

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

General Comments and Requests:

On occasion, these Rules use more than one term for a single concept or are ambiguous or unclear. These technical change requests offer suggestions as to how such inconsistent terminology and ambiguous or unclear provisions might be made consistent or clarified. These requests seek only to clarify the apparent intent of these Rules and not to alter their meaning.

These rules occasionally use adjectives or adverbs that do not clarify, but rather make more ambiguous, the meaning of a rule. In such cases, please delete or define the unclear term.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0501

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 – replace “are in conformance” with “comply”

Line 11 – add commas after “Products” and “.0116(o)(56)”

Line 12 – replace “engage in processing of” with “process” if that does not change the intended meaning.

Line 13 – delete Paragraph (c) entirely, as it is unnecessary.

Line 15 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0501 is readopted as published in 31:05 NCR 355-356 as follows:

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SECTION .0500 - SMOKED AND SMOKE-FLAVORED FISH

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

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

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

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

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
 Eff. January 1, ~~1985~~. 1985;
 Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0502

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – insert “shall” before “apply”

Line 4 – what do these definitions apply to – this Section, Subchapter, Chapter?

Line 7 – replace “and/or” with “and” or “or”

Line 9 – replace “does” with “shall”

Line 15 – do you mean “fish” or “fishery products”?

Line 18 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0502 is readopted as published in 31:05 NCR 356 as follows:

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02 NCAC 09C .0502 DEFINITIONS

The following definitions apply;

- (1) Smoked or smoke-flavored fishery products means the finished food prepared by:
 - (1) Treating fish with salt (sodium chloride), and
 - (2) Subjecting it to the direct action of smoke from burning wood, sawdust, or similar material and/ or imparting to it the flavor of smoke by a means other than the direct action of smoke such as immersing it in a solution of wood smoke. This definition does not alter the labeling requirements.
- ~~"Smoked fish" means any fish that is prepared by treating it with salt (sodium chloride) and then subjecting it to the direct action of smoke from burning wood, sawdust, or similar material.~~
- ~~(2) "Smoke flavored fish" means any fish that is prepared by treating it with salt (sodium chloride) and then imparting to it the flavor of smoke by other than the direct action of smoke. This Paragraph does not alter the labeling requirements.~~
- ~~(2)~~ (2) "Hot process smoked or hot-process smoke-flavored fish" means the finished food prepared by subjecting forms of smoked fish to heat.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. January 1, 1985, 1985;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0503

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 – precisely what does “readily cleanable material” mean?

Lines 7 and 8 – replace “should” with “shall”

Lines 9-12 and 15-16 – do not capitalize the beginnings of these lines

Lines 13-14 – delete these lines in their entirety and renumber 15 and 16 as Subparagraphs (5) and (6) of Paragraph (b). It appears that lines 15-16 merely duplicate lines 7-8.

Line 15 – add “and” at the end of this line.

Line 17 – delete “or” and the comma after “equipment”

Line 18 – delete or define “other objectionable areas”

Line 20 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0503 is readopted as published in 31:05 NCR 356 as follows:

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02 NCAC 09C .0503 PLANTS AND GROUNDS

(a) Unloading platforms shall be:

- (1) made of readily cleanable material; and
- (2) equipped with drainage facilities adequate to accommodate all seepage and wash water.

(b) The following processes should be carried out in separate rooms or facilities, and the interior walls separating these processes should extend from floor to ceiling and contain only necessary openings (such as for conveyors and doorways):

- (1) Receiving or shipping;
- (2) Storage of raw fish;
- (3) Presmoking operations (thawing, dressing, brining, etc.);
- (4) Drying and smoking.

(c) The following processes shall be carried out in separate room or facilities and the interior walls separating these processes shall extend from floor to ceiling and contain only necessary openings (such as for conveyors and doorways):

- (1) Cooling and packing;
- (2) Storage of final product.

(d) The product shall be so processed as to prevent contamination by exposure to areas, utensils, or equipment, involved in earlier processing steps, refuse, or other objectionable areas.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. January 1, ~~1985~~. 1985;
Readopted Eff. March 1, 2017*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0504

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – delete or define “adequate”

Line 4 – replace “the” with “all”

Lines 4 and 5 – replace “room(s)” with “rooms”

Line 7 – delete or define “conspicuously”

Line 7 – replace “the processing room(s)” with “all processing rooms”

Line 7 – what does “as plant conditions require” mean? Can you refer to a rule or other authority that explains or gives meaning to this term?

Line 8 – delete or define “suitable”

Line 9 – delete “whatever”

Line 10 – over what period of time is debris not allowed to accumulate – hourly, daily, or some other period? Please specify.

Line 12 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0504 is readopted as published in 31:05 NCR 356 as follows:

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02 NCAC 09C .0504 SANITARY FACILITIES

- (a) Adequate hand-washing and sanitizing facilities shall be located in the processing room(s) or in one area easily accessible from the processing room(s).
- (b) Readily understandable signs directing employees to wash and sanitize their hands after each absence from post of duty shall be conspicuously posted in the processing room(s) and elsewhere in the plant as conditions require.
- (c) Offal shall be placed in suitable covered containers for removal at least once a day, or more frequently if necessary, or shall be removed by conveyors or chutes. Offal, debris, or refuse from any source whatever shall not be allowed to accumulate in or about the plant.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. January 1, ~~1985~~, 1985;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0505

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 – replace “should” with “shall”

Line 9 – delete “the”

Line 11 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0505 is readopted as published in 31:05 NCR 356 as follows:

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3 **02 NCAC 09C .0505 SANITARY OPERATIONS**

4 (a) Before beginning the day's operation, all utensils and product-contact surfaces of equipment to be used for the day's
5 operation shall be rinsed and sanitized.

6 (b) Containers used to convey or store fish shall not be nested while they contain fish or otherwise handled during processing
7 or storage in a manner conducive to direct or indirect contamination of their contents.

8 (c) Cleaning and sanitizing of utensils and portable equipment should be conducted in an area set aside for these purposes
9 and shall be carried out in such a manner as to prevent contamination of the fish or fish products.

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

12 *Eff. January 1, ~~1985~~. 1985;*

13 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0506

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – add “such as” before “tanks,” add “and” before utensils,” and delete and other equipment”

Line 4 – precisely what does “readily cleanable material” mean?

Line 6 – replace “the product” with “fish or fish products”

Line 6 – delete “at least”

Lines 7-9 – do not capitalize the first words of these lines

Line 8 – add “and” at the end of this line

Line 11 – do you mean “+2” or “±2”?

Line 13 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0506 is readopted as published in 31:05 NCR 356 as follows:

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02 NCAC 09C .0506 EQUIPMENT AND PROCEDURES

- (a) All food-contact surfaces (tanks, belts, tables, utensils, and other equipment) shall be made of readily cleanable materials.
- (b) Metal seams shall be smoothly soldered, welded, or bonded.
- (c) Each freezer and cold storage compartment used for the product shall be fitted with at least the following:
 - (1) An automatic control for regulating temperature;
 - (2) An indicating thermometer so installed as to show accurately the temperature within the compartment;
 - (3) A temperature recording device ~~thermometer~~ so installed as to indicate accurately at all times the temperature within the compartment.
- (d) Thermometers or other temperature-measuring devices shall have an accuracy of +2 degrees ~~fahrenheit.~~ Fahrenheit.

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. January 1, ~~1985.~~ 1985;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0507

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 5 – replace “Fresh fish received” with “Upon receipt, fresh fish”

Page 1, lines 5 and 8 – define or delete “adequately”

Page 1, lines 5 and 8 – define or delete “sound, wholesome” – does the phrase “sound, wholesome” mean “free from adulteration and organoleptically detectable spoilage” in this context? If not, can another rule or authority be referenced to help define this phrase?

Page 1, lines 5-8 – Subparagraphs (a)(1) and (a)(2) are similar and should more closely parallel each other, perhaps as follows (if partially processed and frozen fish can be inspected organoleptically):

- (1) Upon receipt, fresh fish shall be inspected and washed before processing. Only fish free from adulteration and organoleptically detectable spoilage shall be processed.
- (2) Upon receipt, every lot of fish that has been partially processed in another plant, including frozen fish, shall be inspected, and only fish free from adulteration and organoleptically detectable spoilage shall be processed.

Page 1, line 11 – at what temperature – 38 degrees or whatever lower temperature was achieved? If you mean 38 degrees, replace “that temperature” with “38 degrees fahrenheit”

Page 1, line 16 – it appears there is an extra space after “be”

Page 1, line 23 – define or delete “substantially”

Page 1, line 25 – define or delete “thoroughly” and “vigorous”

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

Page 1, lines 28-29 – replace the second sentence of Subparagraph ((b)(4) with “Viscera shall be completely removed.”

Page 1, line 30 – replace “the evisceration process” with “evisceration”

Page 1, lines 30-31 – define or delete “thoroughly” and “vigorous”

Page 1, line 32 – delete the comma

Page 1, lines 34 and 36 – delete “and” at the ends of these lines.

Page 2, line 12 – delete “strategic”

Page 2, line 14 – what does “process” mean – this this a device or a piece of equipment?

Page 2, line 14 – what does “under the conditions of manufacturer” mean?

Page 2, line 21 – at what temperature – 38 degrees or whatever lower temperature was achieved? If you mean 38 degrees, replace “that temperature” with “38 degrees fahrenheit”

Page 2, line 23 – replace “and/or” with “and” or “or”

Page 2, line 26 – delete “at least”

Page 2, lines 26-27 – what does “oven load” mean?

Page 2, line 31 – replace “should’ with “shall”

Page 2, line 34 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 02 NCAC 09C .0507 is readopted as published in 31:05 NCR 356 as follows:

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3 **02 NCAC 09C .0507 PROCESSES AND CONTROLS**

4 (a) Raw materials

5 (1) Fresh fish received shall be inspected and adequately washed before processing. Only sound, wholesome
6 fish free from adulteration and organoleptically detectable spoilage shall be processed.

7 (2) Every lot of fish that has been partially processed in another plant, including frozen fish, shall be
8 adequately inspected, and only clean, wholesome fish shall be processed.

9 (3) Fresh or partially processed fish, except those to be immediately processed, shall be iced or otherwise
10 refrigerated to an internal temperature of 38 degrees fahrenheit or below upon receipt and shall be
11 maintained at that temperature until the fish are to be processed.

12 (4) All fish received in a frozen state shall be either thawed promptly and processed, or stored at a temperature
13 that will maintain it in a frozen state.

14 (b) Defrosting of frozen fish

15 (1) Defrosting shall be carried out in a sanitary manner and by such methods that the wholesomeness of the
16 fish is not adversely affected. Frozen fish shall be defrosted:

17 (A) in air at 45 degrees fahrenheit or below until other than hard frozen; or

18 (B) in air so that the temperature in any part of the fish does not exceed 45 degrees fahrenheit; or

19 (C) in a continuous water-overflow thaw tank or spray system in such a manner that the temperature
20 in any part of the fish does not exceed 45 degrees fahrenheit.

21 (2) When a thaw tank is used, fish should not remain in the tank longer than one-half hour after they are
22 completely defrosted.

23 (3) Fish entering the thaw tanks shall be free of exterior packaging material and substantially free of liner
24 material.

25 (4) After thawing, fish shall be washed thoroughly with a vigorous water spray or a continuous waterflow
26 system.

27 (c) Presmoking operation

28 (1) Evisceration of fish shall be performed with minimum disturbance of intestinal tract contents. Removal of
29 viscera shall be complete.

30 (2) After the evisceration process, the fish (including the body cavity) shall be thoroughly washed with a
31 vigorous water spray or a continuous waterflow system.

32 (3) All fish shall be dry-salted at a temperature not to exceed 38 degrees fahrenheit throughout the fish, or shall
33 be brined in such a manner that the temperature of the fish and the brine:

34 (A) does not exceed 60 degrees fahrenheit at the start of brining; and

35 (B) if between 38 degrees fahrenheit and 50 degrees fahrenheit at the start of brining, is continuously
36 lowered to 38 degrees fahrenheit or below within 12 hours; and

1 (C) if between 50 degrees fahrenheit and 60 degrees fahrenheit at the start of brining, is continuously
2 lowered to 50 degrees fahrenheit or below within 2 hours and to 38 degrees fahrenheit or below
3 within the following 10 hours; and

4 (D) does not rise above 38 degrees fahrenheit after reaching that temperature or below either prior to
5 or during the brining operation.

6 (4) Fish shall be rinsed with fresh water after brining.

7 (d) Heating, cooking, smoking operation

8 (1) A point-sensitive, continuous temperature-recording device shall be used to monitor both the internal
9 temperature of the fish and the ambient temperature within the oven. Each recording-device record shall be
10 identified as to the specific oven load and date processed.

11 (2) Hot-process smoked or hot-process smoke-flavored fish shall be heated by a controlled heat process that
12 provides a monitoring system positioned in as many strategic locations in the oven as necessary to assure a
13 continuous temperature throughout each fish.

14 (3) The process selected by the processor as adequate under the conditions of manufacturer shall be at least
15 equivalent to a process established by a competent processing authority to achieve a safe product.

16 (e) Packing

17 (1) The finished product shall be handled only with clean, sanitized hands, gloves, or utensils.

18 (2) Manual manipulation of the finished product shall be kept to a minimum.

19 (3) The finished product shall be cooled to a temperature of 50 degrees fahrenheit or below within three hours
20 after cooking and further cooled to a temperature of 38 degrees fahrenheit or below within 12 hours after
21 cooking, and this temperature shall be maintained during all subsequent storage and distribution.

22 (4) The shipping containers, retail packages, and shipping records shall indicate by appropriate labeling the
23 perishable nature of the product and shall specify that the product shall be shipped, stored, and/or held for
24 sale at 38 degrees fahrenheit or below until consumed.

25 (5) Permanently legible code marks shall be placed on the outer layer of every finished product package and
26 master carton. Such marks shall identify at least the plant where packed, the date of packing, and the oven
27 load. Records shall be so maintained as to provide positive identification;

28 (A) of the process procedures used for the manufacture of hot-process smoked or hot-process
29 smoke-flavored fish; and

30 (B) of the distribution of the finished product.

31 (f) Testing. Microbiological and chemical examination of in-line and finished product samples should be conducted with
32 sufficient frequency to assure that processing steps and sanitary procedures are adequate.

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34 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*
35 *Eff. January 1, 1985. 1985;*
36 *Readopted Eff. March 1, 2017.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0601

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Consider revising as follows:

Eggs for human food shall be processed in manner which:

- (1) allows examination of the content of individual eggs being processed; and
- (2) does not allow egg content to commingle with egg shell or shell membrane during processing.

Line 10 – please check and correct references to G.S. 106-267 and 106-267.2 in the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0601 is readopted as published in 31:05 NCR 356 as follows:

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SECTION .0600 - PROCESSING OF EGGS

4

02 NCAC 09C .0601 COMMINGLING OF SHELL AND EGG PROHIBITED

6 No person shall process any eggs for human food in any manner which:

7 (1) does not allow examination of the content of individual eggs being processed; and

8 (2) allows egg content to commingle with the egg shell or shell membrane during processing.

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10 *History Note: Authority G.S. 106-131; 106-139;*

11 *Eff. April 1, ~~1987~~. 1987;*

12 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0701

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6 and 7 – replace “the state” with “this State”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0701 is readopted as published in 31:05 NCR 356 as follows:

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SECTION .0700 - BOTTLED WATER

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02 NCAC 09C .0701 SCOPE

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

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

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

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

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

12 *Eff. April 1, 1992;*

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

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

15 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0702

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 – replace “Environment, Health, and Natural Resources” with “Environmental Quality” and check to be sure that the current division and section are cited.

Line 10 – replace “through” with “from”

Line 12 – add a comma after “dug”

Line 13 – replace “through” with “from” and replace “derived” with “withdrawn” or “obtained” or another, more accurate term.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0702 is readopted as published in 31:05 NCR 356 as follows:

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02 NCAC 09C .0702 DEFINITIONS

For the purposes of this Section:

(1) "Approved source" when used in reference to a plant's product or operations water, means a source of water and the water therefrom, whether it be from a spring, well, municipal water supply, or any other source that has been approved by the Department of Agriculture's designated representative, the Department of Environment, Health, and Natural Resources, Environmental Health Division, Public Water Supply Section in accordance with this Section;

(2) "Spring" means a natural orifice in the earth's surface through which water freely flows without the aid of mechanical means;

(3) "Well" means a hole that is cored, bored, drilled, jetted, dug or otherwise constructed so as to tap an aquifer through which water is derived by mechanical means.

*History Note: Authority G.S. 106-139;
Eff. April 1, 1992;
Temporary Amendment Eff. May 13, 1996;
Amended Eff. April 1, ~~1997~~, 1997;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0703

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line numbers should begin with "1" on each page of a multi-page rule.

Page 1, line 4 – replace “proceed to Paragraph (c) of this Rule” with “the provisions of Paragraphs (b), (c), and (d) of this Rule shall not apply”

Page 1, line 7 – add “source” before “approval” and replace “requires” with “is reviewed in”

Page 1, lines 12 and 14 – replace the semicolons with periods.

Page 1, line 14 – replace “proceed to” with “the provisions of” and add “shall apply” at the end of this line.

Page 1, line 15 – what “factors”? List, describe, or cite other authority that identifies or describes these factors.

Page 1, line 20 – replace “proceed to” with “the provisions of”

Page 1, line 21 – add “shall apply” at the end of this line.

Page 1, line 22 – consider revising the first line as follows:

(d) In the second step of the spring investigation, spring water shall be sampled and data collected to determine the capability of

Page 1, line 24 – add “shall” before “apply”

Page 1, line 33 – add “and” at the end of this line.

Page 1, line 35 – replace the semicolon with a period.

Jason Thomas
Commission Counsel

Date submitted to agency: January 27, 2017

Page 2 – line numbers should begin with “1” at the top of each page.

Page 2, line 38 – replace the semicolon with a period.

Page 2, lines 39-45 – it is unclear what is meant by “monitored,” “measured,” and “analysis” in this Subparagraph (d)(3). In addition, the required timing is not clear. Consider revising as follows, if this is what is meant:

- (3) Water samples for parameters (1)(A) through (1)(F) of this Paragraph shall be collected and analyzed at least weekly on the same day of the week before a storm event occurs. After a storm event occurs, water samples for parameters (1)(A) through (1)(F) of this Paragraph shall be collected and analyzed within 24 hours and then twice a week for two weeks. Water samples for parameter (1)(G) of this Paragraph shall be collected and analyzed at least monthly and an additional sample shall be collected and analyzed within 24 hours after each storm event. Water samples for parameter (1)(H) of this Paragraph shall be measured at least two times during the sampling period. The first analysis of water samples for parameter (1)(H) of this Paragraph shall be conducted during the first month of the sampling period, and at least one of these samples shall be collected within 24 hours after a storm event.

Page 2, line 45 – replace the semicolon with a period.

Page 2, lines 46-51 – consider revising as follows, if this is what is meant:

- (4) The owner may develop or begin to develop a spring before beginning the process of sample collection and analysis. Unfavorable sample results shall not be discounted on the basis of inadequate spring development at the time of sample collection. If the owner intends to develop the spring in its final form before monitoring, he shall complete the requirements of Paragraph (e) of this Rule prior to construction.

Page 2, line 52 – replace “These measurements and analyses” with “Water sample collection and analysis”

Page 2, line 54 – do you intend to incorporate this sampling method, including subsequent amendments and editions”? If so, add “, including subsequent amendments and editions.” after “.0116(n)” Replace “and at” with “Water sample analyses for parameters (1)(D) through (1)(H) of this paragraph shall be conducted by” and delete “for parameters (1)(D) through (1)(H) of this paragraph” from line 55.

Page 2, line 56 – delete or define “neat”

Page 2, line 58-59 – delete the entire sentence that begins “The spring owner may...”

Page 2, line 60 – replace “data and sample results” with “data, sample results, and sample analysis” if that is what is meant.

Page 2, line 63 – replace “proceed to” with “the provisions of” and add “shall apply” to the end of this line.

Line 66 – add “for construction” after “contract” if that is what is meant.

Page 2, line 68 – replace “constructed to the final intended form” with “developed in their final form”

Page 2, line 70 – replace “The” with “Neither the” and “or” with “nor.” Delete “not.”

Page 2, line 70 – do you mean “Section” or “Subchapter” or “Chapter”?

Page 3, line 74 – is this the only authority for this Rule that you wish to cite?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09C .0703 is readopted as published in 31:05 NCR 356-358 as follows:

2
3 **02 NCAC 09C .0703 SOURCE APPROVAL**

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

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

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

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

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

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

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

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

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

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

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

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

30 (D) pH;

31 (E) Conductivity;

32 (F) Turbidity;

33 (G) Coliform bacteria;

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

- 36 (2) The minimum sampling and data collection period shall be six consecutive months. The period shall also
37 include a minimum of two storm events (two or more inches of rainfall in a 24-hour period). It is the
38 owner's responsibility to monitor rainfall in the vicinity of the spring site;
- 39 (3) Parameters listed as (1)(A) through (1)(F) of this Paragraph shall be monitored at least weekly on the same
40 day of the week before a storm event occurs. After a storm event occurs, parameters (1)(A) through (1)(F)
41 of this Paragraph shall be monitored within 24 hours and then twice a week for two weeks. Parameter
42 (1)(G) of this Paragraph shall be monitored at least monthly plus one sample within 24 hours after each
43 storm event. Parameter (1)(H) of this Paragraph shall be measured at least two times during the sampling
44 period. The first analysis shall be conducted during the first month of the sampling period. At least one of
45 the samples shall be collected within 24 hours of a storm event;
- 46 (4) The extent to which the spring is developed before beginning the monitoring process is at the discretion of
47 the owner. This may have a bearing on the analysis results, and some spring site improvement may be
48 advisable. Unfavorable sample results will not be discounted on the basis of inadequate spring
49 development at the time of sample collection. The owner may wish to obtain the advice of an engineer or
50 other consultant. If the owner intends to develop the spring in its final form before monitoring, he shall
51 complete the requirements of Paragraph (e) of this Rule prior to construction;
- 52 (5) These measurements and analyses shall be conducted in accordance with the recommendations of the
53 current edition of "Standard Methods for the Examination of Water and Wastewater" which is adopted by
54 reference at ~~2 NCAC 9B .0016 (n)~~ 02 NCAC 09B .0116(n) and at a laboratory certified by the State of
55 North Carolina for parameters (1)(D) through (1)(H) of this Paragraph. All measurements and sample
56 results (with attached laboratory analysis reports) shall be kept in a neat tabular form and submitted to the
57 Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality at the end of the
58 monitoring period. The spring owner may consult with the Department of ~~Environment, Health, and~~
59 ~~Natural Resources~~ Environmental Quality at any point during the monitoring period. Upon review of the
60 data and sample results, the Department of ~~Environment, Health, and Natural Resources~~ Environmental
61 Quality shall determine the capability of the source to meet current North Carolina drinking water quality
62 standards. If the water source is determined to be unsatisfactory, the investigation shall be terminated. If
63 the source is determined to be satisfactory, proceed to Paragraph (e) of this Rule.
- 64 (e) Plans and specifications for construction of the source, protective covering, piping, and storage facilities shall be
65 submitted to the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality by an engineer licensed
66 to practice in the State of North Carolina for review and approval prior to beginning construction or letting a contract. For
67 spring sources, the plans and specifications may be presented by the licensed engineer at any point during the process outlined
68 in Paragraph (d) of this Rule. Springs shall not be constructed to the final intended form until plans and specifications for the
69 spring have been approved.
- 70 (f) The bottling of water or the selling of water for bottling shall not begin until compliance with this Section has been
71 completed and the Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality receives certification

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

74 *History Note:* Authority G.S. 106-139;
75 Eff. April 1, ~~1992~~. 1992;
76 Readopted Eff. March 1, 2017.

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09E .0102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4-5 – please identify where these “Official Feed Terms” may be obtained or accessed by the public. Can you reference an address or a web page and the present cost, if any?

Line 7 – is this the only authority for this Rule that you wish to cite?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09E .0102 is readopted as published in 31:05 NCR 358 as follows:

2

3 **02 NCAC 09E .0102 TERMS USED IN REFERENCE TO COMMERCIAL FEEDS**

4 The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the Association of American
5 Feed Control Officials, except as the Board of Agriculture designates otherwise in specific cases.

6

7 *History Note: Authority G.S. 106-284.41;*

8 *Eff. February 1, ~~1976~~ 1976;*

9 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09E .0103

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 – delete this line and replace it with: “G.S. 106-284.33(4):”

Lines 14-15 – replace “Section 106-284.38(1) of the North Carolina Commercial Feed Law of 1973” with “G.S. 106-284.38(1)”

Line 17 – is this the only authority for this Rule that you wish to cite?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09E .0103 is readopted as published in 31:05 NCR 358 as follows:

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02 NCAC 09E .0103 COMMODITIES DECLARED EXEMPT

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

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

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

History Note: Authority G.S. 106-284.41;
Eff. February 1, 1976;
Amended Eff. October 1, ~~1987~~ 1987;
Readopted Eff. March 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .0101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 – add “and editions” at the end of this line if that is what is intended.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .0101 is readopted as published in 31:05 NCR 358 as follows:

2
3 **SUBCHAPTER 09G - MILK AND MILK PRODUCTS**

4
5 **SECTION .0100 - PASTEURIZED MILK ORDINANCE**

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

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

- 9 (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements,"
- 10 U.S. Department of Agriculture, Agricultural Marketing ~~Service.~~ Service, Dairy Programs. A copy of
- 11 this document is available at no cost from the USDA, Agricultural Marketing Service, at
- 12 www.ams.usda.gov. A farmstead shall be exempt from all mandatory milk testing except the mastitic
- 13 milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk
- 14 or milk product production facility that uses only milk from its own animals in its product production
- 15 and has no other source of milk.
- 16 ~~(2) "General Instructions for Performing Farm Inspections According to the USDA Recommended~~
- 17 ~~Requirements for Milk for Manufacturing Purposes and its Production and Processing, for Adoption~~
- 18 ~~by State Regulatory Agencies," U.S. Department of Agriculture, Agricultural Marketing Service.~~
- 19 ~~(3)~~(2) "Grading and Inspection - General Specifications for Approved Dairy Plants and Standards for Grades
- 20 of Dairy Products," 7 C.F.R. 58. A copy of this document is available at no cost from the Government
- 21 Publishing Office at www.gpo.gov.
- 22 ~~(4) 15A NCAC 18A .1210, "Restrictions on Dispensing Raw Milk."~~

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

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26 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*
27 *Eff. February 1, 1976;*
28 *Amended Eff. August 1, 2002; December 1, 1987; January 1, 1987; January 1, 1985; August 1, 1982.*
29 *1982;*
30 *Readopted Eff. March 1, 2017.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2001

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 11 – delete “(PMO)” if these initials are never used in your rules.

Line 12 – there appears to be an extra space after “Guidance”

Line 12 – add a comma after “methods”

Line 13 – add a comma after “Administration” and delete “(hereinafter referred to as the “Pasteurized Milk Ordinance”)”

Line 14 – replace “secured” with “obtained”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2001 is readopted as published in 31:05 NCR 358 as follows:

2
3 **SECTION .2000 - GRADE A MILK SANITATION**

4
5 **02 NCAC 09G .2001 GENERAL - ADOPTION BY REFERENCE**

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

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

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19 *History Note: Authority G.S. 106-266.31;*
20 *Eff. January 1, 1985;*
21 *Amended Eff. December 1, 1990; June 1, 1988; July 1, 1986;*
22 *Transferred from 15A NCAC 18A .1201 Eff. May 1, ~~2012~~ 2012;*
23 *Readopted Eff. March 1, 2017.*
24

1 02 NCAC 09G .2002 is repealed through readoption as published in 31:05 NCR 358-360 as follows:

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3 **02 NCAC 09G .2002 MODIFICATIONS OF THE ADOPTION BY REFERENCE**

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

6 *Eff. January 1, 1985;*

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

8 *Transferred from 15A NCAC 18A .1202 Eff. May 1, ~~2012~~ 2012;*

9 *Repealed Eff. March 1, 2017*

10

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2003

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9 – to what to these definitions apply – this Section? Please specify.

Lines 11-12 – delete Item (2) entirely.

Line 13 – replace “is” with “shall be”

Line 14 – replace “are” with “shall be”

Lines 14-15 – delete “and are to be substituted as the proper legal jurisdiction”

Lines 16 and 19 – replace “within” with “in”

Lines 17 and 20 – replace “is to be defined as” with “shall be deemed to be”

Line 22 – replace “is defined” with “shall be defined”

Line 23 – add “who” before “sells”

Lines 24-33 – replace Item (7) with “Any violation of the Pasteurized Milk Ordinance shall be a violation of Article 12 of G.S. 106, as provided by G.S. 106-124.1.”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2003 is readopted as published in 31:05 NCR 360 as follows:

2
3 **02 NCAC 09G .2003 DEFINITIONS**

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

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

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

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

9 The following definitions shall apply:

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

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

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

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

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

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

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

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

29 The amount allowable (\$.....) is defined in GS § 106-124.1. Civil penalties.

30 The Commissioner may assess a civil penalty of not more than two thousand dollars (\$2,000) against
31 any person who violates a provision of this Article or any rule adopted pursuant to this Article. In
32 determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm
33 caused by the violation.

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

36 *Eff. January 1, 1985;*

37 *Amended Eff. December 1, 1990;*

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*Transferred from 15A NCAC 18A .1203 Eff. May 1, ~~2012~~ 2012;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2004

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 18 – add commas after “Division” and “send into”

Lines 18-19 – replace “the State of North Carolina” with “this State”

Line 19 – add “to” before “offer” and replace “and/or” with “or”

Line 20 – delete “the current version of the” and do not italicize “Pasteurized Milk Ordinance”

Line 21 – replace Paragraph (b) as follows:

- (b) Any person holding a permit shall not assign, sell, or otherwise transfer a permit to a third party. A permit issued pursuant to this Section governing operations at a particular location shall not apply to any other location.

Line 22 – replace “are” with “shall be” and replace “within the current version of” with “in”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2004 is readopted as published in 31:05 NCR 360 as follows:

2
3 **02 NCAC 09G .2004 PERMITS REQUIRED**

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

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

8 ~~(1) grocery stores;~~

9 ~~(2) restaurants;~~

10 ~~(3) soda fountains; and~~

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

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

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

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

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

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

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

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

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

26 *Eff. January 1, 1985;*

27 *Amended Eff. December 1, 1990;*

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

29 *Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2005

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 19-20 – revise as follows:

- (a) Permits shall be issued pursuant to the administrative procedures set forth in the Pasteurized Milk Ordinance.

Lines 21-22 – is this Rule intended to require these entities to have a NC permit? If so, revise as follows:

- (b) Prior to operating in this State, independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall have been issued a permit by the North Carolina Department of Agriculture and Consumer Services.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2005 is readopted as published in 31:05 NCR 360-361 as follows:

2
3 **02 NCAC 09G .2005 ~~PROCEDURE FOR ISSUANCE OF PERMIT; SAMPLING; EMBARGO PERMIT~~**

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

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

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

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

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

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

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25 *History Note: Authority G.S. 106-266.31;*
26 *Eff. January 1, 1985;*
27 *Amended Eff. April 1, 1994; December 1, 1990;*
28 *Transferred from 15A NCAC 18A .1205 Eff. May 1, 2012; 2012;*
29 *Readopted Eff. March 1, 2017.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2006

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 1 – replace “readopted” with “readoption”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2006 is repealed through readopted as published in 31:05 NCR 361 as follows:

2

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

4

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

6 *Eff. January 1, 1985;*

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

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

9 *Repealed Eff. March 1, 2017.*

10

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2007

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 1 – replace “readopted” with “readoption”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2007 is repealed through readopted as published in 31:05 NCR 361-362 as follows:

2

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

4

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

6 *Eff. January 1, 1985;*

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

8 *Repealed Eff. March 1, 2017.*

9

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2008

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

What is the purpose of this Rule? Is it necessary?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2008 is readopted as published in 31:06 NCR

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3 **02 NCAC 09G .2008 SEVERABILITY**

4 If a provision of this Section or the application of a provision to any person or circumstance is held invalid, the remainder
5 of the provisions of this Section or the application of the provisions to other persons or circumstances shall not be
6 affected.

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

9 *Eff. January 1, 1985;*

10 *Transferred from 15A NCAC 18A .1208 Eff. May 1, ~~2012~~ 2012;*

11 *Readopted Eff March 1, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09G .2010

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 1 – replace “readopted” with “readoption”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09G .2010 is repealed through readopted as published in 31:05 NCR 362 as follows:

2

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

4

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

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

7 *Temporary Adoption Expired January 11, 2002;*

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

9 *Eff. February 1, 2004;*

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

11 *Repealed Eff. March 1, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09H .0109

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “heretofore adopted” with “, incorporated by reference in [cite the rule here],”

Line 5 – replace “constitutes” with “shall constitute” and “under” with “pursuant to”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09H .0109 is readopted as published in 31:05 NCR 362 as follows:

2

3 **02 NCAC 09H .0109 UNAVOIDABLE DEFECT LEVELS FOR CORNMEAL AND FLOUR SAMPLES**

4 Notwithstanding Guideline Number 7404.01 of the FDA Administrative Guidelines heretofore adopted, reaching or exceeding
5 the following limits constitutes product adulteration under G.S. 106-129(1)c. requiring embargo and voluntary recall by
6 manufacturer:

- 7 (1) whole insects--one per 50 grams of product;
- 8 (2) rodent pellet fragments--one per 50 grams of product;
- 9 (3) rodent hairs--one per 50 grams of product;
- 10 (4) insect fragments--100 per 50 grams of product;
- 11 (5) webbing, larvae, etc.--No minimum (indicates product age).

12

13 *History Note: Authority G.S. 106-139; 106-267; 106-267.2;*
14 *Eff. February 1, 1976;*
15 *Amended Eff. January 1, ~~1985~~. 1985;*
16 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09J .0101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6-7 – revise as follows:

- (a) All corn shall be tested for aflatoxin no more than 30 days prior to use in products for human consumption. Only those sampling and laboratory procedures that are acceptable to the Department shall be used.

On what basis will the Department determine whether “sampling and laboratory procedures” are acceptable? Is this set forth in a rule, statute, or other incorporated authority?

Line 9 – add “or her” after “his”

Line 9 – On what basis will the Commissioner decide whether cornmeal products must be tested for aflatoxin? The use of the phrase “may require” ... “whenever he deems it necessary” is ambiguous. Is this set forth in a rule, statute, or other incorporated authority?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09J .0101 is readopted as published in 31:05 NCR 362 as follows:

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SUBCHAPTER 9J - TESTING FOR AFLATOXIN IN CORNMEAL

02 NCAC 09J .0101 CORNMEAL TESTING

- (a) All corn, prior to use in products for human consumption, shall be tested for aflatoxin, no more than 30 days prior to use. Sampling and laboratory procedures must be acceptable to the Department.
- (b) No corn containing unlawful levels of aflatoxin shall be used in any product for human consumption.
- (c) The Commissioner or his agent may require cornmeal products to be tested for aflatoxin whenever he deems it necessary to prevent the sale of adulterated cornmeal.

*History Note: Filed as an Emergency Rule Eff. January 23, 1981, for a Period of 120 Days to Expire on May 23, 1981;
Authority G.S. 106-139;
Made Permanent Eff. March 23, ~~1981~~ 1981;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09J .0102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 – add “or her” after “his”

Line 5 – what does “reasonable” mean – perhaps during regular business hours?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09J .0102 is readopted as published in 31:05 NCR 362 as follows:

2

3 **02 NCAC 09J .0102 RECORDS MAINTAINED**

4 Records of all tests required by this Regulation shall be maintained for 12 months at the location where such products are
5 produced and shall be available for inspection by the Commissioner or his agent at all reasonable times.

6

7 *History Note: Filed as an Emergency Rule Eff. January 23, 1981, for a Period of 120 Days to Expire on May 23, 1981;*

8 *Authority G.S. 106-139;*

9 *Made Permanent Eff. March 23, ~~1981~~, 1981;*

10 *Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 19 – replace “utilizing” with “using”

Lines 20-21 – revise as follows:

automated method set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116 (a), or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 2 NCAC 9B .0116 (j).

Lines 22-23 – move the phrase “approved by the Commissioner” to after “methods” and delete the comma after “Commissioner”

Line 25 – replace “and/or” with “and” or “or”

Line 25 – add a comma after “station”

Lines 26, 29 and 30 – what does “Regulatory Agency” mean? Is this term defined?

Line 27 – add “a” before “producer,” delete “of milk,” and replace “the buyer” with “a buyer”

Line 29 – replace “is” with “means”

Line 31 – add a comma after “packaging” if that is what is meant.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0101 is readopted as published in 31:05 NCR 362 as follows:

2
3 **SUBCHAPTER 9K - SAMPLING AND TESTING OF MILK AND CREAM: FROZEN DESSERTS**

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

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

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

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

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

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

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

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

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

21 (j), (Standard Methods for the Examination of Dairy Products).

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

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

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

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

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

36 *Eff. February 1, 1982;*

37 *Amended Eff. January 1, 1985; December 31, 1983. 1983;*

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Readopted Eff. March 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

13-16 – revise as follows:

- (a) Raw milk for producer payment shall be sampled as set forth in the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).
- (b) Milk sampling and hauling procedures shall be conducted as set forth the Pasteurized Milk Ordinance under Appendix B, Milk Sampling, Hauling and Transportation, incorporated by reference in 02 NCAC 09G .2001.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0102 is readopted as published in 31:05 NCR 362 as follows:

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02 NCAC 09K .0102 GENERAL SAMPLING PROCEDURES

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

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

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

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

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

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

*History Note: Authority G.S. 106-139; 106-267; 106-267.2;
Eff. February 1, 1982;
Amended Eff. June 1, 1988; January 1, 1985; January 1, 1984. 1984;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0103

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 9 – replace “in order to use” with “prior to using”

Line 10 – delete the extra space after “.0101” and end the line with a period.

Line 11 – delete the extra space after “.0101”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0103 is readopted as published in 31:05 NCR 363 as follows:

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02 NCAC 09K .0103 APPROVAL OF TESTING PROCEDURE USED

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

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

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

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

*History Note: Authority G.S. 106-267; 106-267.2;
Eff. February 1, 1982; 1982;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0104

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 – replace “received” with “collected” if that is what is meant.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0104 is readopted as published in 31:05 NCR 363 as follows:

2

3 **02 NCAC 09K .0104 PLACE OF TESTING**

4 Unless written permission of the Commissioner is received, a tester shall test a sample only at the plant or place where the
5 sample is received.

6

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

8 *Eff. February 1, ~~1982~~ 1982;*

9 *Readopted Eff. March 1, 2017*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0105

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – add a comma after “producer”

Line 5 – add a comma after “samples”

Line 5 – replace “tests” with “test results” if that is what is meant.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0105 is readopted as published in 31:05 NCR 363 as follows:

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3 **02 NCAC 09K .0105 RESPONSIBILITY FOR TEST**

4 The tester, sampler, producer and buyer of milk or cream shall be jointly responsible for the integrity of all test reports,
5 including, the proper care, handling, and storage of all samples and for proper recording of all tests.

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

8 *Eff. February 1, ~~1982~~ 1982;*

9 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0106

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6-7 – revise as follows:

The test reading of milk shall be conducted as set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a) or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0106 is readopted as published in 31:05 NCR 363 as follows:

2

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

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

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

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

10 *Eff. February 1, 1982;*

11 *Amended Eff. January 1, ~~1985~~ 1985;*

12 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0107

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “tests” with “test results” if that is what is meant.

Line 4 – add “shall” before “maintain”

Line 5 – add a comma after “record” and replace “tests” with “test results” if that is what is meant.

Line 14 – replace “parties” with “persons”

Line 16 – replace “is responsible to” with “shall”

Line 18 – replace “Division. This is due by” with “Division, no later than”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0107 is readopted as published in 31:05 NCR 363 as follows:

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02 NCAC 09K .0107 TEST REPORTING

- (a) A tester shall report all tests conducted on milk or cream for each producer payment period and maintain a permanent record in duplicate, of the tests.
- ~~(b) A tester shall, immediately upon completing each test or retest, record the test results with ink or indelible pencil on a form supplied or approved by the Commissioner of Agriculture.~~
- ~~(c) A tester shall, immediately upon completing the tests covering a producer payment period, mail a duplicate record of the results, as provided in (b) of this Rule, to the Food and Drug Protection Division, N.C.D.A.~~
- ~~(d) A tester shall authenticate each page of test reports with his signature.~~
- ~~(e) A tester shall use fractional parts in calculating the average butterfat content in milk or cream for all tests.~~
- ~~(f) If daily milk or cream weight tickets are not used, the tester shall report the itemized weights of each daily delivery for each producer payment period.~~
- (b) A tester shall supply both individual sample butterfat test results and monthly average butter fat results to the parties responsible for making butter fat premium payments to each individual producer.
- (c) The payee of the butterfat premium payments to each individual milk producer is responsible to submit the monthly averages for each individual milk producer to the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division. This is due by the fifteenth day of the following month.

*History Note: Authority G.S. 106-267; 106-267.2;
Eff. February 1, 1982, 1982;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0108

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4 and 6 – replace “tests” with “test results” if that is what is meant.

Line 5 – add “from which the samples were collected” after plant” if that is what is meant.

Line 5 – replace “samples” with “test results” if that is what is meant.

Line 5 – replace “them” with “the manager” if that is what is meant.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0108 is readopted as published in 31:05 NCR 363 as follows:

2

3 **02 NCAC 09K .0108 INCORRECT TESTS**

4 (a) If the Commissioner determines that tests of milk or cream have been made erroneously by a tester, he shall notify in
5 writing the manager of the plant that the samples are in error and inform them of the correct test results.

6 (b) A manager of a plant shall cause payments to be made to all producers on the basis of the corrected test.

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8 *History Note: Authority G.S. 106-267; 106-267.2; 106-267.5;*

9 *Eff. February 1, ~~1982~~ 1982;*

10 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0109

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

When are fresh milk samples collected? The rule appears to be silent on this, unless (b) is intended to require sampling at the time of shipment or delivery. The answer to this question may alter the changes requested below.

Line 4 – revise as follows if that is what is meant:

- (a) Only fresh samples of milk and cream shall be collected and tested pursuant to this Section.

Line 5 – replace “Samples” with “Fresh samples” if that is what is meant.

Line 7 – replace “collected” with “collection”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0109 is readopted as published in 31:05 NCR 363 as follows:

2

3 **02 NCAC 09K .0109 SAMPLING AND TESTING FOR FRESH MILK SAMPLES**

4 (a) The fresh sampling method shall be utilized as the exclusive method for sampling milk and cream.

5 (b) Samples shall be collected from every producer's shipment of milk and delivered to the buyer.

6 ~~(c) Fresh samples shall be selected at irregular intervals for testing and tested a minimum of four times a month.~~

7 ~~(c)~~ Fresh samples shall be tested within 48 hours after collected.

8 ~~(d)~~ Fresh samples shall be at least two ounces in volume.

9 ~~(e)~~ Fresh samples shall be held for 24 hours after testing.

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

12 *Eff. February 1, 1982;*

13 *Amended Eff. June 1, 1984; December 31, ~~1983~~, 1983;*

14 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0112

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – delete “general”

Line 5 – replace “two ounce” with “two-ounce”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0112 is readopted as published in 31:05 NCR 363 as follows:

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3 **02 NCAC 09K .0112 SAMPLING CREAM**

4 (a) Cream samples shall be obtained by following the same general procedure as in sampling milk.

5 (b) A sampler shall obtain at least a two ounce sample of cream.

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

8 *Eff. February 1, 1982;*

9 *Amended Eff. December 31, ~~1983~~, 1983;*

10 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0113

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 6-7 – revise as follows:

Cream shall be tested as set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a) or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0113 is readopted as published in 31:05 NCR 363 as follows:

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

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

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

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

10 *Eff. February 1, 1982;*

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

12 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0114

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 8-11 – revise the first sentence as follows:

The automated method shall be calibrated as set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a) or the Standard Methods for the Examination of Dairy Products, incorporated by reference in 02 NCAC 09B .0116(j).

Lines 10-13 – on what basis “may” the Commissioner approve other methods? Does another rule or statute set out the basis, factors or circumstances which guides the Commissioner’s decision?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0114 is readopted as published in 31:05 NCR 363-364 as follows:

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02 NCAC 09K .0114 REFERENCE METHOD

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

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

*History Note: Authority G.S. 106-267; 106-267.2;
Eff. February 1, 1982;
Amended Eff. April 1, 1985; January 1, ~~1985~~ 1985;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0201

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6 – replace “following rules of 2 NCAC 9K .0200” with “Rules of this Section”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0201 is readopted as published in 31:05 NCR 364 as follows:

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SECTION .0200 - FROZEN DESSERTS

4

02 NCAC 09K .0201 SPECIFIC REQUIREMENTS

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

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

10 *Eff. February 1, ~~1982.~~ 1982.*

11 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0202

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6 – add a comma after “operator”

Line 9 – replace “Note: This does” with “Retail Frozen Dessert Dispenser shall” and replace “but does” with “but shall”

Line 16 – delete “only” unless you mean to exclude owners who produce cheese in this State and other states from the defined term.

Line 19 – delete “and includes” and replace “milkshake (milkshake base), (milkshake mix),” with “milkshake, milkshake base, milkshake mix,”

Lines 20-21 – delete “by way of illustration and not by limitation:”

Line 21 – replace the semicolons with commas and add “and” before “frozen”

Lines 22 – delete “through rehydration or other means” as it appears to add nothing to the rule.

Line 27 – add a comma after “mixture” and delete the following comma

Line 30 delete “means and” and delete the semicolon.

Line 36 – add a comma after “whey”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0202 is readopted as published in 31:05 NCR 364 as follows:

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3 **02 NCAC 09K .0202 DEFINITIONS**

4 (a) "Wholesale Frozen Dessert Manufacturer" means any owner or operator of an establishment where frozen desserts are
5 made or stored for disposal at wholesale to retail dealers for resale in this State.

6 (b) "Retail Frozen Dessert Manufacturer" means any owner, operator or proprietor of a retail frozen dessert dispenser or a
7 mobile frozen dessert manufacturing unit.

8 (c) "Retail Frozen Dessert Dispenser" means any device that dispenses a frozen dessert at retail.

9 Note: This does not include the conventional spindle-type milkshake mixers, but does include other dispenser milkshake
10 machines.

11 (d) "Mobile Frozen Dessert Manufacturing Unit" means a retail frozen dessert dispenser that is mounted on or connected to
12 any vehicle from which frozen desserts are sold.

13 (e) "Wholesale Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for
14 disposal at wholesale to retail dealers for resale in this State.

15 (f) "Retail Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for disposal at
16 retail only in this State.

17 (g) "Wholesale Butter Processing Manufacturer" means any owner or operator of an establishment where butter is
18 manufactured or processed for disposal at wholesale to retail dealers for resale in this State.

19 (h) "Frozen Dessert" means and includes ice cream, ice milk, milkshake (milkshake base), (milkshake mix), milk sherbet,
20 sherbet, water ices, and other similar frozen or semi-frozen food products including by way of illustration and not by
21 limitation: yogurt; ice milk; frozen custard.

22 (i) "Frozen Dessert Mix" means any mixture or compound in liquid or dry form from which a frozen dessert is made through
23 rehydration or other means.

24 (j) "Rerun" means frozen dessert mix which has been drawn through a retail frozen dessert dispenser.

25 (k) "Dispenser Milkshake Machine" means any fountain type or similar type machine dispensing a semi-frozen milkshake or
26 imitation milkshake with a minimum temperature of 25 degrees F. in a retail establishment.

27 (l) "Imitation Frozen Dessert" means any substance, mixture or compound, which is made in imitation of, or does in fact
28 imitate, any frozen dessert or frozen dessert mix for which a standard of identity has been established in 21 CFR 135 or these
29 Rules, and which does not conform to said standard of identity.

30 (m) "Milk Products" means and includes: cream, dried cream, plastic cream (sometimes known as concentrated milk fat),
31 butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried
32 milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, sweetened condensed part-skim milk,
33 nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has
34 been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried
35 form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate,
36 lactose (pure milk sugar), concentrated cheese whey and dried cheese whey.

1 *History Note: Authority G.S. 106-253; 106-267;*
2 *Eff. February 1, ~~1982~~-1982;*
3 *Readopted Eff. March 1, 2017.*
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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0203

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 5 – delete “as”

Line 9 – add a comma after “wholesome”

Lines 9-10 – on what basis will a product be determined to be “pure, wholesome, and non-deleterious to health”? Is this set forth in a rule, statute, or other incorporated authority?

Line 12 – replace “are” with “shall be”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0203 is readopted as published in 31:05 NCR 364 as follows:

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02 NCAC 09K .0203 INSPECTION CERTIFICATES

(a) A person shall not operate as a wholesale or retail frozen dessert manufacturer, a wholesale or retail cheese manufacturer, or as a wholesale butter processing manufacturer without first obtaining an inspection certificate issued by the Commissioner of the North Carolina Department of Agriculture.

(b) Inspection certificates shall be issued upon:

(1) a determination by the Commissioner that the manufacturer is operating in a clean and sanitary manner in compliance with statutory requirements and these Rules and is producing a product that is pure, wholesome and non-deleterious to health; and

(2) payment of the appropriate fee as set out in N.C.G.S. 106-254.

(c) All inspection certificates shall expire on June 30 of each year and are non-transferable.

*History Note: Authority G.S. 106-253; 106-254; 106-267;
Eff. February 1, ~~1982~~ 1982;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0204

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4-6 – on what basis may the Commissioner make this determination? Is this set forth in a rule, statute, or other incorporated authority?

Line 7-8 – is Paragraph (b) necessary? Doesn't it merely restate another statute or rule or state a general legal conclusion? Unless it is necessary, delete it.

Line 7 – add "Paragraph" before "(a)"

Line 8 – replace "is" with "shall be"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0204 is readopted as published in 31:05 NCR 364 as follows:

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3 **02 NCAC 09K .0204 SUSPENSION OF INSPECTION CERTIFICATE/PENALTIES**

4 (a) If, during the period for which an inspection certificate is in effect, the Commissioner determines that a retail frozen
5 dessert freezer, dispenser milk machine, or mobile frozen dessert unit does not comply with G.S. 106, Article 26 or these
6 Rules, he shall summarily suspend the inspection certificate.

7 (b) Any person, firm, or corporation operating any of the equipment listed in (a) of this Rule without a valid inspection
8 certificate is guilty of a misdemeanor.

9

10 *History Note: Authority G.S. 106-252; 106-253; 106-254; 106-267;*

11 *Eff. February 1, ~~1982~~, 1982;*

12 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0205

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – add a comma after “cleaning”

Line 6 – add a comma after “walls”

Line 6 – what does “sound manner” mean? Is this set forth in a rule, statute, or other incorporated authority?

Line 9 – delete the comma after “piping”

Line 11 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0205 is readopted as published in 31:05 NCR 364 as follows:

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3 **02 NCAC 09K .0205 STANDARDS FOR MOBILE FROZEN DESSERT UNITS**

4 (a) Mobile frozen dessert units shall operate out of a stationary depot, which shall provide storage, cleaning and toilet
5 facilities.

6 (b) Floors, walls and ceilings of mobile frozen dessert units shall be constructed in a sound manner of impervious material.

7 (c) Openings for serving shall not be larger than necessary for their intended purpose.

8 (d) Machinery shall be constructed to facilitate cleaning and avoid contamination of the product. All valves, piping and
9 fitting shall be constructed of sanitary milk piping, and shall be dismantled and thoroughly washed after each day's use.

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11 *History Note: Authority G.S. 106-246; 106-253; 106-267;*

12 *Eff. February 1, ~~1982~~1982;*

13 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0206

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “A” with “No” and delete “not”

Line 5 – replace “A person shall reconstitute a dry” with “Dry”

Line 5 – replace “mix” with “mixes shall be reconstituted”

Line 5 – delete “cool”

Line 6 – add “shall be cooled” after “product”

Line 7 – replace “A person shall store a liquid” with “Liquid”

Line 7 – replace “mix” with “mixes shall be stored”

Line 9 – replace “must” with “shall”

Lines 9-11 – delete the last sentence entirely – it is unnecessary.

Line 13 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0206 is readopted as published in 31:05 NCR 364 as follows:

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

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

History Note: Authority G.S. 106-248; 106-253; 106-267;
Eff. February 1, 1982;
Amended Eff. April 1, 1987; May 1, ~~1986-1986~~;
Readopted Eff. March 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0207

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “A person shall not label a product as” with “A product shall not be labeled”

Line 5 – what does “standards of identity” mean? Cite a rule, statute, or other authority that addresses this term.

Line 7 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0207 is readopted as published in 31:05 NCR 364 as follows:

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3 **02 NCAC 09K .0207 FROZEN DESSERT MIX/STANDARD OF IDENTITY**

4 A person shall not label a product as "frozen dessert mix" unless the product resulting from the frozen dessert mix conforms
5 to the standards of identity established for that product.

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

8 *Eff. February 1, ~~1982~~ 1982;*

9 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0208

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7 – what does “safe, suitable” mean?

Line 10 – on what basis might the Commissioner approve optional ingredients? Is this set forth in a rule, statute, or other incorporated authority?

Line 16 – replace “If” with “Notwithstanding the provisions of Paragraph (b)(3) of this rule, if”

Line 19 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0208 is readopted as published in 31:05 NCR 364 as follows:

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3 **02 NCAC 09K .0208 DIETARY FROZEN DESSERT STANDARDS**

4 (a) Dietary frozen dessert is the food prepared by freezing while stirring a pasteurized mix containing one or more of the
5 following ingredients:

- 6 (1) optional dairy ingredients permitted by 21 CFR 135;
- 7 (2) safe, suitable stabilizers;
- 8 (3) emulsifiers;
- 9 (4) non-nutritive sweeteners; or
- 10 (5) any optional ingredients approved by the Commissioner of Agriculture.

11 (b) The finished dietary frozen dessert product shall:

- 12 (1) contain less than two percent by weight of milk fat;
- 13 (2) contain not less than seven percent by weight of total milk solids;
- 14 (3) contain not less than 1.1 pounds nor more than 1.45 pounds of food solids per gallon; and
- 15 (4) weigh not less than 4 1/2 pounds per gallon.

16 (c) If the optional ingredient micro-crystalline cellulose is used, the quantity of food solids shall not be less than 1.1 pounds
17 per gallon exclusive of the weight of the micro-crystalline cellulose.

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

20 *Eff. February 1, ~~1982~~, 1982;*

21 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0209

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is the term "quiescently frozen" a term of art that is well-understood by the regulated public?

Line 18 – delete "106-246" – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0209 is readopted as published in 31:05 NCR 364 as follows:

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02 NCAC 09K .0209 QUIESCENTLY FROZEN DAIRY CONFECTIONS

(a) Quiescently frozen dairy confections shall contain:

- (1) water;
- (2) not less than 13 percent by weight of total milk solids;
- (3) not less than 33 percent by weight of total food solids;
- (4) not more than one-half of one percent by weight of stabilizers;
- (5) not more than one-fifth of one percent by weight of emulsifier;
- (6) sugar; and
- (7) flavoring.

(b) Quiescently frozen dairy confections may contain coloring.

(c) Quiescently frozen dairy confections shall be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, and purveyed to the consumer in its original factory-fill packages.

(d) In the production of these frozen confections, no processing or mixing prior to the complete freezing shall be used that develops in the finished confection mix any physical expansion or overrun in excess of 10 percent.

*History Note: Authority G.S. 106-248; 106-253; 106-267;
Eff. February 1, ~~1982~~, 1982;
Readopted Eff March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0210

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Is the term "quiescently frozen" a term of art that is well-understood by the regulated public?

Line 13 – what does "wholesome" mean? Cite a rule, statute, or other authority that addresses this term.

Line 19 – delete "106-246" – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0210 is readopted as published in 31:05 NCR as follows:

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3 **02 NCAC 09K .0210 QUIESCENTLY FROZEN CONFECTIONS**

4 (a) Quiescently frozen confections shall contain:

5 (1) water;

6 (2) sugar;

7 (3) flavoring; and

8 (4) not less than 17 percent by weight of total food solids.

9 (b) Quiescently frozen confections may contain:

10 (1) milk solids;

11 (2) coloring;

12 (3) harmless organic acid; and

13 (4) not more than one-half of one percent by weight of stabilizer composed of wholesome, edible material.

14 (c) The quiescently frozen confections shall be manufactured in the form of servings bagged or otherwise wrapped, and
15 purveyed to the consumer in its original factory-filled package.

16 (d) In the production of quiescently frozen confections, no processing or mixing prior to complete freezing shall be used that
17 develops in the finished confections mix any physical expansion or overrun in excess of 10 percent.

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

20 *Eff. February 1, ~~1982~~, 1982;*

21 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0211

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4-9 – what statute authorizes the requirements set forth in Paragraphs (a) – (c)?

Line 4 – what does “make this fact clear to the public” mean, precisely? What must the sign say?

Line 10 – define or delete “generally”

Line 13 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0211 is readopted as published in 31:05 NCR 364 as follows:

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

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

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

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

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

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

14 *Eff. February 1, ~~1982~~ 1982;*

15 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0212

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – delete the comma after “form”

Line 5 – delete the comma after “consumption” and replace the comma after “provided with “that”

Line 6 – add “plate count” after “gram” if that is what is meant.

Line 7 – add a comma after “nut”

Line 7 – “other flavors” of what? Please specify.

Line 10 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0212 is readopted as published in 31:05 NCR 364 as follows:

2

3 **02 NCAC 09K .0212 BACTERIAL PLATE COUNT AND COLIFORM COUNTS**

4 Ice cream, other frozen milk products, water ices, and all mixes in dry form, shall at no time after pasteurization and until
5 delivery for consumption, show a bacterial plate count in excess of 50,000 bacteria per gram; provided, frozen yogurt mix
6 products are not subject to the 50,000 bacteria per gram. Coliform counts shall not exceed 10 colonies per gram for plain or
7 20 colonies per gram for chocolate, fruit, nut or other flavors; and coliform count for all sherbet shall not exceed 10 colonies
8 per gram.

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

11 *Eff. February 1, 1982;*

12 *Amended Eff. January 1, 1987; May 1, ~~1986~~. 1986;*

13 *Readopted Eff. March 1, 2017.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0213

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7 – what does “harmless” mean? Cite a rule, statute, or other authority that addresses this term.

Line 19 – delete “and”

Line 20 – delete the comma

Lines 24-26 – replace the commas with semicolons

Line 28 – delete the comma after “two percent” and add a comma after “five percent”

Line 29 – delete the comma

Line 33 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

02 NCAC 09K .0213 is readopted as published in 31:05 NCR 364 as follows:

02 NCAC 09K .0213 STANDARDS OF IDENTITY FOR MILKSHAKES AND RELATED PRODUCTS

(a) A person shall label a product milkshake, milkshake mix, or milkshake base only if the product complies with the criteria established in these Rules.

(b) Milkshake is a food product which consists of Grade A pasteurized whole milk with the addition of:

(1) harmless flavoring;

(2) ice cream;

(3) milkshake base; or

(4) ice milk, except as provided in (c) of this Rule.

(c) Milkshakes may be made entirely from milkshake mix or ice milk mix as provided in these Rules.

(d) Milkshake mix is a food product which:

(1) consists of a combination of two or more of the following ingredients:

(A) milk products;

(B) flavoring;

(C) sugar;

(D) stabilizer; or

(E) water.

(2) contains not less than two percent milk fat and;

(3) contains not less than 11 percent by weight, of total milk solids; and

(4) contains not more than one-half of one percent stabilizer.

(e) Milkshake base is a frozen product which:

(1) consists of a combination of two or more of the following ingredients:

(A) milk products,

(B) eggs,

(C) water, and

(D) sugar;

(2) contains not less than two percent, nor more than five percent by weight, of milk fat;

(3) contains not less than 30 percent by weight, of total solids;

(4) contains no flavoring or coloring; and

(5) contains not more than one-half of one percent by weight of stabilizer.

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

Eff. February 1, 1982;

Amended Eff. August 1, ~~1982~~ 1982;

Readopted Eff. March 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09K .0214

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 4-6 – is the first sentence intended to define “frozen yogurt”? If not, delete it. If so:

Line 4 – replace “is the” with “means a”

Line 4 – replace “which” with “that”

Line 4 – delete the comma after “stirring”

Line 4 – delete “consisting”

Line 6 – replace “are” with “in frozen yogurt shall be”

Line 7 – “and” – do you mean “and” or “or”?

Line 7 – replace the comma before “provided” with a semicolon

Line 8 – replace “contains” with “shall contain”

Line 9 – replace “fat, not less than 8.25 percent milk solids not fat,” with “fat and not less than 8.25 percent non-fat milk solids,”

Line 10 – replace “is not” with “shall not be”

Line 11 – replace “is not” with “shall not be”

Line 11 – replace “except if” with “unless”

Line 12 – replace “Ingredient(s)” with “ingredient”

Line 13 – delete the comma after “organisms”

Jason Thomas
Commission Counsel

Date submitted to agency: January 27, 2017

Line 15 – revise as follows:

Sections of 21 CFR Part 101, incorporated by reference in 02 NCAC 09B .0116(o)(41).

Line 17 – delete “106-246” – it has been repealed. Is there new authority that should be added?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09K .0214 is readopted as published in 31:05 NCR 364-365 as follows:

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

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

16

17 *History Note: Authority G.S. 106-128; 106-253; 106-267;*

18 *Eff. December 1, 1985;*

19 *Amended Eff. July 1, ~~2000~~. 2000;*

20 *Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0101

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 delete the comma

Line 14 – do not capitalize “Black”

Line 14 – delete the comma after “green” if that is what is meant

Line 15 – delete the comma after “with” if that is what is meant

Line 16 – delete the comma after “containing” if that is what is meant

Lines 20-25 – revise as a list, as follows:

- (3) "Loss" means an egg:
 - (a) that is inedible, cooked, frozen, contaminated, musty, or moldy;
 - (b) that contains a large blood spot, large meat spot, bloody white, green white, rot, sour eggs, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material; or
 - (c) that is adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.

Line 25 – do not capitalize “federal” and provide a citation to the relevant section of the Food, Drug, and Cosmetic Act.

Line 28 – replace “be” with “have been”

Line 31 – do not capitalize “federal”

Line 31 – what “federal and State standards”? Provide a citation to these standards.

Line 33 – what does “or labeling of similar import” mean, precisely?

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

Line 33 – define or delete “suitable”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 090 .0101 is readopted as published in 31:05 NCR 365 as follows:

2
3 **SUBCHAPTER 090 - MARKETING OF SHELL EGGS**

4
5 **SECTION .0100 - DEFINITIONS AND STANDARDS**

6
7 **02 NCAC 090 .0101 DEFINITIONS**

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

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

35
36 *History Note: Authority G.S. 106-245.16; 106-245.21;*
37 *Eff. August 1, 1982;*
38 *Amended Eff. July 1, 1998; December 1, 1987;*

39

Transferred from 02 NCAC 43H .0101 Eff. May 1, ~~2012~~ 2012;

40

Readopted Eff. March 1, 2017

41

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0102

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “Loose” with “A loose” and replace “displays” with “display”

Line 7 – delete the comma

Line 7 – delete or define “clearly”

Line 11– delete or define “conspicuously”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 090 .0102 is readopted as published in 31:05 NCR 365 as follows:

2

3 **02 NCAC 090 .0102 LOOSE EGG DISPLAYS**

4 (a) Loose egg displays shall be deemed to meet the requirements of G.S. 106-245.18 when the display is labeled
5 with the correct grade and size.

6 (b) The block letters of the label shall be at least three-eighths of an inch in height.

7 (c) The grade and size shall be written or printed on, or otherwise attached to or clearly associated with the
8 container or display of such eggs, and such designation shall be visible to the public when the eggs or containers of
9 such eggs are visible to the public.

10 (d) Retailers may display eggs in bulk without the grade and size designated thereon when such eggs are purchased
11 directly from persons eligible to sell ungraded eggs, and if the display is conspicuously labeled with the words,
12 "Ungraded Eggs". This label shall be bold legible letters at least three-eighths inch high.

13

14 *History Note: Authority G.S. 106-245.15; 106-245.18; 106-245.21;*

15 *Eff. August 1, 1982;*

16 *Amended Eff. December 1, 2011;*

17 *Transferred from 02 NCAC 43H .0102 Eff. May 1, ~~2012~~-2012;*

18 *Readopted Eff. March 1, 2017.*

19

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0103

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 26 – delete the comma after “reference”

Line 28 – add a comma after “State”

Line 29 – delete “also”

Line 32 – delete the comma

Line 34 – replace “except” with “but shall not be sold to”

Line 34 – delete the comma after “consumer”

Line 34 – replace “Said” with “Such”

Lines 34-35 – replace “of production or processing” with “where the cracked or checked eggs were produced or processed”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 090 .0103 is readopted as published in 31:05 NCR 365-366 as follows:

2
3 **02 NCAC 090 .0103 STANDARDS FOR SHELL EGGS**

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

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

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

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

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

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

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

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

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

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

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

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

5

6 *History Note: Authority G.S. 106-245.16; 106-245.21;*
7 *Eff. August 1, 1982;*
8 *Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987;*
9 *Transferred from 02 NCAC 43H .0103 Eff. May 1, 2012;*
10 *Amended Eff. January 1, ~~2015~~ 2015;*
11 *Readopted Eff. March 1, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0104

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 7 – add “which is incorporated by reference including subsequent amendments and editions.” if that is what is meant and the regulation is not incorporated elsewhere in these rules. If it is already incorporated, cite the rule that incorporates the regulation.

Line 8 – delete or define “promptly”

Line 9 – delete the comma after “lower”

Line 11 – replace “less” with “lower” and delete the comma after “freezing”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 090 .0104 is readopted as published in 31:05 NCR 366 as follows:

2

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

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

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

12

13 *History Note: Authority G.S. 106-245.16; 106-245.21; 106-245.22;*
14 *Eff. August 1, 1982;*
15 *Amended Eff. December 1, 1991; December 1, 1987;*
16 *Transferred from 02 NCAC 43H .0104 Eff. May 1, ~~2012~~ 2012;*
17 *Readopted Eff. March 1, 2017.*

18

1 02 NCAC 09O .0105 is readopted as published in 31:05 NCR 366 as follows:

2

3 **02 NCAC 09O .0105 SALE OF INEDIBLE OR LOSS EGGS TO CONSUMER PROHIBITED**

4 Inedible or loss eggs shall not be sold or offered for sale for human consumption in North Carolina.

5

6 *History Note: Authority G.S. 106-245.16; 106-245.21; 106-245.22;*

7 *Eff. August 1, 1982;*

8 *Transferred from 02 NCAC 43H .0105 Eff. May 1, ~~2012~~, 2012;*

9 *Readopted Eff. March 1, 207.*

10

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0106

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – replace “In all cases, the” with “The”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09O .0106 is readopted as published in 31:05 NCR 366 as follows:

2

3 **02 NCAC 09O .0106 DETERMINING GRADES**

4 In all cases, the final determination as to eggs meeting grade requirements shall be made by candling.

5

6 *History Note: Authority G.S. 106-245.15; 106-245.16; 106-245.19; 106-245.21;*

7 *Eff. August 1, 1982;*

8 *Transferred from 02 NCAC 43H .0106 Eff. May 1, ~~2012~~, 2012;*

9 *Readopted Eff. March 1, 2017.*

10

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09O .0107

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – delete “as”

Line 4 – replace “2” with “02”

Line 5 – delete or define “legibly and conspicuously”

Line 6 – delete the comma after “Eggs”

Line 6 – what does “or words of similar import” mean, precisely?

Lines 8, 11, and 13 – replace “must” with “shall”

Lines 9 and 16 – do not capitalize “federal”

Line 9 – replace agency and” with “agency, and shall be”

Line 13 – is “reasonable access” a term of art that is well-understood by the regulated public? Is the term defined in another authority that can be cited here?

Line 14 – add a comma after “consumer”

Line 14 – do you really mean any “other person,” including a private individual?

Line 17 – replace “providing” with “if”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 27, 2017

1 02 NCAC 09O .0107 is readopted as published in 31:05 NCR 366 as follows:

2
3 **02 NCAC 09O .0107 SPECIAL REQUIREMENTS**

4 (a) Baluts are exempt from the standards for shell eggs as set forth in 2 NCAC 09O .0103 and .0105. After incubation,
5 eggs suited for use as baluts shall be legibly and conspicuously labeled with the word "embryo" or "balut" preceded by
6 the name of the kind of poultry, or labeled as "Incubated Fertile Eggs," or words of similar import. Labeling must
7 include the complete name and address of the hatchery with letters no less than three-eighths of one inch high.

8 (b) In addition to all other applicable labeling requirements, eggs marketed and labeled as organically produced must be
9 certified by a State or Federal agency or an accrediting organization recognized by a State or Federal agency and
10 identified on primary container.

11 (c) In addition to all other marketing requirements, eggs labeled and marketed as free range eggs must be identified and
12 otherwise handled to maintain their identity through processing and packaging. Satisfactory evidence that the eggs are
13 from production locations with cage-free birds or that have reasonable access to an outdoors range must be furnished by
14 any person marketing these eggs to a retailer, institutional consumer or other person and shall be kept on file by both the
15 person selling and the purchaser at their respective places of business for a period of at least 30 days.

16 (d) Eggs of a specific nature such as "Fertile" or "Brown" and eggs produced in accordance with applicable Federal or
17 State standards may be labeled as such providing these eggs meet all other applicable requirements.

18
19 *History Note: Authority G.S. 106-245.16; 106-245.21;*
20 *Eff. July 1, 1998;*
21 *Transferred from 02 NCAC 43H .0107 Eff. May 1, ~~2012~~ 2012;*
22 *Readopted Eff. March 1, 2017.*
23

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0201

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6 – add “, including subsequent amendments and editions,” after “reference” if that is what is meant.

Line 13 – delete the reference to “150B-14,” as that statute has been repealed, and replace it with whatever authority you believe authorizes this Rule (perhaps 150B-21.6?).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0201 is readopted as published in 31:05 NCR 366 as follows:

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SECTION .0200 - APPROVAL OF WEIGHING AND MEASURING DEVICES

02 NCAC 38 .0201 ADOPTION BY REFERENCE

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

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

History Note: Authority G.S. 81A-2; 150B-14;
Eff. May 1, 1983;
Amended Eff. January 1, 1990; June 1, 1988; April 1, 1987; May 1, ~~1986.~~ 1986;
Readopted Eff. March 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0202

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 4 – add “shall” after “44”

Line 7 – delete the comma after “consumption”

Line 11 – add “and” at the end of this line

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0202 is readopted as published in 31:05 NCR 366 as follows:

2

3 **02 NCAC 38 .0202 WEIGHING AND MEASURING DEVICES**

4 The requirements of NIST Handbook 44 apply as follows:

5 (1) To commercial weighing and measuring equipment; that is, weights and measures and weighing and
6 measuring devices commercially used or employed in establishing the size, quantity, extent, area, or
7 measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered,
8 or submitted for sale, hire, or award, or in computing any basic charge or payment for services rendered on
9 the basis of weight or measure;

10 (2) To any accessory attached to or used in connection with a commercial weighing or measuring device when
11 such accessory is so designed that its operation affects the accuracy of the device;

12 (3) To weighing and measuring equipment in official use for the enforcement of law or for the collection of
13 statistical information by government agencies.

14

15 *History Note: Authority G.S. 81A-2;*
16 *Eff. May 1, 1983;*
17 *Amended Eff. January 1, ~~1990~~ 1990;*
18 *Readopted Eff. March 1, 2017.*

19

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REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0301

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 6 – add “, including subsequent amendments and editions,” after “reference” if that is what is meant.

Line 9 – add “and” at the end of this line

Line 14 – delete the reference to “150B-14,” as that statute has been repealed, and replace it with whatever authority you believe authorizes this Rule (perhaps 150B-21.6?).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0301 is readopted as published in 31:05 NCR 366 as follows:

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SECTION .0300 - PACKAGE AND LABELING REQUIREMENTS

02 NCAC 38 .0301 ADOPTION BY REFERENCE

The following are adopted by reference in accordance with G.S. 150B-14(c) as standards for packaging and labeling and for determining compliance of packaged goods with net contents labeling requirements:

(1) NIST Handbook 130, "Packaging and Labeling Regulation," with the exception of Sections 13, 14, and 15 of the "Packaging and Labeling Regulation" which are deleted;

(2) NIST Handbook 133, "Checking the Net Contents of Packaged Goods".

Copies of Handbook 130 and Handbook 133 are available for inspection in the Office of the Director of the Standards Division and may be obtained for free at <http://www.nist.gov/pml/wmd/pubs/index.cfm>.

*History Note: Authority G.S. 81A-4; 150B-14;
Eff. May 1, 1983;
Amended Eff. January 1, 1990; December 1, 1988; June 1, 1988; April 1, ~~1987~~ 1987;
Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0401

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 14 – replace “applies” with “shall apply”

Line 15 – delete or define “clearly and conspicuously”

Line 18 – replace “are not” with “shall not be”

Line 20 – replace “must” and “will” with “shall”

Line 23 – add “that “after “provided”

Line 23 – delete or define “clearly and conspicuously”

Line 24 – add “the” before “point”

Line 24 – replace “does” with “shall”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0401 is readopted as published in 31:05 NCR 366-367 as follows:

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

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

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

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

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

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

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

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

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

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

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

32 *Eff. May 1, 1983;*

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

34 *Readopted Eff. March 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0601

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: *This request extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 8 – replace “Effective January 1, 2011, retail” with “Retail” if that does not change the effect of this Rule.

Line 9 – replace “may not longer” with “shall not” if that does not change the effect of this Rule.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0601 is readopted as published in 31:05 NCR 367 as follows:

2
3 **SECTION .0600 - SALE OF PETROLEUM PRODUCTS**
4

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

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

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

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

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

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

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

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

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

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

25 ~~(e) Advertised pricing shall be by the price per gallon.~~
26

27 *History Note: Authority G.S. 81A-2;*
28 *Eff. May 1, 1983;*
29 *Amended Eff. February 1, 2009, 2009;*
30 *Readopted Eff. March 1, 2017.*
31

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0604

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Lines 5, 7, 11, and 16 – delete or define “conspicuously”

Line 13 – add a comma after “unit price”

Line 16 – replace the period with “; and”

Line 17 – replace “how they consider” with “whether”

Line 17 – replace “, either as cash or credit” with “are treated as cash or credit transactions”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0604 is readopted as published is 31:05 NCR 367 as follows:

2

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

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

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

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

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

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

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

19

20 *History Note: Authority G.S. 81A-2; 81A-23;*

21 *Eff. May 1, 1983;*

22 *Amended Eff. October 1, 2011; December 1, 1987, 1987;*

23 *Readopted Eff. March 1, 2017.*

24

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 38 .0701

DEADLINE FOR RECEIPT: Friday, February 10, 2017

NOTE WELL: This request extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Page 1, line 6 – add “and editions” after “amendments” if that is what is meant.

Page 1, line 14 – add a comma after “rot”

Page 1, line 21 – delete “of”

Page 1, line 23 – add a comma after “tubing” and replace “are” with “shall be”

Page 1, line 30 – add a comma after “analysis”

Page 1, line 36 – add “in excess” after “containers” if that is what is meant.

Note: line numbering should re-begin with “1” on each page.

Page 2, line 44 – add “of the meeting” after record”

Page 2, line 47 delete or define “immediately”

Page 2, line 48 – define “NCDA&CS”

Page 2, line 56 – delete the comma after “facility”

Page 2, line 57 – add a comma after “approved”

Page 2, lines 58-63 – The entire Note could be deleted. If you decide to keep it, please (1) check to see if the formal interpretation is current, (2) check whether the NC Board of Examiners for Engineers still takes this same position, and (3) check whether the NC Board’s position has been adopted as a rule that you could cite. If appropriate after these inquiries, shorten the Note as follows:

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

Note: The North Carolina Board of Examiners for Engineers and Surveyors regulates the practice of engineering and has taken the position that the preparation of a fire safety analysis constitutes the practice of engineering.

Page 2, line 64 – delete the comma after “Association”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Jason Thomas
Commission Counsel
Date submitted to agency: January 30, 2017

1 02 NCAC 38 .0701 is readopted as published in 31:05 NCR 367-369 as follows:

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

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

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

8 (1) National Fire Protection Association, document NFPA 58 "Liquefied Petroleum Gas Code," with the
9 following additions and exceptions:

10 ~~(a)~~ All cut off valves and regulating equipment exposed to rain, sleet, or snow shall be protected
11 against such elements either by design or by a hood;

12 ~~(b)~~(a) "Firm Foundation" means that the foundation material has a level top surface, rests on solid
13 ground, is constructed of a masonry material or wood treated to prevent decay by moisture
14 rot and will not settle, careen or deteriorate;

15 ~~(c)~~ "Concrete pads" as used in section 6.6.3.1(G) (2011 Edition) means a foundation of solid
16 concrete blocks, placed concrete pad, or poured concrete foundation sufficient to support the
17 container or container pump assembly mounted on a common base without breaking or
18 settling that is detrimental to the integrity or safe operation of the installation.

19 ~~(d)~~(b) No person shall use liquefied petroleum gas as a source of pressure in lieu of compressed air
20 in spray guns or other pressure operated ~~equipment;~~ equipment, except that liquefied
21 petroleum gas may be used as a source of pressure for operating of internal valves and
22 emergency shutoff valves;

23 ~~(e)~~(c) Piping, tubing or regulators are considered well supported when they are rigidly fastened in
24 their intended position;

25 ~~(f)~~(d) At bulk storage installations, the bulkhead and the plant piping on the hose side of the
26 bulkhead shall be designed and constructed so that an application of force from the hose side
27 will not result in damage to the plant piping on the tank side of the bulkhead. In addition, the
28 bulkhead shall incorporate a means, for instance, mechanical or pneumatic, to automatically
29 close emergency valves in the event of a pull away;

30 ~~(g)~~(e) As an alternative to the requirement for a fire safety analysis the owner, or his designee, of an
31 LP-gas facility which utilizes individual storage containers in excess of 4,000 gallons water
32 capacity, storage containers interconnected through the liquid withdrawal outlets of the
33 containers with an aggregate water capacity in excess of 4,000 gallons, or storage containers
34 interconnected through the vapor withdrawal outlets of the containers with an aggregate
35 capacity in excess of 6,000 gallons, shall, for all installations of containers of such capacity
36 or for additions to an existing LP-gas facility which result in containers of such capacity,
37 meet with fire officials for the jurisdiction in which the facility is located in order to:

- 38 (i) review potential exposure to fire hazards to or from real property which is adjacent
- 39 to such facility;
- 40 (ii) identify emergency access routes to such facility; and
- 41 (iii) review the equipment and emergency shut-down procedures for the facility.

42 The owner of such facility or his designee shall document in writing the time, date and place
 43 of such meeting(s), the participants in the meeting, and the discussions at the meeting in
 44 order to provide a written record. This documentation shall be made available to the
 45 Department not later than 60 days after installation of the new or additional containers.
 46 Compliance with the availability requirement shall be met by having a copy of the
 47 documentation kept on site or at the owner's office and immediately available for review by
 48 NCDA&CS inspection personnel. This meeting, review, and documentation shall be
 49 repeated when NCDA&CS determines that the plant design has changed or that potential
 50 exposures have significantly changed, so as to increase the likelihood of injury.

51 ~~(h)~~(f) An LP-gas facility which utilizes storage containers that are interconnected through the vapor
 52 withdrawal outlets of the containers only with an aggregate water capacity in excess of 4,000
 53 gallons, but not in excess of 6,000 gallons, is exempt from the requirements of a fire safety
 54 analysis; and

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

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

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

70 Copies of NFPA 54, NFPA 58 and NFPA 30A are available for inspection in the Office of the Director of the Standards
 71 Division. They may be obtained at a cost of ~~forty-eight dollars and fifty cents (\$48.50)~~ fifty-four dollars and fifty cents
 72 (\$54.50) each for NFPA 54 and NFPA 58 and for ~~thirty-seven dollars and fifty cents (\$37.50)~~ forty-two dollars (\$42.00)
 73 for NFPA 30A (~~February 2011~~ March 2014 prices), plus shipping, by contacting National Fire Protection Association,

74 Inc., 1 Batterymarch Park, Quincy, Massachusetts 02269, by calling them at 617-770-3000 or 800-344-3555, or by
75 accessing them on the Internet at ~~www.nfpacatalog.org~~, www.nfpa.org/catalog.

76

77

78 *History Note: Authority G.S. 119-55;*

79 *Eff. May 1, 1983;*

80 *Amended Eff. November 1, 2011; April 1, 2009; September 1, 2002; August 1, 2002; January 1, 1994;*

81 *June 1, 1993; December 1, 1988; December 1, ~~1987~~-1987;*

82 *Readopted March 1, 2017.*

83