accordance with 10 NCAC 1B .0200 and 26 NCAC 3 .0003. Decisions or actions taken by an Area Agency on Aging which are not listed in Paragraph (b) of this Rule are not proper subject matter for Division hearings and, subject to the expression or implication of private rights of action by state or federal law, should be contested in a court of law. Subject to the discretion of the Division hearing officer, improper subject matter in a petition may either be deleted or form the basis for dismissal of the entire petition.

(f) After service of a final written decision upon the parties, if a party, other than an "applicant" in Rule .0103(b)(3), disagrees with the Division review hearing decision, the party may request a contested case hearing in accordance with 26 NCAC 3 .0003 and 10 NCAC 1B .0200 within 30 days of said service. For purposes of notice, 26 NCAC 3 .0003 and 10 NCAC 1B .0200 are incorporated herein by reference pursuant to G.S. 150B-14(c).

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 150B-14; 42 U.S.C., Sec. 3025 (b)(1) and 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Parts 80, 84 and 91; 45 C.F.R., Part 74, Appendix G.*

**.0104 NOTICE OF FILING: NOTICE OF HEARING**

Upon receipt of a timely petition for an administrative decision review hearing, the Division Hearing Officer shall promptly notify all parties of receipt of such filing, and shall arrange with the parties a time, date and place of hearing. Notice of the time, date and place of hearing shall be served on all parties not less than 15 days prior to the date of hearing.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0105 ANSWERS TO THE PETITION**

(a) A respondent who is served notice of filing of a petition shall file a written response to the petition and shall serve a copy of such response with certificate of service upon all other parties within 15 days after service of notice. The written answer may be submitted in lieu of a personal appearance at the hearing. If the respondent desires to file an answer in lieu of appearance, he must designate such on the face of the answer.

(b) Answers shall respond to each allegation of the petition, and may contain defenses, assertions of fact, and citations to applicable laws, rules and procedures. Failure to respond thoroughly to a timely and valid petition shall be grounds for admission of facts contained in the petition. The validity and timeliness of the petition may be contested in the answer.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0106 DOCUMENTS**

All documents required to be filed pursuant to these Rules shall likewise be served on all other parties by the filing party. The original of every document filed shall be endorsed with a certificate of service signed by the party making the service or by his designated representative, stating that such service has been made, the date of service, and the manner of service.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0107 VENUE**

Venue shall be in any county which the Hearing Officer determines in his discretion will promote the ends of justice or better serve the convenience of the parties and witnesses.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0108 DISCOVERY**

(a) Parties may exchange information voluntarily with one another without making formal request for discovery. Such provision and exchange of information shall be completed by 5:00 p.m. on the day preceding the date of hearing.

(b) Upon request of a party or on his own motion, the Hearing Officer may allow the parties any or all of the methods of discovery provided in the Rules of Civil Procedure, G.S. 1A-1. The Hearing Officer may extend or limit the time of discovery as necessary, but in no case shall discovery continue past 5:00 p.m. on the day immediately preceding the date of hearing.

(c) Failure to respond to an authorized discovery request shall be grounds for denial of review, admission of facts or other sanction as determined by the Hearing Officer.

(d) Motions for discovery may be made by a party or designated representative in writing or by phone to the Division Hearing Officer. The Hearing Officer shall rule on motions for discovery and notify the parties promptly of his decision. Parties may object to discovery motions orally or in writing.

(e) Discovery shall be directly related to the issues and shall not be unduly burdensome or be used to delay the proceedings.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0109 EVIDENCE**

(a) Whenever material matters of fact are in dispute as stated in the petition, factual evidence and expert opinion testimony related to the issues may be presented at the hearing. Petitions which do not contain disputed material facts or whose disputed material facts have all been resolved by stipulation, etc. may be reviewed and written decision issued by the Hearing Officer without necessity of a hearing. In such case, a party or the party's representative may make a written motion for summary decision which shall include written arguments as to the applicable laws, rules, policies and procedures. The Hearing Officer may also require submission of such written arguments any time he determines that no material facts are in dispute, and may then render his decision accordingly.

(b) Parties shall be entitled to present evidence, examine and cross-examine witnesses at the hearing. A witness may be cross-examined on

any matter material to the proceeding without regard to the scope of his direct examination. Irrelevant, immaterial, unreliable and unduly repetitious evidence shall, upon objection by a party or designated party representative, be excluded at the discretion of the Hearing Officer. Hearsay, whether written or spoken, is likewise excludable except for recognized legal exceptions. Objections to evidence shall be timely and briefly state the grounds relied upon.

(c) When evidence is alleged to be of a confidential nature, the Hearing Officer may examine such evidence in camera, at his discretion, if necessary to preserve its confidentiality.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0110 TESTIMONY; WITNESSES**

All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. Any party may be a witness and present witnesses on the party's behalf at the hearing. When in his determination it is necessary, the Hearing Officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0111 SUBPOENAS**

Although the Division Hearing Officer will not issue subpoenas for a proceeding, he may issue requests either orally or in writing that a person appear at the hearing to testify and/or to supply documentary evidence. Parties and witnesses who fail to appear at a hearing or who fail to produce evidence at the request of the Hearing Officer may jeopardize claims and defenses.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0112 PREHEARING STATEMENTS**

The Hearing Officer may serve all parties with an Order for Prehearing Statements. The parties thus served shall file the requested statements within 15 days of service, setting forth the following:

- (1) a list of facts, conclusions, and exhibits to which the party will stipulate;
- (2) a list of proposed witnesses with a brief description of each witnesses' proposed testimony;

- (3) a description of what discovery, if any, the party will seek to conduct prior to the hearing and an estimate of the time needed to complete discovery;
- (4) any other matters the Hearing Officer deems necessary.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0113 PREHEARING; SETTLEMENT CONFERENCE**

Upon the request of any party or upon his own motion the Hearing Officer may direct the parties to participate in an informal prehearing/settlement conference. The Hearing Officer shall give the parties not less than ten days notice before the scheduled date of a conference. The purposes of the conference shall be to simplify issues, resolve disputes and expedite disposition of the case. If the parties reach a settlement during the conference, such shall be set forth in a settlement agreement or consent order and made a part of the record. Prehearing/settlement conferences may be conducted by conference telephone call.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0114 FAILURE TO APPEAR AT HEARING**

(a) A party to a decision review hearing may waive the right to be present during any portion of the proceedings. The waiver must be knowingly and intelligently made by the party or his designated representative.

(b) If a party served with notice of hearing fails to appear at a scheduled hearing without having waived his right to be present, the Hearing Officer may:

- (1) proceed with the hearing in the party's absence;
- (2) order a continuance or like disposition;
- (3) enter an order of default; or
- (4) deny review of the decision.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0115 MISCONDUCT AT HEARING**

Disrespectful, disorderly or contumacious language or conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at any decision review hearing shall constitute grounds for immediate exclusion of

such person from the hearing by the Hearing Officer.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0116 SANCTIONS**

If a party fails to comply with an order or request of the Hearing Officer, the Hearing Officer may:

- (1) find that the allegations of or the issues set out in the petition or other pleading may be taken as true or deemed proved without further evidence;
- (2) dismiss or grant the motion or petition;
- (3) suppress a claim or defense;
- (4) exclude evidence; or
- (5) impose some combination of these sanctions or other appropriate sanction.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0117 MOTIONS**

An application for an order shall be by written motion unless made during a hearing or otherwise specified in these Rules. Written motions shall be filed and served upon all parties not less than ten days before the hearing, unless otherwise specified in these Rules.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0118 CONTINUANCES AND EXTENSIONS OF TIME**

The Hearing Officer may grant continuances and extensions of time to file only in compelling circumstances and with due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A request for continuance may be made in writing or by phone, but must be received by the Hearing Officer no later than 5:00 p.m. two days prior to the date of hearing. A request for extension of time in which to file a document may be made in writing or by phone, but must be received by the Hearing Officer no later than 5:00 p.m. two days prior to the date the document is due.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0119 TIME**

Unless otherwise provided in these Rules or in a specific statute, time computations in a decision review hearing conducted by the Division shall be governed by G.S. 1A-1, Rule 6.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0120 AUTHORITY OF PRESIDING OFFICER**

The Division Hearing Officer shall preside over decision review hearings. The Hearing Officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

- (1) issue notices, orders and like documents;
- (2) rule on motions and other procedural matters pending before him;
- (3) administer oaths and affirmations;
- (4) receive, rule on, exclude or limit evidence;
- (5) fix the time for filing and responding to motions and other documents not otherwise fixed by these Rules;
- (6) fix or adjust the date, time and place of hearing;
- (7) hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters which may aid in the expeditious disposition of the proceeding;
- (8) require parties to state their position with respect to the various issues in the proceeding;
- (9) examine witnesses and direct witnesses to testify;
- (10) issue final decisions; and
- (11) take any action otherwise directly or impliedly authorized by these Rules.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0121 FINAL DECISION**

If the Division conducts a hearing as requested by petition, and the matters in dispute are not dispensed with through agreement, dismissal or otherwise prior to the conclusion of the hearing, then the Hearing Officer shall prepare a final written decision within 30 days of the date of hearing and serve copies of the final decision upon the parties.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**.0122 APPEALS TO COMMISSIONER ON AGING**

If an applicant under Rule .0103 (b)(3) makes a timely request for hearing with the state Division of Aging, and the Division hears the case and issues a written decision denying the applicant's designation as a planning and service area; then the applicant may appeal the denial to the Commissioner on Aging in Washington, D.C. The appeal must be in writing and must be made within 30 days following receipt of the state's hearing decision.

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3027(a)(5); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

**SECTION .0200 - BIDDING AND CONTRACTING**

**.0201 BIDDING AND CONTRACTING PROCEDURES**

Service bid, contract, and grant procedures shall be governed by G.S. Chapter 143, Art. 8, where applicable, as well as 42 U.S.C., Sec. 3001, et. seq., 45 C.F.R. Part 1321, and the procedures contained in 45 C.F.R., Part 74, as well as Appendix G of the same Part, more particularly described as OMB Circular A-102. The aforesaid regulations are incorporated herein by reference pursuant to G.S. 150B-14(c).

*Authority G.S. 143B-10; 143B-138; 143B-181.1; 42 U.S.C., Sec. 3021, 3022(1), 3025(c) and 3027(a)(7); 45 C.F.R., Part 1321; 45 C.F.R., Part 74, Appendix G.*

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*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Human Resources/Division of Medical Assistance intends to amend the regulation cited as 10 NCAC 26H .0104(d)(15).*

*The proposed effective date of this action is October 1, 1988.*

*The public hearing will be conducted at 1:30 p.m. on July 15, 1988 at North Carolina Division of Medical Assistance, 1985 Umstead Drive, Room 201, Raleigh, N.C. 27603.*

*Comment Procedures: Written comments concerning this amendment must be submitted by July 15, 1988 to: Director, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, N.C. 27603.*

*Oral comments may be presented at the hearing. In addition, a fiscal impact statement on this rule amendment is available upon written request from the same address.*

**CHAPTER 26 - MEDICAL SERVICES**

**SUBCHAPTER 26H - REIMBURSEMENT PLANS**

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

**.0104 COST REPORTING: AUDITING AND SETTLEMENTS**

(d) The specific cost reporting guidelines related to this plan are set forth in the following paragraphs. The state will publish guidelines, consistent with the provisions of this plan, concerning the proper accounting treatment for items described in this Rule as related operating expenses. These guidelines will be issued prior to April 1, 1985. The guidelines may be subsequently modified prior to the beginning of each cost reporting period. In no case, however, shall any modifications be applied retroactively. A provider should request clarification in writing from the state if there is uncertainty about the proper cost center classification of any particular expense item.

(15) Direct Service Contracts. If a facility provides any one or a portion thereof of the services listed below under contract with an outside vendor the contract cost shall be allocated 70 percent to the direct cost center and 30 percent to the A & G cost center. To avoid this allocation the facility and vendor may provide the state agency with a detailed, auditable statement (in a format similar to that of the home office cost report) detailing the vendor's costs for the service. The agency shall under such circumstances have the right to audit the vendor's books to verify its statement. The verified statement can be used as the basis for allocating the vendor's charges to the provider between the direct and indirect cost centers. The services included under this provision are: nursing, dietary, social services and patient activities.

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

**TITLE 11 - DEPARTMENT OF INSURANCE**

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt regulations cited as 11 NCAC 6B .0101 - .0105, .0201 - .0205, .0301 - .0304, .0401 - .0403.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 10:00 a.m. on July 20, 1988 at Hearing Room, Third Floor, Dobbs Building, 430 N. Salisbury Street, Raleigh, N.C. 27611.

**Comment Procedures:** Written comments should be directed to Fran DiPasquantonio at P.O. Box 26387, Raleigh, N.C. 27611. He may be reached by telephone at (919) 733-4700. Oral comments may be made at the hearing.

CHAPTER 6 - AGENT SERVICES DIVISION

SUBCHAPTER 6B - THIRD PARTY ADMINISTRATOR

SECTION .0100 - DESCRIPTION OF FORMS

**.0101 APPLICATION FORM**

The application form designated as TPA-1-87 shall include, but not be limited to, the following information:

- (1) administrator's name;
- (2) location of North Carolina office;
- (3) type of entity of the administrator;
- (4) administrator's federal identification number;
- (5) administrator's registration in other states;
- (6) name of the administrator's errors and omission company;
- (7) signature of officers.

Statutory Authority G.S. 58-9; 58-536.

**.0102 BIOGRAPHICAL AFFIDAVIT**

The biographical affidavit for administrators shall include, but not be limited to, the following information:

- (1) full name and address of administrator;
- (2) affiant's social security number;
- (3) affiant's date and place of birth;
- (4) affiant's residence address;
- (5) affiant's business address;
- (6) affiant's business telephone number;
- (7) affiant's present or proposed position with the administrator;
- (8) affiant's employment record for the past five years;

- (9) whether the affiant has ever been in a position which required a fidelity bond or has been denied a fidelity bond;
- (10) affiant's education;
- (11) affiant's membership in professional societies and associations;
- (12) the name of any insurance company in which affiant controls directly or indirectly, or owns legally or beneficially ten percent or more of the outstanding stock (in voting power);
- (13) the names of members of affiant's immediate family who subscribe to or own, beneficially or of record, shares of stock of applicant administrator or its affiliates and a description of such holdings;
- (14) whether affiant has ever been refused a professional, occupational, or vocational license by any public or governmental agency or regulatory authority, or whether such license held has ever been suspended or revoked;
- (15) whether affiant has ever been adjudged bankrupt;
- (16) whether affiant has ever been convicted, or has had a sentence imposed or suspended, or has been pardoned for conviction of or pleaded guilty or nolo contendere to an indictment charging any crime involving fraud, dishonesty or moral turpitude, or charging a violation of any corporate securities statute, or any insurance law, or has been subject of any disciplinary proceeding of any federal or state regulatory agency;
- (17) whether affiant has ever been an officer, director, manager, trustee, or controlling stockholder of any company during which time the company became insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship;
- (18) whether the certificate of authority or license to do business of any insurance company of which affiant was an officer has ever been suspended or revoked while the affiant was an officer of such company.

Statutory Authority G.S. 58-9; 58-536.

**.0103 TPA TRANSMITTAL**

The TPA transmittal form (TPA-3-87) is designed as a check list to assure that all information required is submitted. The following information is required:

- (1) application for administrator's registration (TPA-1-87);
- (2) biographical form, (TPA-2-87), must be completed by every officer of a corporation

- or every partner of a partnership or the owner and operating manager of a sole proprietorship;
- (3) copies of each type of service contract utilized by the third party administrator with its benefit plans for North Carolina residents;
  - (4) certified, reviewed or compiled financial statements which must include a balance sheet, a statement of income and a statement of changes in financial position for the administrator's most recent full fiscal year (financial statements for parent companies of third party administrators are not acceptable);
  - (5) a copy of the fidelity bond in an amount of surety of one hundred thousand dollars (\$100,000) or more on the third party administrator written by a company duly licensed or authorized to do business in North Carolina;
  - (6) company check, certified check or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance;
  - (7) narrative description of the third party administrator's operations in North Carolina;
  - (8) signature, date, address and telephone number of the preparer of the application package.

*Statutory Authority G.S. 58-9; 58-536.*

**.0104 RENEWAL APPLICATION FORM**

The renewal application form (RTPA-1-88) is designed to obtain basically the same information as the application form (TPA-1-87). The following information is called for:

- (1) administrator's name;
- (2) location of North Carolina office;
- (3) administrator's registration in other states;
- (4) name of the administrator's errors and omission company; and
- (5) signature of officers.

*Statutory Authority G.S. 58-9; 58-536.*

**.0105 RENEWAL TPA TRANSMITTAL**

The renewal TPA transmittal form (RTPA-2-88) is similar to the TPA transmittal form (TPA-3-87) and must contain the following information:

- (1) any change of address in location of the third party administrator's North Carolina office;
- (2) any changes in ownership of the third party administrator or, any new officers, or addition or deletion of any new partners since

- the last filing and, if so, a biographical affidavit for new administrators (TPA-2-87);
- (3) a list of all new service contracts (self-funded, or fully insured) entered into since the last application;
  - (4) certified, reviewed or compiled financial statements which must include a balance sheet, a statement of income, and a statement of changes in financial position for the administrator's most recent full fiscal year (financial statements for parent companies of third party administrators are not acceptable);
  - (5) a copy of the fidelity bond in an amount of surety of one hundred thousand dollars (\$100,000) or more on the third party administrator written by a company duly licensed or authorized to do business in North Carolina;
  - (6) narrative of description of the third party administrator's operations in North Carolina;
  - (7) company check, certified check or money order in the amount of twenty dollars (\$20.00) registration fee payable to the North Carolina Department of Insurance; and
  - (8) signature, date, address, and telephone number of the preparer of the application package.

*Statutory Authority G.S. 58-9; 58-536.*

**SECTION .0200 - REGISTRATION**

**.0201 CONTENTS OF FULL APPLICATION**

All applications for a third party administrator certificate of registration must include:

- (1) an application for administrator's registration (TPA-1-87) signed by an officer, if a corporation, or every partner, if a partnership, or the owner and operating manager, if a sole proprietorship;
- (2) biographical form(s) (TPA-2-87) completed by every officer, partner, or owner and operating manager as indicated; forms may be duplicated to meet needs;
- (3) copies of each type of service contract utilized for benefit plans administered covering North Carolina residents;
- (4) financial statements for the most recent fiscal year prepared by an independent certified public accountant (financial statements for parent companies of third party administrators are not acceptable);
- (5) a copy of a fidelity bond issued to the applicant in the amount of one hundred thousand dollars (\$100,000) or more in the name

of the third party administrator issued by a company licensed or authorized to do business in North Carolina (a copy of the policy is required);

- (6) all basic organizational documents of the third party administrator, such as the articles of incorporation, bylaws, partnership agreements and all other similar documents and all amendments to those documents;
- (7) a description of the third party administrator, its services, facilities and personnel;
- (8) a power of attorney duly executed by the third party administrator, if not domiciled in North Carolina, appointing the commissioner of insurance, and the commissioner's duly authorized deputies as attorneys for the third party administrator in and for this state, upon whom process in any legal action or proceeding against the third party administrator on a cause of action arising in this state may be served;
- (9) a company check, certified check, or money order in the amount of twenty dollars (\$20.00), registration fee, payable to the North Carolina Department of Insurance; and
- (10) such other information as the department may reasonably require.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

**.0202 MODIFICATION OF APPLICATION**

Within 30 days following a significant modification of any of the information submitted with an application for a certificate of registration, the third party administrator shall file a notice of the modification(s) with the agent services division.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

**.0203 DURATION OF INITIAL CERTIFICATE OF REGISTRATION**

The initial certificate of registration will authorize the third party administrator to operate in North Carolina from the date of issue until August 31 next following the date of issue. The fee of twenty dollars (\$20.00) will not be pro-rated.

*Statutory Authority G.S. 58-536; 59-9.*

**.0204 APPLICATION FOR RENEWAL OF A CERTIFICATE OF REGISTRATION**

All applications for renewal of a certificate of registration must include:

- (1) application for administrator's renewal registration (RTPA-1-88);

- (2) all changes to the information contained in biographical form(s) (TPA-2-87);
- (3) all changes or additions to ownership, organizational structure or location of the third party administrator;
- (4) all changes or additions to the service contracts entered into by the third party administrator;
- (5) certified or reviewed or compiled financial statements for the most recent fiscal year prepared by an independent certified public accountant (financial statements for parent companies of third party administrators are not acceptable);
- (6) a copy of a fidelity bond issued to the applicant in the amount of at least one hundred thousand dollars (\$100,000) in the name of the third party administrator issued by a company licensed or authorized to do business in North Carolina (a copy of the policy is required);
- (7) a company check, certified check, or money order in the amount of twenty dollars (\$20.00), renewal registration fee, payable to the North Carolina Department of Insurance.

*Statutory Authority G.S. 58-9; 58-525; 58-527; 58-529; 58-532; 58-536.*

**.0205 RENEWAL CERTIFICATE OF REGISTRATION**

The renewal date for all certificates of registration will be September 1. Renewal packages will be sent to registered third party administrators on July 1 and should be returned to the Department of Insurance, Agent Services Division, Administrative Assistant, P.O. Box 26387, Raleigh, N.C. 27611, no later than August 10.

*Statutory Authority G.S. 58-9; 58-536.*

**SECTION .0300 - FINANCIAL REQUIREMENTS**

**.0301 FINANCIAL STATEMENTS**

All applicants for a certificate of registration must file financial statements with their initial and renewal applications. These financial statements must be for the third party administrator seeking registration. Financial statements for parent companies of the third party administrator are not acceptable for registration. The financial statements must report the financial position, results of operations, and a statement of cash flows for the third party administrator. The financial statements must be certified or reviewed or compiled by an independent certified public accountant. A copy of the applicant's financial

statements for the most recent fiscal year shall satisfy this requirement unless the department determines that additional or more recent financial information is required.

*Statutory Authority G.S. 58-9; 58-536.*

**.0302 DETERMINATION OF FINANCIAL RESPONSIBILITY**

In determining the financial responsibility of an applicant for a certificate of registration, the department requires that an applicant be solvent. In addition, the department will consider, among other things:

- (1) liquidity, and
- (2) any internal controls the applicant may have in place to afford protection for benefit plans, which may include, but are not limited to, the manner in which benefit plan fund accounts are established.

*Statutory Authority G.S. 58-9; 58-532; 58-536.*

**.0303 FINANCIAL INFORMATION PUBLIC RECORDS**

All financial information filed in support of an application for initial issuance or renewal of a certificate of registration will be subject to the public records law of North Carolina. Such information will not be released by the department until registration is accomplished and a certificate issued. In the event that the application is withdrawn from consideration by the applicant, then it will not be deemed public information.

*Statutory Authority G.S. 58-9; 58-11; 132-6.*

**.0304 FIDELITY BOND ISSUED BY LICENSED COMPANY**

The fidelity bond required by G.S. 58-536(b) must be issued by an insurance company licensed or authorized to do business in North Carolina. Such bond must be issued in the name of the third party administrator and provide for notification to the Department of Insurance 30 days in advance of any termination, or increase or decrease in the amount thereof. A copy of the policy is required to be filed with the department.

*Statutory Authority G.S. 58-9; 58-15; 58-29; 58-536.*

**SECTION .0400 - GENERAL PROVISIONS**

**.0401 SERVICE CONTRACTS WITH INSURANCE COMPANIES**

All service contracts with insurance companies must be with insurers licensed or authorized to operate in North Carolina.

*Statutory Authority G.S. 58-9; 58-15; 58-527.*

**.0402 ADJUSTING CLAIMS BY THIRD PARTY ADMINISTRATORS**

No adjuster's license will be required of persons acting for third party administrators in adjusting claims for life, accident and health and annuity claims or self-funded health benefit plans.

*Statutory Authority G.S. 58-9; 58-529; 58-533; 58-611(b).*

**.0403 VIOLATIONS: PENALTIES**

The department shall follow the provisions of G.S. 58-9.7 for the imposition of civil penalties against any third party administrator that does not obtain a certificate of registration prior to beginning its operations in this state in accordance with Article 41 of the North Carolina General Statutes.

*Statutory Authority G.S. 58-9; 58-9.7; 58-536.*

**TITLE 15 - DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Department of Natural Resources and Community Development intends to adopt regulations cited as 15 NCAC 2L .0106 - .0114; amend regulations cited as 2L .0101 - .0104, .0201 - .0202, .0301 - .0302, and .0319; and repeal regulation cited as 2L .0105.*

*The proposed effective date of this action is January 1, 1989.*

*The public hearing will be conducted at 7:00 p.m. at:*

ASHEVILLE  
July 26, 1988  
Humanities Lecture Hall  
UNC-Asheville

RALEIGH  
July 28, 1988  
Ground Floor Hearing Room  
Archdale Building  
512 N. Salisbury St.

NEW BERN  
August 2, 1988  
Building C, Room C-15  
Craven County Community College

*Comment Procedures:* Oral comments may be made at a hearing, or written statements may be submitted to the agency prior to September 1, 1988. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officers.

CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT

SUBCHAPTER 2L - GROUNDWATER  
CLASSIFICATION AND STANDARDS

SECTION .0100 - GENERAL CONSIDERATIONS

.0101 AUTHORIZATION

(a) N.C. General Statute 143-214.1 directs that the Commission develop and adopt after proper study a series of classifications and standards which will be appropriate for the purpose of classifying each of the waters of the state in such a way as to promote the policy and purposes of the act. Pursuant to this statute, the Regulations of rules in this Subchapter establish a series of classifications and water quality standards applicable to the underground waters groundwaters of the state.

(b) These Regulations and the standards they establish apply to all classified underground waters. Many common activities take place in or near shallow subsurface waters with no resulting violation of GA groundwater quality standards and it is the intention of these Regulations that those activities continue unimpeded except where specific problems are identified on a case by case basis. These activities include:

- (1) the agricultural operations of applying fertilizer, herbicides, or pesticides to crop-lands or pastures, and the raising of live-stock;
- (2) silvicultural fertilizer, herbicide or pesticide application; home or commercial fertilizer, pesticide, or herbicide application;
- (3) structural pest control activities when conducted according to label directions; and
- (4) subsurface or surface municipal, industrial, and domestic waste disposal activities or other activities which may affect underground waters when these systems are installed and operated or conducted according to regulations established by the Departments of Human Resources, Agriculture, or Natural Resources and Community Development.

(c) As used herein, the phrase "specific problems" shall mean a set of facts or circumstances which show with a reasonable certainty that one

or more of the following exists or will exist in the foreseeable future:

- (1) An existing or probable violation of GA groundwater standards;
- (2) The existence or probability of a violation of any other environmental standard or regulation;
- (3) A threat to human life, health, or safety;
- (4) A threat to the environment.
- (d) The regulations established in this Subchapter are intended to maintain and preserve the quality of the subsurface and groundwaters, prevent and abate pollution and contamination, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina. It is the policy of the EMC that the best usage of the groundwater of the state is as a source of drinking water in its ambient state. These groundwaters generally are a potable source of drinking water without the necessity of treatment. It is the intent of these Regulations to protect the overall high quality of North Carolina's groundwaters and to enhance and restore the quality of degraded groundwaters to the level established by the standards wherever practicable.

Statutory Authority G.S. 143-214.1; 143-214.2; 143-215.3(a)(1); 143B-282.

.0102 DEFINITIONS

The definition of any word or phrase used in these regulations Rules shall be the same as given in G.S. 143-213 except that the following words and phrases shall have the following meanings:

- (4) Deleterious substance means any substance which may cause the water to be unpleasant to taste, or unsightly, or otherwise renders the water unsuitable for human consumption.
- (1) "Alternate contaminant concentration" means the allowable concentration of a contaminant, in excess of water quality standards, as established for restoration activities.
- (2) "Bedrock" means any consolidated or coherent and relatively hard, naturally-formed mass of mineral matter which cannot be readily excavated without the use of explosives or power equipment.
- (3)(22) "Commission" shall mean means the Environmental Management Commission as organized under General Statute Section 143B-282, et seq. G.S. 143B.
- (23) "Land Surface" for the purpose of determining the location of GB waters shall be the existing contour of the earth, whether the natural contour or artificially altered by

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excavation. In the case of an alteration of the existing land surface by the addition of fill material, the land surface is the natural contour of the earth as it existed prior to any alteration. Where it is determined that a person has intentionally altered the surface of the earth for the purpose of evading the regulations and standards contained in this Subchapter, the phrase, "land surface" shall mean the contour of the earth that existed prior to such activity.

(4)(25) Perimeter of "Compliance boundary" means a boundary around a disposal system at and beyond which water quality standards may not be exceeded and only applies to facilities which are applying for or have received a permit from the Division of Environmental Management under G.S. 143-215.1, or for disposal systems permitted by the Department of Human Resources, shall mean the locus of all points in the vertical plane extending downward from the points of compliance surrounding a point of discharge.

(5) Micrograms per liter (ug/l) gives the weight in micrograms of any constituent in one liter of solution.

(6) Milligrams per liter (mg/l) is the weight in milligrams of any specific constituent or constituents in a liter of the solution.

(5)(26) "Director" shall mean means director of the Division of Environmental Management.

(6)(2) "Fresh groundwaters" are means those groundwaters having a chloride concentration equal to or less than 250 milligrams per liter.

(7) Naturally occurring concentration means the concentration of chemical or biological substances or physical characteristics which exist naturally and which have not been changed by man's activities.

(7)(3) "Groundwaters" are means those waters in the saturated zone of the earth.

(4) Infiltration water means the water that infiltrates or moves into the subsurface or occurs between the land surface and the top of the saturated zone or serves to recharge groundwaters.

(8) "Limit of detectability" means the method detection limit established for the U.S. EPA approved test procedure providing the lowest method detection limit for the substance being monitored.

(9)(8) "Natural quality conditions" means the physical, biological, and chemical and radiological conditions quality which occurs na-

turally, and which has not been changed by man's activities.

(9) Parts per million (ppm) and parts per billion (ppb) shall be construed to be equivalent to milligrams per liter and micrograms per liter, respectively.

(24) "Point of Compliance" shall be the point at the land surface at which penalties under G.S. 143-214.6(a)(1)(b) may be imposed for a violation of applicable underground water quality standards. (See Rule .0103(h) of this Subchapter).

(10) Point of discharge or outlet is the point of initial contact of waste with the existing soil or rock materials.

(10)(14) "Potable waters" are means those waters suitable for drinking, by humans, culinary and food processing purposes.

(11)(12) "Saline groundwaters" are means those groundwaters having a chloride concentration of more than 250 mg/l.

(12)(13) The saturated "Saturated zone" is means that part of the water-bearing consolidated and unconsolidated formations subsurface below the water table in which all the interconnected voids are filled with water under pressure at or greater than atmospheric. It does not include the capillary fringe.

(14) Subsurface means the area beneath the land surface and may or may not be part of the saturated zone.

(15) Subsurface waters are those waters occurring in the subsurface and include groundwaters and infiltration waters.

(16) Toxic substances shall mean those substances which if ingested or assimilated into any organism either directly or indirectly will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in such organisms of their offspring).

(13) "Suitable for drinking" means a quality of water which does not contain substances in concentrations which, either singularly or in combination if ingested into the human body, will cause death, disease, behavioral abnormalities, congenital defects, genetic mutations, or result in an incremental lifetime cancer risk in excess of  $1 \times 10^{-6}$ , or render the water unacceptable due to aesthetic qualities, including taste, odor and appearance.

(17) The unsaturated zone is the portion of the consolidated and unconsolidated formations between land surface and the water table. It includes the capillary fringe.

- (14) "Waste boundary" means the horizontal perimeter of the permitted waste disposal area.
- (15)(18) "Water table" is means the surface of the saturated zone in the unconfined water-bearing formation or material below which all interconnected voids are filled with water and at which the pressure is atmospheric.
- (19) Thermal waste for purposes of groundwater quality means discharges having a temperature which is in excess of 30 degrees Fahrenheit above or below the naturally occurring temperature of the receiving groundwater as determined by the director.
- (20) Underground waters means all waters in the subsurface including infiltration and groundwaters.
- (21) "Person" shall mean any individual, proprietorship, partnership, joint venture, corporation, or any other entity, or any employee, designee, agent, or representative in any official capacity empowered to act in behalf of that entity with knowledge of that entity, either express or implied.

Statutory Authority G.S. 143-214.1; 143-215(a)(1); 143B-282.

.0103 POLICY

(a) The discharge of any wastes to the subsurface or groundwaters of the state by means of wells is prohibited. The rules established in this Subchapter are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina. It is the policy of the commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of treatment. It is the intent of these Rules to protect the overall high quality of North Carolina's groundwaters and to enhance and restore the quality of degraded groundwaters to the level established by the standards, wherever practicable.

(b) ~~(e)~~ It is the intention of the Environmental Management Commission to protect all the underground waters existing below a depth of 20 feet beneath the surface of the land groundwaters to a level of quality at least as high as that required under the standards established in Rule .0202 of this Subchapter. However, the commission may permit degradation of groundwater quality below the level of the applicable stand-

ards within boundaries established in accordance with the rules of this Subchapter. In keeping with the overall policy of the EMC to protect, maintain, and enhance water quality within the State of North Carolina, the EMC The commission will not approve any project or development disposal system subject to the provisions of G.S. 143-215.1 which would result in the significant degradation of groundwaters whose existing quality is better than the assigned standard, a violation of the water quality standards beyond the boundaries of the property on which the source of pollution is located, or which would result in the impairment of existing groundwater uses or would adversely impact the public health, safety, or welfare, unless such degradation is found to be economically and socially justifiable, and in the best public interest. It is within the authority and in keeping with the policies of the EMC to decline to allow degradation from the existing background quality of an underground water source down to the level of the standard without such social and economic justification. Prior to the approval of any project or development which will result in the significant degradation of groundwater quality, the EMC will solicit, through public notice, or public hearing, or both, comments from the public and governmental agencies relative to the project or development and anticipated underground water quality degradation.

(c) In addition to the GA, GSA, GB, GSB classifications assigned to underground waters as a provision of this Subchapter, the director is authorized to designate such underground waters "restricted" (RS) under any of the following circumstances:

- (1) Where underground waters contain toxic or deleterious substances in excess of the maximum allowable concentrations established under this Subchapter, and restoration or treatment can be shown to be technologically and economically feasible.
- (2) Where a statutory variance has been granted for the underground waters as provided in Paragraph (d) of this Rule.
- (3) Where underground waters contain naturally occurring concentrations in excess of the standards established under Rule .0202(b) of this Subchapter whether or not restoration or treatment is feasible, but provided that restoration for naturally occurring excess concentrations may not be required of any person as a result of this designation.
- (4) Where underground waters have been designated RS under Subparagraph (1) of this Paragraph, and where the source of

contamination and the responsible person are identified, a compliance schedule shall be issued within 12 months of the underground waters being designated.

(c) The commission recognizes that the application of fertilizers and other agricultural chemicals on land used for agricultural or silvicultural activities may result in the presence of these substances in the underlying groundwaters in concentrations exceeding water quality standards, as established in Rule .0202 of this Subchapter, because of a seasonally high or fluctuating water table. The presence of these substances in concentrations in excess of water quality standards shall not be considered a violation if they result from applications made in accordance with label instructions, where applicable, or accepted agronomic practices, and do not occur in concentrations exceeding the water quality standards beyond the boundary of the property on which they were applied or below a depth of ten feet below land surface.

(d) Any person subject to the provisions of General Statute 143-215.1 may apply to the EMC for a variance from the groundwater classifications and quality standards established pursuant to these Regulations and North Carolina General Statute 143-214.1. A variance may be granted by the commission pursuant to the requirements of North Carolina General Statute 143-215.3(e). The burden of proof in any public hearing or other proceeding pursuant to North Carolina General Statute 143-215.3(e) shall be upon the applicant for a variance. No variance shall be granted to allow the discharge of waste to the subsurface or groundwaters of the state by means of wells or for an extension or expansion of the perimeter of compliance as established pursuant to the regulations of this Subchapter.

(d) (h) No person shall conduct or permit an activity which causes the concentration of any toxic or deleterious substances substance, to exceed that specified in Rule .0202 of this Subchapter, except as authorized by the rules of this Subchapter, in accordance with a compliance schedule authorized by the director.

(e) Any person conducting an activity causing or significantly contributing to the violation of underground water quality standards may apply to the director for a compliance schedule. In such cases the director may authorize a compliance schedule requiring the restoration of the quality of the underground waters to the level of the standard, or to a level as close to the applicable standards hereunder as is economically and technologically feasible. In determination the structure, duration, level of compliance, and feasibility of a compliance schedule, the director

shall consider the extent of any violations; the extent of any threat to human health or safety; the extent of damage to the environment; the total cost of the cleanup involved; the marginal cost of the cleanup required; further technological advances which might permit such cleanup; and the public and economic benefit of requiring such cleanup. Compliance schedules may be revised or revoked by the director if the terms of the compliance schedules are violated by the person operating thereunder, or if additional information on the extent and magnitude of the violation becomes known. Where it is determined that there was willful or intentional violation of the underground water quality standards, the director shall not grant a compliance schedule prior to instituting the appropriate enforcement provision under G.S. 143-214.6.

(c) (f) An activity or source of pollution disposal system operating under and in compliance with the terms of a statutory variance or a special order compliance schedule established under these Regulations is deemed to be in compliance with the water groundwater quality standards.

(h) Perimeter of Compliance: Existing and New Facilities.

- (1) Exceedances of the standards established for the underground waters occurring within the perimeter of compliance shall not be subject to the penalty provisions applicable under 143-215.6(1)a.
- (2) The commission shall otherwise consider underground waters existing within the compliance perimeter to be classified waters of the state, and shall require:
  - (A) that permits for all activities governed by G.S. 143-214.1 will be written to protect the level of groundwater quality established by GA standards;
  - (B) that necessary groundwater quality monitoring within the compliance perimeter will be required;
  - (C) that a violation of standards within the compliance perimeter be remedied through clean-up, recovery, containment, or other response which the commission determines to be necessary when any of the following conditions occur:
    - (i) a violation of the standard in adjoining GA waters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
    - (ii) an imminent hazard or threat to the public health or safety exists or can be predicted.
- (3) For existing facilities, the compliance perimeter shall be established at a distance

500 feet from the point of discharge, or the property boundary, whichever is less.

(4) For new facilities, the compliance perimeter shall be established at the lesser of 250 feet from the point of discharge, or 50 feet within the property boundary.

(5) Nothing in this Rule shall be construed to prevent the commission from initiating enforcement action even when pollution occurs solely within the compliance perimeter based upon permit violations, imminent threat to the public health, safety, or the environment, or violations of any special order issued by the commission.

(4) Exemptions. The following activities shall not be subject to the regulations of this Subchapter:

(1) Leaking resulting from water use activities conducted under and in compliance with a water use permit.

(2) The use of drilling fluids as approved under the well construction regulations.

Statutory Authority G.S. 143-214; 143-214.1; 143-214.2; 143-215.3(e); 143-215.3(a)(1); 143B-282.

.0104 RS DESIGNATION

Tests or analytical procedures to determine compliance or non-compliance with the underground water quality standards established in Rule .0202 of this Subchapter will be in accordance with:

(1) the methods described in Standard Methods for the Examination of Water and Wastewater, fifteenth edition, 1980, and the 1981 supplement thereto;

(2) testing, monitoring, or analytical procedures required as a condition of a permit issued by the Division of Environmental Management under N.C.G.S. 143-211.1; or

(3) methods approved by letter from the Director of the Division of Environmental Management.

The director is authorized to designate GA or GSA groundwaters as RS under any of the following circumstances:

(1) Where groundwaters contain concentrations of substances in excess of the water quality standards established under this Subchapter;

(2) Where a statutory variance has been granted as provided in Rule .0114 of this Subchapter; or

(3) Where an alternate contaminant concentration has been established by the director.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2).

.0105 ADOPTION BY REFERENCE (REPEALED)

Statutory Authority G.S. 143-214.1.

.0106 CORRECTIVE ACTION

Any person conducting, permitting or controlling an activity which causes an increase in the concentration of a substance above the water quality standard:

(1) as the result of activities not specifically permitted by the state, shall assess the cause, significance and extent of the violation of water quality standards; submit a plan for eliminating the source of contamination and for restoration; and implement the plan in accordance with a special order;

(2) at or beyond the review boundary, shall:

(a) demonstrate, through predictive calculations or modeling, that natural site conditions, facility designs and operation controls will prevent a violation of standards at the compliance boundary; or

(b) submit a plan for alteration of existing site conditions, facility design or operation controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the director.

(3) at or beyond the compliance boundary, shall, assess the cause, significance and extent of the violation of water quality standards and submit results of investigation and a plan for restoration and implement the plan in accordance with a special order.

Statutory Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.

.0107 ALTERNATE CONTAMINANT CONCENTRATION

(a) If the responsible party determines that it is not feasible to restore contaminated groundwaters to the level of the standards, then the responsible party may apply to the director for a Special Order by Consent and submit a proposal for alternate contaminant concentrations. The proposal shall address the potential for adverse effects on human health and the environment through consideration of:

(1) the physical and chemical characteristics of the contaminants, including the potential for migration;

(2) the hydrogeological characteristics of the impacted area and surrounding land;

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- (3) the rate and direction of groundwater flow;
- (4) the proximity and withdrawal rates of local groundwater users;
- (5) the current and predictable uses of groundwater in the area;
- (6) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
- (7) the proximity of the contaminant plume to hydraulically connected surface water;
- (8) the current and predictable uses of surface water hydraulically connected to the contamination plume, including existing quality of those waters, and any water quality standards established for those surface waters;
- (9) the potential for health risks caused by human exposure to the contaminants;
- (10) the potential damage to wildlife, crops, vegetation and physical structures caused by exposure to the contaminants; and
- (11) the persistence and permanence of the potential adverse effects.

(b) In determining the feasibility of groundwater quality restoration activities and evaluating the proposal for alternate contaminant concentrations, the director shall consider the extent of any threat to human health or safety, the extent of existing and potential damage to the environment, the total cost of the restoration involved, the marginal or incremental cost of the restoration required, the economic benefit accruing to the responsible party as a result of the violation, technological constraints which might prevent restoration and the public and economic benefit of requiring such restoration. Upon the director's approval of the proposal, alternate contaminant concentrations will be authorized by a special order.

(c) In making the determination required in Paragraph (b) of this Rule, the director shall request public comments, in accordance with the provision of G.S. 143-215.4(b), prior to approving or authorizing alternate contaminant concentrations; provided that, the director, at any time and in his discretion, may authorize the responsible party to make preliminary studies or investigations which will result in a proposal for alternate contaminant concentrations, without receipt of public comments.

(a) For disposal systems permitted prior to December 30, 1983, the compliance boundary is established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.

(b) For disposal systems permitted on or after December 30, 1983, a compliance boundary shall be established 250 feet from the waste boundary, or 50 feet within the property boundary, whichever point is closer to the source.

(c) The boundary shall form a vertical plane extending from the water table to the maximum depth of saturation.

(d) For ground absorption sewage treatment and disposal systems which are permitted under 10 NCAC 10A .1900, the compliance boundary shall be established at the property boundary.

(e) A contravention of the applicable water quality standard within the compliance boundary shall not be subject to the penalty provisions applicable under G.S. 143-215.6(a)(1)a.

(f) The director shall require:

- (1) that permits for all activities governed by G.S. 143-215.1 will be written to protect the level of groundwater quality, established by applicable standards, at the compliance boundary;
- (2) that recommendations be made to protect the level of standards at the compliance boundary on all permit applications received for review from other state agencies;
- (3) that necessary groundwater quality monitoring shall be conducted within the compliance boundary; and
- (4) that a contravention of standards within the compliance boundary be remedied through clean-up, recovery, containment, or other response when any of the following conditions occur:
  - (A) a violation of any standard in adjoining classified waters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
  - (B) an imminent hazard or threat to the public health or safety exists or can be predicted; or
  - (C) a violation of any standard in groundwater occurring in the bedrock other than limestones found in the coastal plain sediments.

*Statutory Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2).*

*Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143B-282.*

**.0108 COMPLIANCE BOUNDARY**

**.0109 REVIEW BOUNDARY**

A review boundary is established around disposal systems at the mid-point between the compliance boundary and the waste boundary. Where the groundwater quality standards are reached or exceeded at the review boundary as determined by monitoring, the permittee shall take action in accordance with the provisions of Rule .0106(a)(2) of this Subchapter.

*Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143B-282.*

**.0110 DELEGATION**

(a) The director is delegated the authority to enter into consent special orders under G.S. 143-215.2 for violations of the water quality standards.

(b) The director is delegated the authority to issue a proposed special order without the consent of the person affected and to notify the affected person of the procedure set out in G.S. 150B-23 to contest the proposed special order.

*Statutory Authority G.S. 143-215.2; 143-215.3(a)(1).*

**.0111 MONITORING**

(a) Any person subject to the provisions of G.S. 143-215.1 who causes, permits or has control over any discharge of waste, shall install a monitoring system, at such locations, and in such detail, as the director may require to evaluate the efficiency of the treatment facility and the effects of the discharge upon the waters of the state.

(b) Monitoring systems shall be operated in a manner that will not result in the contamination of adjacent groundwaters of a higher quality.

(c) Monitoring shall be conducted and results reported in a manner and at a frequency specified by the director.

*Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.68; 143B-282.*

**.0112 REPORTS**

Any person subject to the provisions of G.S. 143-215.1 and to the requirements for corrective action specified in Rule .0106 of this Subchapter shall submit to the director, in such detail as the director may require, a written report that describes:

- (1) the results of the investigation specified in Paragraphs (1) and (3) of Rule .0106, including but not limited to:
  - (a) a description of the sampling procedures followed and methods of chemical analyses used; and

- (b) all technical data utilized in support of any conclusions drawn or determinations made.
- (2) the results of the predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data, used in the demonstration required in Paragraph (2) of Rule .0106; and
- (3) the proposed methodology and timetable associated with the restoration of groundwater quality for those situations identified in Paragraphs (1) and (3) of Rule .0106.

*Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143-215.68; 143B-282.*

**.0113 ANALYTICAL PROCEDURES**

Tests or analytical procedures to determine compliance or noncompliance with the water quality standards established in Rule .0202 of this Subchapter will be in accordance with:

- (1) The following methods or procedures for substances where the selected method or procedure provides a method detection limit value at or less than the standard:
  - (a) Standard methods for the Examination of Water and Wastewater, 16th Edition, 1985, published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation;
  - (b) Methods for Chemical Analysis of Water and Waste, 1979, U.S. Environmental Protection Agency publication number EPA-600/4-79-020, as revised March 1983;
  - (c) Test Methods for Evaluating Solid Wastes: Physical Chemical Methods, 3rd Edition, 1986, U.S. Environmental Protection Agency publication number SW-846;
  - (d) Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Federal Register Vol. 49, No. 209, 40 CFR Part 136, October 26, 1984;
  - (e) Methods or procedures approved by letter from the director upon application by the regulated source.
- (2) A method or procedure approved by the director for substances where the standard is less than the limit of detectability.

*Statutory Authority G.S. 143-215.3(a)(1); 143B-282.*

**.0114 VARIANCE**

(a) The commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e),

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may grant variances to water quality standards and the compliance boundary. Persons subject to the provisions of G.S. 130A-294 may apply for a variance under this Section.

(b) Requests for variances are filed by letter from the applicant to the Environmental Management Commission. The application should be mailed to the chairman of the commission in care of the Director, Division of Environmental Management, Post Office Box 27687, Raleigh, N.C. 27611.

(c) The application should contain the following information:

- (1) Applications filed by counties or municipalities must include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance from water quality standards which apply to the area for which the variance is requested.
- (2) A description of the past, existing or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.
- (3) Description of proposed area for which a variance is requested. A detailed location map, showing orientation of the facility, potential for groundwater contaminant migration, as well as the area covered by the variance request, with reference to at least two geographic references (numbered roads, named streams/rivers, etc.) must be included.
- (4) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects with exposure to the groundwater contaminants. (Location of wells and other water supply sources including details of well construction within 1/2 mile of site must be shown on a map).
- (5) Supporting information to establish that standards cannot be achieved by providing the best available technology economically reasonable. This information must identify specific technology considered, changes in quality of the contaminant plume as demonstrated through predictive calculations approved by the director, and technological constraints which limit restoration to the level of the proposed alternate contaminant concentrations.
- (6) Supporting information to establish that compliance would produce serious hardship on the applicant.
- (7) Supporting information that compliance would produce serious hardship without equal or greater public benefit.
- (8) A copy of any Special Order that was issued in connection with the contaminants in the proposed area and supporting information that applicant has complied with the Special Order and any alternate contaminant concentrations contained therein.
  - (d) Upon receipt of the application, the director will review it for completeness and request additional information if necessary. When the application is complete, the director shall give public notice of the application and schedule the matter for a public hearing in accordance with G.S. 143-215.4(d) and the procedures set out below.
  - (e) Notice of Public Hearing.
    - (1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the director at least 30 days prior to the date of the hearing:
      - (A) by publishing the notice one time in a newspaper having general circulation in said county;
      - (B) by mailing to the North Carolina Department of Human Resources, Division of Health Services, and appropriate local health agency;
      - (C) by mailing to any other federal, state or local agency upon request;
      - (D) by mailing to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;
      - (E) by mailing to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance; and
      - (F) by mailing to any person or group upon request.
    - (2) The contents of public notice of any hearing shall include at least the following:
      - (A) name, address, and phone number of agency holding the public hearing;
      - (B) name and address of each applicant whose application will be considered at the meeting;
      - (C) brief summary of the proposed standard variance or modification of the perimeter of compliance being requested;
      - (D) geographic description for a proposed area for which a variance is requested;
      - (E) brief description of the activities or operations which have or will result in the discharge of contaminants to the groundwaters described in the variance application;
      - (F) a brief reference to the public notice issued for each variance application;

- (G) information regarding the time and location for the hearing;
- (H) the purpose of the hearing;
- (I) address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and
- (J) a brief description of the nature of the hearing including the rules and procedures to be followed. The notice shall also state that additional information is on file with the director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

(f) All comments received within 30 days following the date of the public hearing shall be made part of the application file and shall be considered by the commission prior to taking final action on the application.

(g) In determining whether to grant a variance, the commission shall consider whether the applicant has complied with any alternate contaminant concentrations established pursuant to Rule .0107 of this Section and has complied with any Special Order issued under G.S. 143-215.2.

(h) If the commission's final decision is unacceptable, the applicant may file a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 30 days, the decision on the variance shall be final and binding.

(i) A variance shall not operate on a defense to an action at law based upon a public or private nuisance theory or any other cause of action.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.3 (a) (3); 143-215.3 (a) (4); 143-215.3 (e); 143-215.4.*

**SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS**

**.0201 CLASSIFICATIONS**

The classifications which may be assigned to the underground waters groundwaters will be those specified in the following series of classifications:

- (1) Class GA waters; usage and occurrence:
  - (a) Best Usage. ~~of Waters.~~ Existing or potential source of drinking water supply for humans, drinking, culinary use, and food processing without treatment, except where necessary to correct naturally occurring conditions.
  - (b) Conditions Related to Best Usage. This class is intended for those groundwaters in

which chloride concentrations are equal to or less than 250 mg/l, and which are considered suitable safe for drinking, but which may require treatment to improve quality related to natural conditions, culinary use, and food processing without treatment, but which may require disinfection or other treatment when necessary to reduce naturally occurring concentrations in order not to exceed the maximum concentrations specified in Rule .0202 of this Section.

- (c) Occurrence. ~~At depths greater than 20 feet below land surface and in~~ In the saturated zone, ~~above a depth of 20 feet where these waters are a principal source of potable water supply.~~
- (2) Class GSA waters; usage and occurrence:
  - (a) Best Usage. Existing or potential source of water supply for potable mineral water culinary use, food processing, and conversion to fresh waters. by treatment.
  - (b) Conditions Related to Best Usage. This class is intended for those groundwaters in which naturally occurring the chloride concentrations due to natural conditions is in excess of are greater than 250 mg/l, and but which are otherwise may be considered safe suitable for use as potable mineral water after treatment to reduce concentrations of naturally occurring substances, culinary use, and food processing without treatment but may require disinfection or other treatment when necessary to reduce naturally occurring concentrations in order not to exceed the maximum concentrations specified in Rule .0202 of this Section.
  - (c) Occurrence. ~~At depths greater than 20 feet below land surface and in~~ In the saturated zone, ~~above a depth of 20 feet where these waters are a principal source of potable mineral water supply.~~
  - (3) Class GB waters; usage and occurrence:
    - (a) Best Usage. Source of recharge to surface waters and groundwaters occurring below a depth of 20 feet; source of treatable water supply.
    - (b) Conditions Related to Best Usage. Precipitation is the principal source of recharge to the saturated zone. The water in the saturated zone above a depth of 20 feet is of drinking water quality in much of the state. However, the upper 20 feet of the earth's surface is generally very vulnerable to pollution from man's activities, and should be considered a cycling zone for removing most or all of the

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contaminants from the water by adsorption, absorption, filtration or other natural treatment processes. In recognition of this fact, this classification is intended for those fresh groundwaters occurring at depths less than 20 feet below land surface that are of suitable quality for recharge to the deeper aquifers and surface waters of the state.

(e) Occurrence. Above a depth of 20 feet below land surface.

(4) Class GSB waters; usage and occurrence:

(a) Best Usage. Source of recharge to saline surface waters and saline groundwaters occurring below a depth of 20 feet, source of treatable water supply.

(b) Conditions Related to Best Usage. Precipitation is the principal source of recharge to the saturated zone. The water in the saturated zone above a depth of 20 feet of the earth's surface is generally very vulnerable to pollution from man's activities and should be considered a cycling zone for removing most or all of the contaminants from the water by adsorption, absorption, filtration or other natural treatment processes. In recognition of this fact, this classification is intended for those saline groundwaters occurring at depths less than 20 feet below land surface that are of suitable quality for recharge to the deeper aquifers and surface waters of the state.

(c) Occurrence. Above a depth of 20 feet below land surface.

(3)(5) Class GC waters; usage and occurrence:

(a) Best Usage. Source of water supply for purposes other than human drinking, culinary use, or food processing.

(b) Conditions Related to Best Usage. This class includes those groundwaters that do not meet the quality criteria requirements of waters having a higher classification and for which measures of efforts to upgrade restore in-situ to a higher classification would not be technically, technologically or economically not be feasible, or not in the best interest of the public, or and for which maximum feasible restoration has been completed, treatment at the point of use to a quality suitable for drinking is not technologically feasible.

(c) Occurrence. In the saturated zone, as determined by the commission on a case by case basis.

Statutory Authority G.S. 143-214.1; 143B-282(2).

.0202 WATER QUALITY STANDARDS

(a) The water quality standards for the ~~underground waters~~ groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage. Where groundwater quality standards have been exceeded due to man's activities, restoration efforts shall be designed to restore groundwater quality to the level of the standard or as closely there to as is practicable. In recognition of circumstances or conditions which may prevent restoration to the level of the standards, the director may authorize alternate contaminant concentrations in accordance with Rule .0107 of this Subchapter. These standards are the maximum levels of contamination that are permitted under these Regulations. It is the policy of the EMC, however, to protect and maintain the existing quality of the groundwaters where that quality is better than the assigned standards. Therefore, the increase in any constituent for which a standard is specified to a concentration of 50 percent of the standard may result in review or modification of an existing permit, requirements for additional monitoring, or issuance of a special order where a violation of standards may be predicted.

(b) The standards will not be considered violated when concentrations of substances which exceed the established limits are attributable to natural conditions.

(c) Maximum concentrations for substances are established as the lesser of:

- (1) Health advisory based on the no-observed-adverse-effect-level (NOAEL) or lowest-observed-adverse-effect-level (LOAEL);
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1x10<sup>-6</sup>
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) National primary drinking water standard;  
or
- (6) National secondary drinking water standard.

(d) The maximum concentrations for contaminants specified in Paragraphs (h) and (i) of this Rule, shall be as listed.

(e) Maximum concentrations for substances not specified in Paragraphs (h) and (i) of this Rule, shall be determined by the director in ac-

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cordance with the procedures established in Paragraph (c) of this Rule. Where available data does not enable development of maximum concentrations in accordance with established procedures, the director shall consider appropriate U.S. Environmental Protection Agency data and other published health effects data in developing maximum concentrations.

(f) Where the maximum concentration of a substance is less than the limit of detectability, the substance shall not be permitted in detectable concentrations.

(g) Where two or more substances exist in combination, the director shall consider the effects of chemical interactions and may establish maximum concentrations at values less than those established in accordance with Paragraphs (d) and (e) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.

(h) ~~(b)~~ Class G:A Standards. Waters. The maximum allowable contaminant levels for toxic and deleterious substances are those concentrations specified in Subparagraphs (1) - (31) of this Paragraph. For substances not specified, the standard is the naturally occurring concentration as determined by the director. Synthetic, man-made, or other substances that do not naturally occur are prohibited. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent.

(1) where naturally occurring concentrations exceed the established standard, the standard will be the naturally occurring concentration as determined by the director;

- (1) acrylamide (propenamide): 0.00001
- (2)alachlor: 0.00015
- (3) aldicarb (TEMIK): 0.009
- (4)(10) arsenic: 0.05 mg/l
- (5)(11) barium: 1.0 mg/l
- (6) benzene: 0.0007
- (7) bromoform (tribromomethane): 0.00019
- (8)(12) cadmium: ~~0.10 mg/l~~ 0.005
- (9) carbofuran: 0.036
- (10) carbon tetrachloride: 0.0003
- (11) chlordane:  $2.7 \times 10^{-5}$
- (12)(27) chloride: 250.0 mg/l
- (13) chlorobenzene: 0.3
- (14) chloroform (trichloromethane): 0.00019
- (15) 2-chlorophenol: 0.0001
- (16)(13) chromium: 0.05 mg/l
- (17) cis-1,2-dichloroethene: 0.07
- (18)(2) total coliform organisms (total): 1 per 100 milliliters
- (19)(28) color: less than 15 color units

- (20) copper: 1.0
- (21) cyanide: 0.154
- (22)(7) 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07 ~~0.1 mg/l~~
- (23) 1,2-dibromo-3-chloropropane:  $2.5 \times 10^{-5}$
- (24) dichlorodifluoromethane (Freon-12; Halon): 0.00019
- (25) 1,2-dichloroethane (ethylene dichloride): 0.00038
- (26) 1,1-dichloroethylene (vinylidene chloride): 0.007
- (27) 1,2-dichloropropane: 0.00056
- (28) p-dioxane (1,4-diethylene dioxide): 0.007
- (29) dioxin:  $2.2 \times 10^{-10}$
- (30) total dissolved solids (total): 500 mg/l and
- (31)(3) endrin: 0.0002 mg/l
- (32) epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
- (33) ethylbenzene: 0.029
- (34) ethylene dibromide (EDB; 1,2-dibromoethane):  $0.05 \times 10^{-5}$
- (35) ethylene glycol: 7.0
- (36)(20) fluoride: 2.0 ~~1.5 mg/l~~
- (37) foaming agents: 0.5
- (38)(22) gross alpha particle activity (including radium-226 but excluding radon and uranium): 15 pCi/l
- (23) gross beta particle activity: 50 pCi/l
- (39) heptachlor:  $7.6 \times 10^{-5}$
- (40) heptachlor epoxide:  $3.8 \times 10^{-5}$
- (41) hexachlorobenzene (perchlorobenzene): 0.00002
- (42) n-hexane: 14.3
- (43)(24) iron: 0.3 ~~0.30 mg/l~~
- (44)(14) lead: 0.05 mg/l
- (45)(1) lindane:  $2.65 \times 10^{-5}$  0.004 mg/l
- (46)(25) manganese: 0.05 mg/l
- (47)(15) mercury: 0.0011 mg/l
- (48) metadichlorobenzene (1,3-dichlorobenzene): 0.62
- (49)(5) methoxychlor: 0.1 mg/l
- (50) methylene chloride (dichloromethane): 0.005
- (51) methyl ethyl ketone (MEK; 2-butanone): 0.17
- (52) nickel: 0.15
- (53)(16) nitrate: (as N) 10.0 mg/l
- (54)(17) nitrite: (as N) 1.0 mg/l
- (55) orthodichlorobenzene (1,2-dichlorobenzene): 0.62
- (56) oxamyl: 0.175
- (57) paradichlorobenzene (1,4-dichlorobenzene): 0.0018
- (58) pentachlorophenol: 0.22
- (59)(26) pH: 6.5 - 8.5 no increase from naturally occurring pH values in acidity below or increase in alkalinity above 7;

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- (29) phenol: not greater than 1.0 ug/l;
- (60)(21) combined radium-226 and radium-228 (combined): 5 pCi/l
- (61)(18) selenium: 0.01 mg/l;
- (62)(19) silver: 0.05 mg/l;
- (63) styrene (ethenylbenzene):  $1.4 \times 10^{-5}$
- (64) sulfate: 250.0
- (31) thermal; not greater than 30 degrees Fahrenheit variance from the naturally occurring level as determined by the director;
- (65) tetrachloroethylene (perchloroethylene; PCE): 0.0007
- (66) toluene (methylbenzene): 1.0
- (67)(6) toxaphene:  $3.1 \times 10^{-5}$  .005 mg/l;
- (68)(8) 2, 4, 5,-TP (Silvex): 0.01 mg/l;
- (9) total trihalomethanes: 0.10 mg/l;
- (69) trans-1,2-dichloroethene: 0.07
- (70) 1,1,1-trichloroethane (methyl chloroform): 0.2
- (71) trichloroethylene (TCE): 0.0028
- (72) vinyl chloride (chloroethylene):  $1.5 \times 10^{-5}$
- (73) xlenes (o-, m-, and p-): 0.4
- (74) zinc: 5.0

(i) (e) Class GSA Waters. Standards. The standards for this class shall be the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration; and
- (2) total dissolved solids: 1000 mg/l.

The maximum allowable contaminant levels for toxic and deleterious substances are those concentrations specified Subparagraphs (1) - (31) of this Paragraph. For substances not specified, the standard is the naturally occurring concentration as determined by the director. Synthetic, man-made, or other substances that do not naturally occur are prohibited. Where not otherwise indicated, the standard refers to the total concentration of any constituent.

- (1) where naturally occurring concentrations exceed the established standard, the standard will be the naturally occurring concentration as determined by the director;
- (2) total coliform: 1 per 100 milliliters;
- (3) endrin: .0002 mg/l;
- (4) lindane: .004 mg/l;
- (5) methoxychlor: 0.1 mg/l;
- (6) toxaphene: .005 mg/l;
- (7) 2,4,D: 0.1 mg/l;
- (8) 2,4,5,-TP Silvex .01 mg/l;
- (9) total trihalomethanes: 0.10 mg/l;
- (10) arsenic: .05 mg/l;
- (11) barium: 1.0 mg/l;
- (12) cadmium: .010 mg/l;
- (13) chromium: .05 mg/l;
- (14) lead: .05 mg/l;

- (15) mercury: .002 mg/l;
- (16) nitrate: (as N) 10.0 mg/l;
- (17) nitrite: (as N) 1.0 mg/l;
- (18) selenium: .01 mg/l;
- (19) silver: .05 mg/l;
- (20) fluoride: 1.5 mg/l;
- (21) combined radium - 226 and radium - 228: 5 pCi/l;
- (22) gross alpha particle activity: 15 pCi/l;
- (23) gross beta particle activity: 50 pCi/l;
- (24) iron: 0.30 mg/l;
- (25) manganese: .05 mg/l;
- (26) pH: No increase from naturally occurring pH values in acidity below or increase in alkalinity above 7;
- (27) chloride: allowable increase not to exceed 100 percent of the naturally occurring chloride concentration;
- (28) color less than 15 units;
- (29) phenol: not greater than 1.0 ug/l;
- (30) total dissolved solids: 1000 mg/l; and
- (31) thermal: not greater than 30 degrees Fahrenheit variance from the naturally occurring level as determined by the director.

(d) Class GB Waters. No increase above the naturally occurring concentration of any toxic or deleterious substance unless it can be shown, upon request, to the satisfaction of the director that the increase:

- (1) will not cause or contribute to the contravention of water quality standards in adjoining waters of a different class;
- (2) will not accumulate in a manner such that unusual or different hydrological conditions may cause a threat to public health or the environment; and
- (3) will not cause an existing or potential water supply to become unsafe or unsuitable for its current use.

(e) Class GSB Waters. No increase above the naturally occurring concentration of any toxic or deleterious substance unless it can be shown, upon request, to the satisfaction of the director that the increase:

- (1) will not cause or contribute to the contravention of water quality standards in adjoining waters of a different class;
- (2) will not accumulate in a manner such that unusual or different hydrological conditions may cause a threat to public health or the environment; and
- (3) will not cause an existing or potential water supply to become unsafe or unsuitable for its current use.

(d) (f) Class GC Waters. All chemical, radioactive, biological, taste producing, odor producing, thermal, and other toxic or deleterious

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substances shall not exceed the concentration existing at the time of classification.

- (1) The concentrations of substances which, at the time of classification exceed water quality standards, shall not be permitted to increase. For all other substances, concentrations shall not be caused or permitted to exceed the established standard.
(2) The concentrations of substances which, at the time of classification, exceed water quality standards shall not cause or contribute to the contravention of groundwater or surface water quality standards in adjoining waters of a different class.
(3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

Statutory Authority G.S. 143-214.1; 143B-282(2).

SECTION .0300 - ASSIGNMENT OF UNDERGROUND WATER CLASSIFICATIONS

.0301 CLASSIFICATIONS: GENERAL

(a) Schedule of Classifications. The classifications are based on the quality, occurrence and existing or contemplated best usage of the underground waters groundwaters as established in Section .0200 of this Subchapter and are assigned statewide except where supplemented or supplanted by specific classification assignments by major river basins.

(b) Classifications and Water Quality Standards. The classifications and standards assigned to the underground waters groundwaters are denoted by the letters GA, GSA, GB, GSB, or GC. These classifications refer to the classifications and standards established by 15 NCAC 21, "Classifications and Standards Applicable to the Underground Waters of North Carolina." Rule .0201 of this Subchapter.

Statutory Authority G.S. 143-214.1; 143-282(2).

.0302 STATEWIDE

(a) The classifications assigned to the underground waters groundwaters located within the boundaries or under the extraterritorial jurisdiction of the State of North Carolina are:

- (1) Class GA Waters. Those underground waters groundwaters in the state naturally containing less than 250 mg/l or less of chloride and occurring at depths greater than 20 feet below land surface are classified GA.
(2) Class GB Waters. Those underground waters in the state naturally containing less

than 250 mg/l chloride concentration and occurring between land surface and a depth of 20 feet are classified GB.

- (2)(3) Class GSA Waters. Those underground waters groundwaters in the state naturally containing greater than 250 mg/l chloride concentration and occurring at depths greater than 20 feet below land surface are classified GSA.
(4) Class GSB Waters. Those underground waters in the state naturally containing greater than 250 mg/l chloride concentration and occurring between land surface and a depth of 20 feet are classified GSB.
(3)(5) Class GC Waters. Those underground waters groundwaters assigned the classification GC in Rules .0303 - .0318 of this Section.

Statutory Authority G.S. 143-214.1; 143-282(2).

.0319 RECLASSIFICATION

The underground water groundwater classifications as assigned may be revised by the EMC commission following public notice and subsequent public hearing. Changes may be to a higher or lower classification. Reclassification requests may be submitted to the Director. of the Division of Environmental Management.

Statutory Authority G.S. 143-214.1; 143-215.3(e); 143B-282(2).

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Notice is hereby given in accordance with G.S. 150B-12 that the Division of Coastal Management intends to amend regulation cited as 15 NCAC 7H .0104.

The proposed effective date of this action is November 1, 1988.

The public hearing will be conducted at 10:00 a.m. on July 28, 1988 at Duke Marine Lab Auditorium, Pivers Island, Beaufort, North Carolina.

Comment Procedures: All persons interested in this matter are invited to attend the public hearing. The Coastal Management Division will receive written comments up to the date of the hearing. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposal may be obtained by con-

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tacting Portia Rochell, Division of Coastal Management, P. O. Box 27687, Raleigh, N. C. 27611. (919) 733-2293

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7II - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

.0104 DEVELOPMENT INITIATED PRIOR TO EFFECTIVE DATE OF REVISIONS

(c) In the case of subdivisions which have received all required final or preliminary local approvals or a CAMA major development permit prior to May 27, 1988, and have therein met all applicable CAMA setback requirements as of May 27, 1988, the updated oceanfront erosion rate approved by the Commission on July 29, 1988, and effective on November 1, 1988, shall only apply to the maximum extent feasible. For these previously approved lots, the erosion rate existing as of May 27, 1988, shall be applied in determining minimum oceanfront setbacks.

Statutory Authority 113A-107; 113A-113; 113A-124.

TITLE 24 - INDEPENDENT AGENCIES

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Housing Finance Agency intends to adopt regulation cited as 24 NCAC 1B .0004.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 9:00 a.m. on July 18, 1988 at 3300 Drake Circle, Suite 200, Raleigh, North Carolina, 27607.

Comment Procedures: Written comments concerning this rule must be submitted by July 18, 1988 to the APA Coordinator, N. C. Housing Finance Agency, 3300 Drake Circle, Suite 200, Raleigh, North Carolina, 27607.

CHAPTER 1 - N.C. HOUSING FINANCE AGENCY

SUBCHAPTER 1B - RULEMAKING PROCEDURES

.0004 DECLARATORY RULINGS

Any person affected by a statute administered by the board or by a rule promulgated by the board may request a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts. All requests for declaratory rulings shall be in writing and shall contain the following information:

- (1) Name(s) and address(es) of petitioner(s);
(2) Statute and/or rule to which the petition relates; and
(3) Concise statement of facts and explanation of the manner in which the petitioner is injured, or thinks he may be injured, by the statute or rule as applied to him.

Statutory Authority G.S. 122A-5; 150B-17.

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Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Housing Finance Agency/North Carolina Housing Partnership intends to adopt regulations cited as 24 NCAC 1M .0201 - .0205.

The proposed effective date of this action is October 1, 1988.

The public hearing will be conducted at 10:00 a.m. on July 15, 1988 at North Carolina Housing Finance Agency/North Carolina Housing Partnership, 3300 Drake Circle, Suite 200, Raleigh, North Carolina, 27607.

Comment Procedures: Written comments concerning this rule must be submitted by July 15, 1988 to the APA Coordinator, North Carolina Housing Partnership, P. O. Box 26147, Raleigh, N. C. 27611. Oral comments may be presented at the hearing.

SUBCHAPTER 1M - NORTH CAROLINA HOUSING TRUST FUND

SECTION .0200 - ENERGY CONSERVATION AND HOUSING REHABILITATION INCENTIVE PROGRAM

.0201 PURPOSE

The purpose of the Energy Conservation and Housing Rehabilitation Incentive Program (the "Program") is to provide funding to encourage the upgrading and energy efficiency of housing for very low-, low- and moderate-income households. Program funds will be used both to leverage other funds for comprehensive housing

rehabilitation improvements and independently for weatherization improvements.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0202 ELIGIBILITY**

(a) Eligible projects under the program will include:

- (1) Comprehensive housing rehabilitation projects that utilize program funds for energy conservation improvements and other funding sources for the other rehabilitation improvements;
- (2) Projects that exclusively involve energy conservation improvements to existing residential structures. Specific activities eligible for program funds will be identified in the application material and funding documents.

(b) Eligible applicants for program funds include units of state and local government, Public Housing Authorities, Community Action Agencies, nonprofit organizations, and for-profit developers. Eligible recipients of program funds must directly operate the program funded.

(c) Housing units assisted under the program must be occupied by very low-, low- or moderate-income households, as defined in the act. Specific targeting of funds required under the program will be identified in the program application materials and funding documents.

(d) All rental housing units assisted under the program must remain affordable to the occupant, as required by the act. Applicants for program funding will be required to demonstrate how affordability will be maintained. The agency, through its funding agreement, will include measures to help ensure that affordability is maintained.

(e) Eligible forms of assistance under the program will include loans, grants, combination grant loans and other comparable forms of assistance. Loans will be repaid to the Housing Trust Fund. The agency may establish standards for grants and loans in program documents.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0203 APPLICATION PROCEDURES**

(a) Funding cycles for program funds will be established on an annual basis, or more frequently, depending on the need and the availability of funds.

(b) The agency will solicit applications for program funds by advertising in newspapers and other media, mailing information to eligible ap-

plicants [as defined in .0202(b)] and by other methods of public announcement.

(c) Eligible applicants may apply for funding under the program by submitting an application to the agency in a manner described in the program application material available from the agency. The agency will develop the application material which will include, but not be limited to, a program description, application instructions and the application form(s) and supporting documents. The agency may from time-to-time amend the contents of the application material.

(d) The agency will provide technical assistance to prospective applicants to assist them in preparing applications for program funds.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0204 SELECTION PROCEDURES**

(a) In distributing program funds, the partnership will develop an allocation formula that will promote the distribution of funds across the state based on the following allocation factors: lower-income housing need; an equitable distribution of funds among the state's geographic regions; and a balance between the availability of funds in urban and rural areas.

(b) The agency's evaluation of applications for funding will take into consideration the following criteria:

- (1) Consistency of the application with the purposes and requirements of the Act;
- (2) Consistency of the application with the purposes and requirements of the Stripper Well Litigation Settlement Agreement;
- (3) Benefit to very low- and low-income households;
- (4) Extent to which program funds are recycled;
- (5) Experience of the applicant and its administrative plan; and
- (6) Community support for the project.

(c) In addition, priority will be given to projects that:

- (1) Address special housing needs;
- (2) Expand opportunities in areas where there is a shortage of standard and affordable housing; and
- (3) Upgrade housing currently failing to meet minimum standards of health and safety.

The Partnership may establish additional evaluation criteria. All criteria utilized for evaluating applications will be described in the application materials.

(d) All applications received by the agency will be reviewed at the time they are received to determine if the application is complete. Appli-

cants submitting incomplete applications will be notified by the agency and be given the opportunity to submit additional information. All application information must be submitted before the application deadline. The agency will evaluate applications based on the allocation categories and the evaluation criteria described in Rule .0204(a) and (b). Additional information on the review process may be provided in the program application material.

(e) If applications received by the application deadline are insufficient to utilize all of the funds allocated to a geographic region and urban or rural area, the partnership, at its discretion, may extend the application deadline for that region or area. Funds allocated to regions/areas may also be reallocated by the partnership, in a manner defined by the partnership, if the available funds are underutilized within the region or area.

(f) Upon completion of its review, the agency will determine whether funding approval will be granted or denied. The agency will notify applicants selected for funding in writing of the amount of funding awarded, the timeframe for the funding awarded and will provide additional information about the funding awarded. When the agency is unable to approve an application for funding, it will notify the applicant in writing and specify the reason for the denial of funding.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

**.0205 ADMINISTRATION**

(a) The agency will enter into a funding agreement with each applicant selected as a program

recipient. The agreement will include, but not be limited to:

- (1) The amount of funding;
- (2) The obligations of the recipient;
- (3) The terms of the disbursement of funds from the Housing Trust Fund;
- (4) The maximum loan or grant amount per housing unit assisted with program funds; and
- (5) Provisions for the repayment of grants and loans to the Housing Trust Fund by recipients, subrecipients and their successors and assigns.

(b) The agency will periodically review the performance of project recipients according to the funding agreement. This will be done at least annually and may be done on a more frequent basis.

(c) Recipients will submit such periodic reports as required by the agency to facilitate the monitoring process. The reports will be described in greater detail in the program funding documents. The reports will include, but not be limited to, progress on the accomplishment of program objectives including information on program beneficiaries and housing units improved and annual audited financial statements.

(d) If the agency finds there has been substantial nonperformance under the funding agreement and the situation is not corrected within a period of time, as established in the funding agreement and after notice to the recipient of such finding, the agency may terminate or modify the agreement after written notice is provided.

*Statutory Authority G.S. 122A-5; 122A-5.1; 122E-4; 122E-5; 122E-8.*

*Upon request from the adopting agency, the text of rules will be 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 17 - DEPARTMENT OF REVENUE**

**CHAPTER 9 - MOTOR FUELS TAX DIVISION**

**SUBCHAPTER 91 - HIGHWAY FUEL USE TAX**

**SECTION .0500 - REGISTRATION CARDS AND IDENTIFICATION MARKERS**

**.0504 NO VEHICLE REGISTRATION REQUIRED**

A motor vehicle not designed by the manufacturer for the purpose of pulling a trailer or mobile home and not modified to the extent that the vehicle becomes a tractor-type truck for the purpose of pulling a trailer is not required to be registered.

- (1) A person installing a trailer hitch on a pickup type truck, whose bed has not been removed, in order to pull a trailer or mobile home, does not have to register the vehicle;
- (2) A person who removes the bed or shortens the chassis of a pickup type truck in order to pull a trailer or mobile home does have to register the vehicle.

*History Note: Statutory Authority G.S. 105-262; 105-449.47 through 105-449.49; Eff. January 1, 1983; Amended Eff. July 1, 1988; May 1, 1987; March 1, 1987.*

**TITLE 19A - DEPARTMENT OF TRANSPORTATION**

**CHAPTER 3 - DIVISION OF MOTOR VEHICLES**

**SUBCHAPTER 3D - LICENSE AND THEFT SECTION**

**SECTION .0800 - SAFETY RULES AND REGULATIONS**

**.0801 SAFETY OF OPERATION AND EQUIPMENT**

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 - formerly Parts 290-298 - and amendments thereto) shall apply to all for-hire motor carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of the State of North Carolina, whether common carriers, contract carriers or exempt carriers.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall also apply to all private motor carriers engaged in the transportation of hazardous waste and radioactive waste in interstate and intrastate commerce over the highways of the State of North Carolina.

(c) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-398 and amendments thereto) shall apply to all private motor carrier vehicles on the highways of the State of North Carolina used in commerce to transport passengers or cargo:

- (1) if such vehicle has a gross vehicle weight rating of ten thousand pounds or more; or
- (2) if such vehicle is used in the transportation of materials found to be hazardous in accordance with the Hazardous Materials Transportation Act as amended in Title 49, Code of Federal Regulations.

49 CFR Part 395.3(b) shall not apply to any private motor carrier engaged in a seasonal enterprise whenever any current seven or eight consecutive days, as defined by Part 395.2 (c) and (d), has been preceded by any 24-hour off-duty period as defined by Part 395.2(e) and the driver is on duty within a radius of 100 air miles of the point at which he reports for duty; and provided the driver has not been on duty more than 70 hours in any seven consecutive days or more than 80 hours in any eight consecutive days. 49 CFR Part 391.11 (b) (1), (b) (2), and (b) (6) shall not apply to drivers employed by private motor carriers who hold a valid North Carolina Driver's License as of June 1, 1988, or until such time that Part 383 (The Commercial Motor Vehicle Safety Act of 1986) shall be adopted by North Carolina.

49 CFR Part 395.3(b) shall not apply to any intrastate motor carrier engaged in a seasonal enterprise whenever any current seven or eight consecutive days, as defined by Part 395.2(c) and

## FINAL RULES

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(d) has been preceded by any 24-hour off-duty period as defined by Part 395.2(e) and the driver is on duty within a radius of 100 air miles of the point at which he reports for duty; and provided the driver has been on duty more than 70 hours in any seven consecutive days or more than 80 hours in any eight consecutive days. 49 CFR Part 391.11(b)(1), (b)(2), and (b)(6) shall not apply to drivers employed by intrastate motor

carriers who hold a valid North Carolina Driver's License as of June 1, 1988, or until such time that Part 383 (The Commercial Motor Vehicle Safety Act of 1986) shall be adopted by North Carolina.

*History Note: Statutory Authority G.S. 20-384; Eff. December 1, 1983;*

*Amended Eff. July 1, 1988; June 1, 1988.*

*LIST OF RULES AFFECTED*

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**NORTH CAROLINA ADMINISTRATIVE CODE**

**EFFECTIVE: June 1, 1988**

<b>AGENCY</b>			<b>ACTION TAKEN</b>
<b><u>DEPARTMENT OF ADMINISTRATION</u></b>			
1	NCAC 19B	.0101 - .0103	Temp. Adopted
		.0201	Expires 10-29-88
		.0301 - .0303	Temp. Adopted
	35	.0103	Expires 10-29-88
		.0202	Temp. Adopted
		.0302 - .0303	Expires 10-29-88
			Amended
			Amended
			Amended
<b><u>DEPARTMENT OF AGRICULTURE</u></b>			
2	NCAC 9B	.0016	Amended
		.0033	Amended
	9K	.0102	Amended
	9M	.0001	Adopted
	38	.0201	Amended
		.0301	Amended
		.0401	Amended
		.0402	Repealed
	52B	.0204	Amended
<b><u>STATE AUDITOR'S OFFICE</u></b>			
3	NCAC 1	.0104 - .0105	Repealed
		.0202 - .0203	Repealed
	3	.0101 - .0104	Repealed
		.0201 - .0205	Repealed
		.0301 - .0304	Repealed
		.0401 - .0415	Repealed
		.0501 - .0508	Repealed
		.0105 - .0107	Adopted
		.0206 - .0219	Adopted
		.0305 - .0313	Adopted
	4	.0101 - .0103	Repealed
		.0201 - .0203	Repealed
<b><u>DEPARTMENT OF COMMERCE</u></b>			
4	NCAC 2R	.0902	Amended
	16A	.0002	Repealed
	16I	.0904	Amended
		.1003	Amended
<b><u>BOARD OF ELECTIONS</u></b>			
8	NCAC 1	.0002 - .0003	Repealed
	6	.0001 - .0003	Repealed
	7	.0001 - .0002	Repealed

**LIST OF RULES AFFECTED**

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**GOVERNOR'S OFFICE**

9 NCAC 2 Executive Order Number 72  
Eff. 04-26-88  
Executive Order Number 73  
Eff. 04-27-88

**DEPARTMENT OF HUMAN RESOURCES**

10	NCAC	3C	.0307	Adopted
		3J	.5101	Adopted
			.5201	Adopted
			.5301 - .5302	Adopted
			.5401 - .5404	Adopted
			.5501 - .5507	Adopted
			.5601 - .5603	Adopted
			.5701 - .5705	Adopted
			.5801 - .5802	Adopted
			.5901 - .5907	Adopted
			.6001 - .6006	Adopted
			.6101 - .6102	Adopted
			.6201 - .6202	Adopted
			.6301	Adopted
		7A	.0601 - .0605	Adopted
		7F	.0107	Amended
		10A	.1205	Amended
		10D	.0702	Amended
			.1008	Adopted
			.1624	Amended
			.1628	Amended
			.1638 - .1641	Adopted
			.2513 - .2514	Adopted
		10E	.0105	Amended
		10F	.0001 - .0002	Amended
			.0028 - .0031	Amended
			.0033 - .0034	Amended
			.0039 - .0042	Amended
		10G	.0801 - .0803	Adopted
		14C	.1115	Amended
			.1128	Amended
		26D	.0010	Amended
			.0012	Amended
		26G	.0506	Repealed
			.0601 - .0602	Repealed
		26L	.0001 - .0003	Adopted

**DEPARTMENT OF INSURANCE**

11	NCAC	6B	.0101 - .0105	Temp. Adopted Expires 11-11-88
			.0201 - .0205	Temp. Adopted Expires 11-11-88
			.0301 - .0304	Temp. Adopted Expires 11-11-88
			.0401 - .0403	Temp. Adopted Expires 11-11-88

***LIST OF RULES AFFECTED***

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**DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT**

15	NCAC	2B	.0311 - .0312	Amended
		16E	.0101 - .0106	Adopted
			.0201 - .0202	Adopted

**DEPARTMENT OF TRANSPORTATION**

19A	NCAC	3D	.0201	Repealed
			.0203 - .0214	Repealed
			.0215 - .0231	Adopted
			.0801	Amended

**BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

21	NCAC	8A	.0105	Amended
		8F	.0103	Amended
			.0401	Amended
		8G	.0110	Amended
			.0201 - .0203	Amended
			.0208 - .0212	Amended
			.0404	Amended
		8H	.0001	Amended

**BOARD OF CHIROPRACTIC EXAMINERS**

21	NCAC	10	.0301	Repealed
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**BOARD OF EXAMINERS OF PRACTICING PSYCHOLOGISTS**

21	NCAC	54	.1605	Amended
			.1701 - .1703	Amended
			.1801	Adopted
			.1803	Adopted
			.2401 - .2402	Adopted
			.2501 - .2505	Adopted
			.2601	Adopted

**HOUSING FINANCE**

24	NCAC	1M	.0201 - .0205	Temp. Adopted Expires 11-09-88
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3	Auditor, Department of State
4	Commerce, Department of
5	Corrections, Department of
6	Council of State
7	Cultural Resources, Department of
8	Elections, State Board of
9	Governor, Office of the
10	Human Resources, Department of
11	Insurance, Department of
12	Justice, Department of
13	Labor, Department of
14A	Crime Control and Public Safety, Department of
15	Natural Resources and Community Development, Department of
16	Education, Department of
17	Revenue, Department of
18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Housing Finance Agency
25	State Personnel, Office of
26	Administrative Hearings, Office of

NOTE: Title 21 contains the chapters of the various occupational licensing boards.

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4	Auctioneers, Commission for
6	Barber Examiners, Board of
8	Certified Public Accountant Examiners, Board of
10	Chiropractic Examiners, Board of
12	Contractors, Licensing Board for
14	Cosmetic Art Examiners, Board of
16	Dental Examiners, Board of
18	Electrical Contractors, Board of Examiners of
20	Foresters, Board of Registration for
21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Martial & Family Therapy Certification Board
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34	Mortuary Science, Board of
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54	Practicing Psychologists, Board of
56	Professional Engineers and Land Surveyors, Board of
58	Real Estate Commission
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64	Speech and Language Pathologists and Audiologists, Board of Examiners of
66	Veterinary Medical Board

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- AO - Administrative Order
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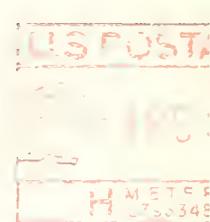
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