



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6714

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

February 16, 2017

Via Email Only: Christina.waggett@ncagr.gov
Christina Waggett, Rulemaking Coordinator
Board of Agriculture
1001 Mail Service Center
Raleigh, NC 27699-1001

Re: 02 NCAC 09C .0507 and .0703; 09G .2005 and .2008; 09J .0101 and .0102; 09K .0101, .0103, .0105, .0106, .0107, .0108, .0109, .0113, .0114, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, and .0214; and 09O .0101 and .0107

Dear Ms. Waggett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the rulemaking coordinator to extend the period in order to allow the agency additional time to make technical changes.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days after the date of the extension - in this case, within 70 days after January 19, 2017.

If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Jason Thomas
Commission Counsel

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Burgos, Alexander N

Subject: FW: Request for an Extended Period of Review - Chapter 09

From: Waggett, Christina

Sent: Friday, February 10, 2017 3:12 PM

To: Thomas, Jason S <jason.thomas@oah.nc.gov>

Subject: Request for an Extended Period of Review - Chapter 09

Jason,

We wish to request an extended period of review for the below listed rules. Due to the volume of rules, as well as the nature of the rules, we need ample time to make sure that we can address the technical corrections while not losing intention of the rule, or interfering with the federal regulations which these are closely aligned. In the interest of food safety, it is important that we make sure these rules are right.

09C .0507

09C .0703

09G .2005

09G .2008

09J .0101

09J .0102

09K .0101

09K .0103

09K .0105

09K .0106

09K .0107

09K .0108

09K .0109

09K .0113

09K .0114

09K .0203

09K .0204

09K .0205

09K .0206

09K .0207

09K .0208

09K .0209

09K .0210

09K .0211

09K .0212

09K .0213

09K .0214

09O .0101

09O .0107

If you have any further questions, please let me know.

Thanks!

Chrissy Waggett | Federal Liaison | NC Dep't of Agriculture & Consumer Services | 919-707-3008 (direct) | 919-414-1350 (cell) | www.ncagr.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

REQUEST FOR TECHNICAL CHANGE

AGENCY: NC Board of Agriculture

RULE CITATION: 02 NCAC 09C .0507

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 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:

2
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.

33
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.*
37

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

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.~~

23
24
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.*
30

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

2

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.

7

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 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:

2

3

SUBCHAPTER 9J - TESTING FOR AFLATOXIN IN CORNMEAL

4

02 NCAC 09J .0101 CORNMEAL TESTING

6

(a) All corn, prior to use in products for human consumption, shall be tested for aflatoxin, no more than 30 days prior to use.

7

Sampling and laboratory procedures must be acceptable to the Department.

8

(b) No corn containing unlawful levels of aflatoxin shall be used in any product for human consumption.

9

(c) The Commissioner or his agent may require cornmeal products to be tested for aflatoxin whenever he deems it necessary

10

to prevent the sale of adulterated cornmeal.

11

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

13

Authority G.S. 106-139;

14

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

15

Readopted Eff. March 1, 2017.

16

17

18

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**

6
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.

33
34
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;*

1
2
3
4

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:

2

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

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

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

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

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

13

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

15 *Eff. February 1, 1982; 1982;*

16 *Readopted Eff. March 1, 2017.*

17

18

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:

2

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.

6

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

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

9 *Readopted Eff. March 1, 2017.*

10

11

12

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.

8

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

10 *Eff. February 1, 1982;*

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

12 *Readopted Eff. March 1, 2017.*

13

14

15

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:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

7

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.*

11

12

13

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.

10

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.*

15

16

17

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:

2

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

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

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

8

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

10 *Eff. February 1, 1982;*

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

12 *Readopted Eff. March 1, 2017.*

13

14

15

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:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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 .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:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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:

2

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.*

13

14

15

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:

2

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.

10

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

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

13 *Readopted Eff. March 1, 2017.*

14

15

16

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:

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

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:

2

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.

6

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

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

9 *Readopted Eff. March 1, 2017.*

10

11

12

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:

2

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.

18

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

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

21 *Readopted Eff. March 1, 2017.*

22

23

24

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:

2

3 **02 NCAC 09K .0209 QUIESCENTLY FROZEN DAIRY CONFECTIONS**

4 (a) Quiescently frozen dairy confections shall contain:

5 (1) water;

6 (2) not less than 13 percent by weight of total milk solids;

7 (3) not less than 33 percent by weight of total food solids;

8 (4) not more than one-half of one percent by weight of stabilizers;

9 (5) not more than one-fifth of one percent by weight of emulsifier;

10 (6) sugar; and

11 (7) flavoring.

12 (b) Quiescently frozen dairy confections may contain coloring.

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

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

17

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

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

20 *Readopted Eff March 1, 2017.*

21

22

23

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:

2

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.

18

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

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

21 *Readopted Eff. March 1, 2017.*

22

23

24

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:

2

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.

12

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

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

15 *Readopted Eff. March 1, 2017.*

16

17

18

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.

9

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.*

14

15

16

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:

2

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 .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