

**CHAPTER 9 - FOOD AND DRUG PROTECTION DIVISION**

**SUBCHAPTER 9A - ORGANIZATION**

<b>02 NCAC 09A .0101</b>	<b>PURPOSE</b>
<b>02 NCAC 09A .0102</b>	<b>DIVISION SECTIONS</b>
<b>02 NCAC 09A .0103</b>	<b>RESPONSIBILITIES OF THE FOOD BRANCH</b>
<b>02 NCAC 09A .0104</b>	<b>RESPONSIBILITIES OF THE DRUG AND COSMETIC BRANCH</b>
<b>02 NCAC 09A .0105</b>	<b>FUNCTIONS OF THE COMMERCIAL FEEDS AND PET FOODS BRANCH</b>
<b>02 NCAC 09A .0106</b>	<b>FUNCTION OF THE CHEMISTRY LABORATORY BRANCH</b>
<b>02 NCAC 09A .0107</b>	<b>FUNCTION OF THE MICROBIOLOGY LABORATORY BRANCH</b>

*History Note:* Authority G.S. 106-128;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.

**SUBCHAPTER 9B - RULES AND STANDARDS ADOPTED BY REFERENCE**

<b>02 NCAC 09B .0101</b>	<b>INSPECTOR'S MANUAL</b>
<b>02 NCAC 09B .0102</b>	<b>AOAC METHODS</b>
<b>02 NCAC 09B .0103</b>	<b>NATIONAL FORMULARY</b>
<b>02 NCAC 09B .0104</b>	<b>U.S. PHARMACOPEIA</b>
<b>02 NCAC 09B .0105</b>	<b>ASTM STANDARDS</b>
<b>02 NCAC 09B .0106</b>	<b>REFERENCE MANUALS</b>

*History Note:* Authority G.S. 150B-14;  
Eff. February 1, 1976;  
Repealed Eff. December 14, 1981.

<b>02 NCAC 09B .0107</b>	<b>GENERAL PROVISIONS</b>
<b>02 NCAC 09B .0108</b>	<b>FOOD AND FOOD PRODUCTS</b>
<b>02 NCAC 09B .0109</b>	<b>DRUGS</b>
<b>02 NCAC 09B .0110</b>	<b>DRUGS FOR HUMAN USE</b>
<b>02 NCAC 09B .0111</b>	<b>ANIMAL DRUGS: FEEDS: AND RELATED PRODUCTS</b>
<b>02 NCAC 09B .0112</b>	<b>COSMETICS</b>
<b>02 NCAC 09B .0113</b>	<b>TITLE 40: CODE OF FEDERAL REGULATIONS</b>
<b>02 NCAC 09B .0114</b>	<b>TITLE 9: PART 319: CODE OF FEDERAL REGULATIONS</b>
<b>02 NCAC 09B .0115</b>	<b>TITLE 9: PART 381: CODE OF FEDERAL REGULATIONS</b>

*History Note:* Authority G.S. 150B-14;  
Eff. February 1, 1976;  
Amended Eff. December 20, 1980;  
Repealed Eff. December 1, 1981.

**02 NCAC 09B .0116 ADOPTIONS BY REFERENCE**

- (a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of seven hundred thirty dollars (\$730.00).
- (b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXXIII-NFXXVIII" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this

document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of eight-hundred fifty dollars (\$850.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, "ASTM Volume 15.05 Engine Coolants and Related Fluids; Halogenated Organic Solvents and Fire Extinguishing Agents," published by ASTM International. Copies of this document may be obtained from ASTM International, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, or by visiting <https://www.astm.org/BOOKSTORE/BOS/1505.htm> at a cost of one hundred ninety dollars (\$190.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained online at no cost from the Environmental Protection Agency National Service Center for Environmental Publications at <http://nepis.epa.gov/EXE/ZyPURL.cgi?Dockey=2000YS3Y.txt>.

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/PesticideAnalysisManualPAM/default.htm>.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at no cost at <http://www.fda.gov/iceci/compliancemanuals/compliancepolicyguidancemanual/default.htm> or from the State Information Branch (HFC-151), Division of Federal-State Relations, US Food and Drug Administration, 5600 Fishers Lane, Room 12-07, Rockville, MD 20857.

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," Lippincott, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Lippincott, Williams & Wilkins Company, P.O. Box 1620, Hagerstown, MD 21741 at a cost one hundred forty five dollars and ninety nine cents (\$145.99).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Food Safety and Inspection Service, Washington, DC. Copies of this document may be obtained online at no cost from <http://www.fsis.usda.gov>.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical Manual," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm114664.htm> at no charge.

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of eighty-five dollars and fifty cents (\$87.50) for members and one hundred twenty-five dollars (\$125.00) for non-members.

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of one hundred forty seven dollars and fifty cents (\$147.50).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Springer Publishing, New York, NY. Copies of this document may be obtained from Springer Publishing, 233 Spring Street, New York, NY, 10013 at a cost of one hundred fifty-nine dollars (\$159.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology Press, PO Box 605, Herndon, VA 22070, at a cost of two hundred sixty-nine dollars and ninety-five cents (\$269.95).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of two hundred ninety-five dollars (\$295.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts or sections of the Code of Federal Regulations, Title 21, Chapter I, as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

Part or

Section Description of Part or Section

(1)	1.1	General
(2)	1.3	Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.326	Who is Subject to this Subpart?
(7)	1.327	Who is Excluded from All or Part of the Regulations in this Subpart?
(8)	1.328	What Definitions Apply to this Subpart?
(9)	1.329	Do Other Statutory Provisions and Regulations Apply?
(10)	1.330	Can Existing Records Satisfy the Requirements of this Subpart?
(11)	1.337	What Information Must Nontransporters Establish and Maintain to Identify the Nontransporter and Transporter Immediate Previous Sources of Food?
(12)	1.345	What Information Must Nontransporter Establish and Maintain to Identify the Nontransporter and Transporter Immediate Subsequent Recipients of Food?
(13)	1.352	What Information Must Transporters Establish and Maintain?
(14)	1.360	What are the Record Retention Requirements?
(15)	1.361	What are the Record Availability Requirements?
(16)	1.362	What Records are Excluded from this Subpart?
(17)	1.363	What are the Consequences of Failing to Establish, or Maintain Records or Make Them Available to FDA as Required by this Subpart?
(18)	1.368	What are the Compliance Dates for this Subpart?
(19)	2.25	Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(20)	2.35	Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(21)	7.1	Scope
(22)	7.3	Definitions
(23)	7.12	Guaranty
(24)	7.13	Suggested Forms of Guaranty
(25)	7.40	Recall Policy
(26)	7.41	Health Hazard Evaluation and Recall Classification
(27)	7.42	Recall Strategy
(28)	7.45	Food and Drug Administration - Requested Recall
(29)	7.46	Firm-initiated Recall
(30)	7.49	Recall Communications
(31)	7.50	Public Notification of Recall
(32)	7.53	Recall Status Reports
(33)	7.55	Termination of a Recall
(34)	7.59	General Industry Guidance
(35)	70	Color Additives
(36)	73	Listing of Color Additives Exempt from Certification
(37)	74	Listing of Color Additives Subject to Certification
(38)	81	General Specifications and General Restrictions for Provisional Color Additives for Use in Foods, Drugs, and Cosmetics
(39)	82	Listing of Certified Provisionally Listed Colors and Specifications
(40)	100	General
(41)	101	Food Labeling
(42)	102	Common or Usual Name for Nonstandardized Foods
(43)	104	Nutritional Quality Guidelines for Foods
(44)	105	Foods for Special Dietary Use
(45)	106	Infant Formula Requirements Pertaining to Current Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Records and Reports, and Notifications
(46)	107	Infant Formula
(47)	108	Emergency Permit Control
(48)	109	Unavoidable Contaminants in Food for Human Consumption and Food-Packaging

		Material
(49)	110	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food
(50)	111	Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding
		Operations for Dietary Supplements
(51)	112	Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption
(52)	113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers
(53)	114	Acidified Foods
(54)	115	Shell Eggs
(55)	117	Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food
(56)	118	Production, Storage, and Transportation of Shell Eggs
(57)	120	Hazard Analysis and Critical Control Point (HACCP) Systems
(58)	123	Fish and Fishery Products
(59)	129	Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C.0700 - Bottled Water)
(60)	130	Food Standards: General
(61)	131	Milk and Cream
(62)	133	Cheeses and Related Cheese Products
(63)	135	Frozen Desserts
(64)	136	Bakery Products
(65)	137	Cereal Flours and Related Products
(66)	139	Macaroni and Noodle Products
(67)	145	Canned Fruits
(68)	146	Canned Fruit Juices
(69)	150	Fruit Butters, Jellies, Preserves, and Related Products
(70)	152	Fruit Pies
(71)	155	Canned Vegetables
(72)	156	Vegetable Juices
(73)	158	Frozen Vegetables
(74)	160	Eggs and Egg Products
(75)	161	Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)
(76)	163	Cacao Products
(77)	164	Tree Nut and Peanut Products
(78)	165	Beverages
(79)	166	Margarine
(80)	168	Sweeteners and Table Syrups
(81)	169	Food Dressings and Flavorings
(82)	170	Food Additives
(83)	172	Food Additives Permitted for Direct Addition to Food for Human Consumption
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(85)	174	Indirect Food Additives: General
(86)	175	Indirect Food Additives: Adhesives and Components of Coatings
(87)	176	Indirect Food Additives: Paper and Paperboard Components
(88)	177	Indirect Food Additives: Polymers
(89)	178	Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers
(90)	179	Irradiation in the Production, Processing and Handling of Food
(91)	180	Food Additives Permitted in Food or in Contact with Food on an Interim Basis Pending Additional Study
(92)	181	Prior-Sanctioned Food Ingredients
(93)	182	Substances Generally Recognized as Safe
(94)	184	Direct Food Substances Affirmed as Generally Recognized as Safe
(95)	186	Indirect Food Substances Affirmed as Generally Recognized as Safe

(96)	189	Substances Prohibited from Use in Human Food
(97)	190	Dietary Supplements
(98)	200	General
(99)	201	Labeling
(100)	202	Prescription Drug Advertising
(101)	210	Current Good Manufacturing Practice in Manufacturing, Processing, Packing or Holding of Drugs; General
(102)	211	Current Good Manufacturing Practice for Finished Pharmaceuticals
(103)	225	Current Good Manufacturing Practice for Medicated Feeds
(104)	226	Current Good Manufacturing Practice for Type A Medicated Articles
(105)	250	Special Requirements for Specific Human Drugs
(106)	290	Controlled Drugs
(107)	299	Drugs; Official Names and Established Names
(108)	300	General
(109)	310	New Drugs
(110)	312	Investigational New Drug Application
(111)	314	Applications for FDA Approval to Market New Drug
(112)	320	Bioavailability and Bioequivalence Requirements
(113)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(114)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(115)	332	Antiflatulent Products for Over-the-Counter Human Use
(116)	361	Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(117)	369	Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(118)	809	In Vitro Diagnostic Products for Human Use
(119)	812	Investigational Device Exemptions
(120)	820	Quality System Regulation
(121)	860	Medical Device Classification Procedures
(122)	861	Procedures for Performance Standards Development
(123)	870	Cardiovascular Devices
(124)	882	Neurological Devices
(125)	884	Obstetrical and Gynecological Devices
(126)	895	Banned Devices
(127)	500	General
(128)	501	Animal Food Labeling
(129)	502	Common or Usual Names for Nonstandardized Animal Foods
(130)	507	Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals
(131)	509	Unavoidable Contaminants in Animal Food and Food-Packaging Material
(132)	510	New Animal Drugs
(133)	511	New Animal Drugs for Investigational Use
(134)	514	New Animal Drug Applications
(135)	520	Oral Dosage Form New Animal Drugs
(136)	522	Implantation or Injectable Dosage Form New Animal Drugs
(137)	524	Ophthalmic and Topical Dosage Form New Animal Drugs
(138)	526	Intramammary Dosage Form New Animal Drugs
(139)	529	Certain Other Dosage Form New Animal Drugs
(140)	556	Tolerances for Residues of New Animal Drugs in Food
(141)	558	New Animal Drugs for Use in Animal Feeds
(142)	570	Food Additives
(143)	573	Food Additives Permitted in Feed and Drinking Water of Animals
(144)	582	Substances Generally Recognized as Safe
(145)	584	Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking

		Water of Animals
(146)	589	Substances Prohibited from Use in Animal Food or Feed
(147)	700	General
(148)	701	Cosmetic Labeling
(149)	720	Voluntary Filing of Cosmetic Product Ingredient Composition Statements
(150)	740	Cosmetic Product Warning Statements

Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(p) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions for Pesticide Chemical Residues in Food," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(q) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(r) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(s) The Board incorporates by reference, including subsequent amendments and editions, "Labels: Definitions; Required Features," 9 C.F.R. Section 317.2 of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(t) The Board incorporates by reference, including subsequent amendments and editions, "Special Handling Label Requirements," 9 C.F.R. Section 381.125 of the Code of Federal Regulations. Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <http://www.gpoaccess.gov/cfr/index.html>.

(u) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Department of Health and Human Services, Food and Drug Administration. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

(v) The Board incorporates by reference, including subsequent amendments and editions, the definition of "dietary supplement" found at 21 USC 321(ff).

(w) The Board incorporates by reference, including subsequent amendments and editions, the definition of "processed food" found at 21 USC 321(gg).

(x) The Board incorporates by reference, including subsequent amendments and editions, the definition of "major food allergen" found at 21 USC 321(qq).

(y) The Board incorporates by reference, including subsequent amendments and editions, the definition of "knowingly" or "knew" found at 21 USC 321(bb).

(z) The Board incorporates by reference, including subsequent amendments and editions, the definition of "animal feed" found at 21 USC 321(w).

*History Note:* Authority G.S. 106-139; 106-245.16; 106-245.22; 106-245.32; 106-267; 106-284.41;  
 Eff. December 14, 1981;  
 Amended Eff. May 1, 2013; January 1, 2011; June 1, 2004; April 1, 2003; June 1, 1995; April 1, 1992;  
 June 1, 1988; October 1, 1987;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015;  
 Amended Eff. February 1, 2019; May 1, 2018.

**02 NCAC 09B .0117 NATIONAL FORMULARY**

*History Note:* Authority G.S. 150B-14;  
 Eff. December 14, 1981;  
 Repealed Eff. January 1, 1985.

**02 NCAC 09B .0118 U.S. PHARMACOPEIA NATIONAL FORMULARY**

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. December 14, 1981;  
Amended Eff. January 1, 1985;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0119      ASTM STANDARDS**

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. December 14, 1981;  
Amended Eff. January 1, 1985;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0120      REFERENCE MANUALS**

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. December 14, 1981;  
Amended Eff. January 1, 1985;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0121      GENERAL**

*History Note:* Authority G.S. 106-139; 150B-14;  
Eff. December 1, 1981;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0122      FOOD FOR HUMAN CONSUMPTION**

*History Note:* Authority G.S. 106-139; 150B-14;  
Eff. December 1, 1981;  
Amended Eff. January 1, 1987; July 1, 1985; March 1, 1985; June 1, 1984;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0123      DRUGS**

*History Note:* Authority G.S. 106-139; 150B-14;  
Eff. December 1, 1981;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0124      DRUGS FOR HUMAN USE**

*History Note:* Authority G.S. 106-139; 150B-14;  
Eff. December 1, 1981;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0125      MEDICAL DEVICES**

*History Note:* Authority G. S. 106-139; 150B-14;  
Eff. December 1, 1981;  
Transferred to T02.09B .0016 Eff. April 1, 1987.

**02 NCAC 09B .0126      ANIMAL DRUGS: FEEDS: AND RELATED PRODUCTS**

*History Note:* Authority G.S. 106-139; 150B-14;  
Eff. December 1, 1981;

*Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0127      COSMETICS**

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. December 1, 1981;  
                         Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0128      TITLE 40: CODE OF FEDERAL REGULATIONS**

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. December 1, 1981;  
                         Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0129      TITLE 9: PART 319: CODE OF FEDERAL REGULATIONS**

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. December 1, 1981;  
                         Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0130      TITLE 9: PART 381: CODE OF FEDERAL REGULATIONS**

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. December 1, 1981;  
                         Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0131      ETHYLENE DIBROMIDE TOLERANCE**

*History Note:    Authority G.S. 106-139;  
                         Temporary Rule Eff. February 6, 1984, for a Period of 120 Days to Expire on June 4, 1984;  
                         Eff. June 1, 1984;  
                         Pursuant to G.S. 150B-21.3A, rule Expired April 1, 2015.*

**02 NCAC 09B .0132      EFFECTIVE DATE FOR ADOPTIONS BY REFERENCE**

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. January 1, 1987;  
                         Transferred to T02.09B .0016 Eff. April 1, 1987.*

**02 NCAC 09B .0133      DOCUMENT AVAILABILITY**

Copies of documents adopted by reference in 02 NCAC 09B .0116 are 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 the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

*History Note:    Authority G.S. 106-139; 150B-14;  
                         Eff. January 1, 1987;  
                         Amended Eff. June 1, 1988;  
                         Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09B .0134      DEFINING ESTABLISHMENT**

The term "establishment" under the North Carolina Food, Drugs and Cosmetics Act, G.S. 106-120 et seq. shall include farms as defined under 21 CFR 112.3, which is hereby incorporated by reference including later amendments or editions and can be accessed free of cost at <http://www.gpoaccess.gov/cfr/index.html>.

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



*Eff. May 1, 2018.*

**02 NCAC 09B .0135 CURRENT GOOD MANUFACTURING PRACTICES FOR RETAIL FOOD ESTABLISHMENTS**

Subpart B of 21 C.F.R. Part 117, as incorporated by reference pursuant to Rule .0116(o)(55) of this Subchapter, shall apply to "retail food establishments" as defined by 21 C.F.R. 1.227, and shall include bakeries, retail food outlets, and seafood markets.

*History Note: Authority G.S. 106-139;  
Eff. February 1, 2019.*

**SUBCHAPTER 09C - CURRENT GOOD MANUFACTURING PRACTICES FOR SPECIFIC FOOD INDUSTRIES**

**SECTION .0100 - SOFT DRINK PLANTS**

<b>02 NCAC 09C .0101</b>	<b>SANITARY OPERATION OF PLANTS MANUFACTURING SOFT DRINKS</b>
<b>02 NCAC 09C .0102</b>	<b>BUILDING LOCATION</b>
<b>02 NCAC 09C .0103</b>	<b>CONSTRUCTION OF BUILDING</b>
<b>02 NCAC 09C .0104</b>	<b>SYRUP ROOM</b>
<b>02 NCAC 09C .0105</b>	<b>MACHINERY AND MAINTENANCE</b>
<b>02 NCAC 09C .0106</b>	<b>WATER SUPPLY</b>
<b>02 NCAC 09C .0107</b>	<b>PREPARATION OF SYRUP</b>
<b>02 NCAC 09C .0108</b>	<b>PROTECTION OF BOTTLE CROWNS</b>
<b>02 NCAC 09C .0109</b>	<b>CLEANING CONTAINERS AND EQUIPMENT</b>
<b>02 NCAC 09C .0110</b>	<b>EMPLOYEES</b>
<b>02 NCAC 09C .0111</b>	<b>TOILETS AND PREMISES</b>

*History Note: Authority G.S. 106-122; 106-128; 106-139; 106-140;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1983;  
Repealed Eff. June 1, 1984.*

**SECTION .0200 - RETAIL AND WHOLESALE BAKERIES**

<b>02 NCAC 09C .0201</b>	<b>SANITARY OPERATION OF RETAIL AND WHOLESALE BAKERIES</b>
<b>02 NCAC 09C .0202</b>	<b>BAKERY BUILDINGS</b>
<b>02 NCAC 09C .0203</b>	<b>TOILET FACILITIES</b>
<b>02 NCAC 09C .0204</b>	<b>LIGHTING</b>
<b>02 NCAC 09C .0205</b>	<b>BINS: SHOWCASES: ETC.</b>
<b>02 NCAC 09C .0206</b>	<b>HANDLING OF BAKERY PRODUCTS</b>
<b>02 NCAC 09C .0207</b>	<b>PACKAGING</b>
<b>02 NCAC 09C .0208</b>	<b>TRANSFER OF PRODUCTS</b>
<b>02 NCAC 09C .0209</b>	<b>MIXERS</b>
<b>02 NCAC 09C .0210</b>	<b>HOT WATER</b>
<b>02 NCAC 09C .0211</b>	<b>USE OF BUILDINGS</b>
<b>02 NCAC 09C .0212</b>	<b>INGREDIENTS</b>
<b>02 NCAC 09C .0213</b>	<b>SANITATION</b>
<b>02 NCAC 09C .0214</b>	<b>SINKS</b>
<b>02 NCAC 09C .0215</b>	<b>DISEASE</b>
<b>02 NCAC 09C .0216</b>	<b>CERTIFICATE OF INSPECTION</b>

*History Note: Authority G.S. 106-122; 106-128; 106-139; 106-140;*

*Eff. February 1, 1976;*  
*Amended Eff. May 1, 1983; April 22, 1981;*  
*Repealed Eff. June 1, 1984.*

## **SECTION .0300 - FOOD BANKS**

### **02 NCAC 09C .0301 SANITARY OPERATION OF FOOD BANKS**

The sanitary requirements shall be in addition to those set out in Title 21, Code of Federal Regulations, Part 110.

*History Note: Authority G.S. 106-141.1;*  
*Eff. December 9, 1980;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09C .0302 DEFINITIONS**

The following definitions shall apply in this Section:

- (1) "Food Bank" means a nonprofit organization or nonprofit corporation engaged only in the practice of collecting donated food for distribution.
- (2) "Swells" means a condition of canned foods whereby internal pressure from gas production becomes sufficient to distort both ends of the container.
- (3) "Springers" means swollen cans characterized by one bulging end which, when pressed inward, causes the other end to bulge.
- (4) "Flippers" means normal appearing cans which when struck on one end (or side) will cause the other end to spring outward. The bulged end can be pushed back in with light pressure.
- (5) "Low-acid Foods" means any foods other than alcoholic beverages with a finished equilibrium pH value greater than 4.6 and a water activity greater than 0.85.
- (6) "Brights" means foods packaged in metal cans to which labels have not been attached.
- (7) "Department" means North Carolina Department of Agriculture.
- (8) "High Risk Foods" means foods which provide optimum conditions for microbial growth with special reference to pathogenic (disease causing) organisms.

*History Note: Authority G.S. 106-141.1;*  
*Eff. December 9, 1980;*  
*Amended Eff. October 1, 1987;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09C .0303 RECONDITIONING AREA**

Areas used for reconditioning of food items for distribution shall be properly lighted and equipped with hot and cold water, facilities for sanitizing where required, adequate plumbing and waste disposal.

*History Note: Authority G.S. 106-141.1;*  
*Eff. December 9, 1980;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09C .0304 RECONDITIONING AND LABELING**

- (a) All metal cans of food offered for distribution shall be free from rust and rim and/or seam dents which would compromise the integrity of the can. Springers, flippers and swells shall be deemed to be unfit for distribution.
- (b) Fresh fruits and vegetables, especially those donated because of age or ripeness, must be culled to remove those which would be unfit for human consumption.
- (c) Meats offered for distribution must have originated from an inspected source, be free of microbiological spoilage and kept stored under adequate refrigeration temperature.
- (d) All packaged merchandise, including brights, shall be labeled with at minimum, the name of the food and the manufacturer or distributor.

*History Note: Authority G.S. 106-141.1;*  
*Eff. December 9, 1980;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09C .0305 UNSUITABLE FOOD**

The following foods have been deemed high risk and not suitable for distribution:

- (1) Home-canned low-acid foods including but not limited to asparagus, beans, beets, broccoli, carrots, corn (any style), dates, figs, hominy, peas, pimentos, potatoes, spinach, squash, sweet potatoes, turnip greens, and mixed vegetables;
- (2) Baked goods posing a potential health risk including but not limited to cream pies, egg custards, "eclairs," cream-filled products, coconut pies and coconut cakes.

*History Note: Authority G.S. 106-141.1;  
Eff. December 9, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09C .0306 RECORDS**

Records of all incoming donations shall be kept to include the following information:

- (1) product;
- (2) lot size;
- (3) lot code;
- (4) manufacturer;
- (5) donor; and
- (6) date of receipt.

*History Note: Authority G.S. 106-141.1;  
Eff. December 9, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09C .0307 REGISTRATION**

Each food bank shall register with the department prior to the commencing of distributing food.

*History Note: Authority G.S. 106-141.1;  
Eff. December 9, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09C .0308 RESTRICTIONS**

Food which has been received for distribution may not reenter commercial channels.

*History Note: Authority G.S. 106-141.1;  
Eff. December 9, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**SECTION .0400 - HOME PROCESSORS OF ACIDIFIED FOODS**

- 02 NCAC 09C .0401 GENERAL: GOOD MANUFACTURING PRACTICES**
- 02 NCAC 09C .0402 DEFINITIONS**
- 02 NCAC 09C .0403 INGREDIENTS IN PROCESSING**
- 02 NCAC 09C .0404 SCHEDULED PROCESS REQUIRED**
- 02 NCAC 09C .0405 LABELING**
- 02 NCAC 09C .0406 DAILY PROCESS RECORDS**

*History Note: Authority G.S. 106-122; 106-128; 106-130; 106-139; 106-139.1; 106-140;  
Eff. April 22, 1981;  
Repealed Eff. June 1, 1984.*

**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 comply 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 process fish and fishery products.

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

**02 NCAC 09C .0502 DEFINITIONS**

The following definitions shall apply to this Section:

- (1) Smoked or smoke-flavored fishery products means the finished food prepared by:
  - (a) Treating fish with salt (sodium chloride), and
  - (b) Subjecting it to the direct action of smoke from burning wood, sawdust, or similar material 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 shall not alter the labeling requirements.
  - (c) This Paragraph does not alter the labeling requirements.
- (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;  
Eff. January 1, 1985;  
Readopted Eff. March 1, 2017.*

**02 NCAC 09C .0503 PLANTS AND GROUNDS**

(a) Unloading platforms shall be:

- (1) maintained free of refuse; and
- (2) equipped with drainage facilities adequate to accommodate all seepage and wash water.

(b) The following processes shall be carried out in separate rooms 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) receiving or shipping;
- (2) storage of raw fish;
- (3) presmoking operations (thawing, dressing, brining, etc.);
- (4) drying and smoking;
- (5) cooling and packing; and
- (6) storage of final product.

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

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

**02 NCAC 09C .0504 SANITARY FACILITIES**

(a) Hand-washing and sanitizing facilities shall be located in all processing rooms or in one area easily accessible from the processing rooms.

(b) Readily understandable signs directing employees to wash and sanitize their hands after each absence from post of duty shall be posted in all processing rooms and elsewhere in the plant as appropriate, such as bathrooms or break areas.

(c) Offal shall be placed in covered containers for removal at least once a day, or more frequently if necessary, or shall be removed by conveyors or chutes.

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

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

- (a) Before beginning the day's operation, all utensils and product-contact surfaces of equipment to be used for the day's operation shall be rinsed and sanitized.
- (b) Containers used to convey or store fish shall not be nested while they contain fish or otherwise handled during processing or storage in a manner conducive to direct or indirect contamination of their contents.
- (c) Cleaning and sanitizing of utensils and portable equipment shall be conducted in an area set aside for these purposes and shall be carried out in such a manner as to prevent contamination of fish or fish products.

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

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

- (a) All food-contact surfaces such as tanks, belts, tables, and utensils shall be so designed and of such material and workmanship as to be cleanable.
- (b) Metal seams shall be smoothly soldered, welded, or bonded.
- (c) Each freezer and cold storage compartment used for fish or fish products shall be fitted with the following:
  - (1) an automatic control for regulating temperature;
  - (2) an indicating thermometer so installed as to show accurately the temperature within the compartment; and
  - (3) a temperature recording device 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  $\pm 2$  degrees Fahrenheit.

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

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

- (a) Raw materials
  - (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.
  - (3) Fresh or partially processed fish, except those to be immediately processed, shall be iced or otherwise refrigerated to an internal temperature of 38 degrees fahrenheit or below upon receipt and shall be maintained at 38 degrees fahrenheit until the fish are to be processed.
  - (4) All fish received in a frozen state shall be either thawed promptly and processed, or stored at a temperature that will maintain it in a frozen state.
- (b) Defrosting of frozen fish
  - (1) Defrosting shall be carried out in a sanitary manner and by such methods that the wholesomeness of the fish is not adversely affected. Frozen fish shall be defrosted:
    - (A) in air at 45 degrees fahrenheit or below until other than hard frozen; or
    - (B) in air so that the temperature in any part of the fish does not exceed 45 degrees fahrenheit; or
    - (C) in a continuous water-overflow thaw tank or spray system in such a manner that the temperature in any part of the fish does not exceed 45 degrees fahrenheit.
  - (2) When a thaw tank is used, fish shall not remain in the tank longer than one-half hour after they are completely defrosted.
  - (3) Fish entering the thaw tanks shall be free of exterior packaging material and free of liner material.
  - (4) After thawing, fish shall be washed with a water spray or a continuous waterflow system.
- (c) Presmoking operation

- (1) Evisceration of fish shall be performed with minimum disturbance of intestinal tract contents.
  - (2) After evisceration, the fish (including the body cavity) shall be washed with a water spray or a continuous waterflow system.
  - (3) All fish shall be dry-salted at a temperature not to exceed 38 degrees fahrenheit throughout the fish, or shall be brined in such a manner that the temperature of the fish and the brine:
    - (A) does not exceed 60 degrees fahrenheit at the start of brining;
    - (B) if between 38 degrees fahrenheit and 50 degrees fahrenheit at the start of brining, is continuously lowered to 38 degrees fahrenheit or below within 12 hours;
    - (C) if between 50 degrees fahrenheit and 60 degrees fahrenheit at the start of brining, is continuously lowered to 50 degrees fahrenheit or below within 2 hours and to 38 degrees fahrenheit or below within the following 10 hours; and
    - (D) does not rise above 38 degrees fahrenheit after reaching that temperature or below either prior to or during the brining operation.
  - (4) Fish shall be rinsed with fresh water after brining.
- (d) Heating, cooking, smoking operation
- (1) A point-sensitive, continuous temperature-recording device shall be used to monitor both the internal temperature of the fish and the ambient temperature within the oven. Each recording-device record shall be identified as to the specific oven load and date processed.
  - (2) Hot-process smoked or hot-process smoke-flavored fish shall be heated by a controlled heat process that provides a monitoring system positioned in as many locations in the oven as necessary to assure a continuous temperature throughout each fish.
  - (3) The process selected by the processor shall be at least equivalent to a process established by a competent processing authority to achieve a safe product.
- (e) Packing
- (1) The finished product shall be handled only with clean, sanitized hands, gloves, or utensils.
  - (2) Manual manipulation of the finished product shall be kept to a minimum.
  - (3) The finished product shall be cooled to a temperature of 50 degrees fahrenheit or below within three hours after cooking and further cooled to a temperature of 38 degrees fahrenheit or below within 12 hours after cooking, and 38 degrees fahrenheit shall be maintained during all subsequent storage and distribution.
  - (4) The shipping containers, retail packages, and shipping records shall indicate by appropriate labeling the perishable nature of the product and shall specify that the product shall be shipped, stored, and held for sale at 38 degrees fahrenheit or below until consumed.
  - (5) Permanently legible code marks shall be placed on the outer layer of every finished product package and master carton. Such marks shall identify the plant where packed, the date of packing, and the oven load. Records shall be so maintained as to provide positive identification;
    - (A) of the process procedures used for the manufacture of hot-process smoked or hot-process smoke-flavored fish; and
    - (B) of the distribution of the finished product.
- (f) Testing. Microbiological and chemical examination of in-line and finished product samples shall be conducted with sufficient frequency to assure that processing steps and sanitary procedures are adequate.

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

## **SECTION .0600 - PROCESSING OF EGGS**

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

Eggs for human food shall be processed in a manner which:

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

*History Note:* Authority G.S. 106-131; 106-139;  
 Eff. April 1, 1987;  
 Readopted Eff. March 1, 2017.

## SECTION .0700 - BOTTLED WATER

### 02 NCAC 09C .0701 SCOPE

The source approval requirements of this Section apply to bottled water sources located within this State. Bottled water from sources located outside this State must comply with the source approval requirements of Title 21, Code of Federal Regulations, Part 129, which is adopted by reference in 02 NCAC 09B .0116(o)(57).

*History Note: Authority G.S. 106-139;  
Eff. April 1, 1992;  
Temporary Amendment Eff. May 13, 1996;  
Amended Eff. April 1, 2003; April 1, 1997;  
Readopted Eff. March 1, 2017.*

### 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 and Consumer Services' designated representative, the Department of Environmental Quality, Division of Water Resources in accordance with this Section;
- (2) "Spring" means a natural orifice in the earth's surface from 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 from which water is withdrawn 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;  
Readopted Eff. March 1, 2017.*

### 02 NCAC 09C .0703 SOURCE APPROVAL

(a) If the proposed source is from an existing approved public water supply system, the provisions of Paragraphs (b), (c), and (d) of this Rule shall not apply.

(b) If the proposed source is a well, the provisions of 15A NCAC 18C, Rules Governing Public Water Supplies, shall apply. Copies are available upon request from the Public Water Supply Section.

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

- (1) If the investigation reveals influence by surface water or other factors which render the site unsuitable for development as a safe water source, the investigation shall be terminated.
- (2) If the investigation does not reveal influence by surface waters, and all other factors as set forth in this Rule are considered satisfactory for site development, the provisions of Paragraph (d) of this Rule shall apply.
- (3) If the investigation reveals factors set forth in this Rule which warrant further investigation, the Department of Environmental Quality may require, as a condition for continued investigation, evaluation of the site or specific factors influencing the site by a geologist or engineer licensed to practice in North Carolina. If the Department of Environmental Quality determines that the investigation and report illustrate that the questionable factors do not hinder the suitability of the site to produce a safe water source, the provisions of Paragraph (d) of this Rule shall apply.

(d) In the second step of the spring investigation, spring water shall be sampled and data collected to determine the capability of source water to meet current North Carolina drinking water quality standards under the most severe anticipated environmental conditions. The following requirements shall apply to the water sampling and data collection process:

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

- (A) Flow in gallons per minute (on-site measurement);
  - (B) Precipitation in inches (on-site measurement);
  - (C) Temperature (on-site measurement);
  - (D) pH;
  - (E) Conductivity;
  - (F) Turbidity;
  - (G) Coliform bacteria; and
  - (H) Microscopic analysis for organic debris, larvae, animal or insect parts, algae, diatoms, rotifers, coccidia and giardia cysts.
- (2) The minimum sampling and data collection period shall be six consecutive months. The period shall also include a minimum of two storm events (two or more inches of rainfall in a 24-hour period). It is the owner's responsibility to monitor rainfall in the vicinity of the spring site.
- (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 the samples shall be collected within 24 hours of a storm event.
- (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.
- (5) Water sample collection and analysis shall be conducted in accordance with the recommendations of the current edition of "Standard Methods for the Examination of Water and Wastewater" which is adopted by reference at 02 NCAC 09B .0116(n), including subsequent amendments and editions. Water sample analyses for parameters (1)(D) through (1)(H) of this paragraph shall be conducted by a laboratory certified by the State of North Carolina. . All measurements and sample results (with attached laboratory analysis reports) shall be kept in a tabular form and submitted to the Department of Environmental Quality at the end of the monitoring period. Upon review of the data, sample results and sample analysis, the Department of Environmental Quality shall determine the capability of the source to meet current North Carolina drinking water quality standards. If the water source is determined to be unsatisfactory, the investigation shall be terminated. If the source is determined to be satisfactory, the provisions of Paragraph (e) of this Rule shall apply.
- (e) Plans and specifications for construction of the source, protective covering, piping, and storage facilities shall be submitted to the Department of Environmental Quality by an engineer licensed to practice in the State of North Carolina for review and approval prior to beginning construction or letting a contract for construction. For spring sources, the plans and specifications may be presented by the licensed engineer at any point during the process outlined in Paragraph (d) of this Rule. Springs shall not be developed in their final form until plans and specifications for the spring have been approved.
- (f) Neither the bottling of water nor the selling of water for bottling shall begin until compliance with this Section has been completed and the Department of Environmental Quality receives certification from an engineer licensed to practice in North Carolina that the project has been constructed in accordance with the approved plans and specifications.

*History Note:* Authority G.S. 106-139;  
 Eff. April 1, 1992;  
 Readopted Eff. May 1, 2017.

**02 NCAC 09C .0704 LABELING**

*History Note:* Authority G.S. 106-139;  
 Eff. April 1, 1992;  
 Temporary Repeal Eff. May 13, 1996;  
 Repealed Eff. April 1, 1997.



## SUBCHAPTER 09D - CANNED DOG AND CAT FOOD

### 02 NCAC 09D .0101 DEFINITIONS AND TERMS

For the purpose of these regulations the following shall be construed respectively to mean the following:

- (1) "Principal display panel" means the part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.
- (2) "Ingredient statements" means a collective and contiguous listing on the label of the ingredients of which the pet food is composed.
- (3) "Immediate container" means the unit, can, box, tin, bag or other receptacle or covering in which a pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.
- (4) The term "drug" means any article for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles, other than feed, intended to affect the structure or any function of the animal body.
- (5) The term "pet food" shall be taken to mean "canned pet food" as defined in N.C.G.S. 106-284.33.

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

*Eff. February 1, 1976;*

*Amended Eff. October 1, 1987;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### 02 NCAC 09D .0102 LABEL FORMAT AND LABELING

(a) The statement of net content and product name must be shown on the principal display panel. All other required information may be placed elsewhere on the label but shall be sufficiently conspicuous as to render it easily read by the average purchaser under ordinary conditions of purchase and sale.

(b) The declaration of the net content shall be made in conformity with the United States "Fair Packaging and Labeling Act" and the regulations promulgated thereunder.

(c) The information which is required to appear on the label under the "Guaranteed Analysis" shall be listed in the following order:

- (1) Crude protein (minimum amounts);
- (2) Crude fat (minimum amounts);
- (3) Crude fiber (maximum amounts);
- (4) Moisture (maximum amounts);
- (5) Additional guarantees shall follow moisture.

(d) The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor of the pet food. The statement of the place of business should include the street address, if any, of such place unless such street address is shown in a current city directory or telephone directory.

(e) If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food was manufactured or packaged or is to be distributed if such statement is not misleading in any particular, and provided each package of such pet food shall be coded to indicate location of plant where manufactured or processed when more than one plant is involved in the processing or packaging of one pet food.

(f) A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

(g) The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

(h) No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

(i) Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

(j) When a pet food is enclosed in an outer container or wrapper which is intended for retail sale, all required label information must appear on such outside wrapper or container unless all of the required label information is readily legible through apertures or transparencies in such outside container or wrapper.

(k) The words "Dog Food," "Cat Food," or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

(l) The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats unless such product or feeding contains other than the following:

- (1) ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Academy of Sciences; To the extent that the product's ingredients provide nutrients in amounts which substantially deviate from those nutrient requirements estimated by such a recognized authority on animal nutrition, or in the event that no estimation has been made by a recognized authority on animal nutrition of the requirements of animals for one or more stages of said animals' lives, the product's represented capabilities in this regard must have been demonstrated by adequate testing;
- (2) a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactory for fertility of male and female, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.

(m) Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only in the following instances:

- (1) In conjunction with a statement of the limited purpose for which the product is intended or suitable (as, for example, in the statement "a complete food for puppies"). Such representations and such required qualifications therefor shall be juxtaposed on the same panel and in the same size, style and color print; and
- (2) Such qualified representations may appear on pet food labels only if the following are present:
  - (A) The pet food contains ingredients sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or
  - (B) The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

*History Note: Authority G.S. 106-284.1;*

*Eff. February 1, 1976;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **02 NCAC 09D .0103 BRAND AND PRODUCT NAMES**

(a) No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one the presence of which provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of the flavor. Distributors of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the Commissioner of Agriculture.

(b) The designation "100 percent" or "all" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

(c) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are from cattle, swine, sheep, and goats. For example, "horsemeat" and "horsemeat by-products."

(d) The name of the pet food shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by (a), (e), or (f) of this Rule; provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is significant to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the name of the pet food if the following occur:

- (1) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product;
  - (2) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; and
  - (3) It is not otherwise false or misleading.
- (e) When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95 percent or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of a pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style, and color print.
- (f) When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25 percent but less than 95 percent of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the product in accordance with an established law, custom or usage or so that the product is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.
- (g) Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food unless it is in compliance with this Rule.

*History Note: Authority G.S. 106-284.1;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09D .0104 EXPRESSION OF GUARANTEES**

- (a) The sliding scale method of expressing a guaranteed analysis (for example, "protein 15-18 percent") is prohibited.
- (b) Pet foods containing five percent or more mineral ingredients, shall include in the guaranteed analysis the minimum and maximum percentage of calcium (Ca) and salt (NaCl), and the minimum percentages of phosphorus (P) and iodine (I), if added. Minerals, except salt (NaCl), when quantitatively guaranteed shall be stated in terms of percentage of the element. The label of the pet food which is formulated as and represented to be a mineral supplement shall include a guarantee of all the minerals contained in the ingredient statement.
- (c) The label of the pet food which is formulated as and represented to be a vitamin supplement, shall include a guarantee of the minimum content of each vitamin declared in the ingredient statement. Such vitamin guarantees shall be stated in units or milligrams per pound or ppm, as provided herein; vitamin E in USP or International Units; vitamin A, other than precursors of vitamin A, in USP Units; vitamin D in USP units: all other vitamins as true vitamins, not compounds, except pyridoxine hydrochloride, choline chloride, and thiamine; oils and concentrates containing vitamin A or vitamin D or both may be additionally labeled to show vitamin content in units per gram; and providing that the term "d-pantothenic acid" be used in stating the pantothenic acid guarantee.
- (d) The vitamin potency of pet food products distributed in containers smaller than one pound may be guaranteed in approved units per ounce.
- (e) If the label of a pet food does not represent the pet food to be either a vitamin or a mineral supplement but does include a table of comparison of a typical analysis of the vitamin, mineral, or nutrient content of the pet food with levels recommended by a recognized animal nutrition authority, such comparison may be stated in the units of measurement used by recognized authority. The statement in a table of comparison of the vitamin, mineral, or nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis. Such table of comparison may appear on the label separate and apart from the guaranteed analysis.

*History Note: Authority G.S. 106-284.1;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09D .0105 INGREDIENTS**

- (a) The maximum moisture in all pet foods shall be guaranteed and shall not exceed 78.00 percent or the natural moisture content of the constituent ingredients of the product, whichever is greater. Pet foods such as those consisting principally of stew, gravy, sauce, broth or juice which are so labeled, may contain moisture in excess of 78.00 percent.
- (b) Each ingredient of the pet food shall be listed in the ingredient statement, and names of all ingredients in the ingredient statement must be shown in letters or type of the same size. The failure to list the ingredients of a pet food in descending

order by their predominance by weight in non-quantitative terms may be misleading. Any ingredient for which the Association of American Feed Control Officials has established a name and definition shall be identified by the name so established. Any ingredient for which no name and definition has been so established shall be identified by the common or usual name of the ingredient. Brand or trade names shall not be used in the ingredient statement.

(c) The term "dehydrated" may precede the name of any ingredient in the ingredient list that has been artificially dried.

(d) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a pet food.

*History Note: Authority G.S. 106-284.1;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **02 NCAC 09D .0106 DIRECTIONS FOR USE**

The label of a pet food product which is suitable only for intermittent or supplemental feeding or for some other limited purpose shall conform to the following:

- (1) bear a clear and conspicuous disclosure to that effect, or
- (2) contain specific feeding directions which clearly state that the product should be used only in conjunction with other foods.

*History Note: Authority G.S. 106-284.1;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **02 NCAC 09D .0107 DRUGS AND PET FOOD ADDITIVES**

(a) An artificial color may be used in a pet food only if it has been shown to be harmless to pets. The permanent or provisional listing of an artificial color in the United States Food and Drug Regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets.

(b) Prior to approval of a registration application and/or approval of a label for pet food, which contains additives, (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the pet food, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food may be as follows:

- (1) when the pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use; or
- (2) when the pet food itself is a drug as defined in 02 NCAC 09D .0101 and is generally recognized as safe and effective for label use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 355 or 357.

(c) The medicated labeling format recommended by Association of American Feed Control Officials shall be used to assure that adequate labeling is provided.

*History Note: Authority G.S. 106-284.1;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **SUBCHAPTER 09E - FEED**

### **02 NCAC 09E .0101 THE DEFINITIONS FOR COMMERCIAL FEEDS**

The names and definitions for commercial feeds shall be the Official Definition of Feed Ingredients adopted by the Association of American Feed Control Officials, except as the Board of Agriculture designates otherwise in specific cases.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

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

The terms used in reference to commercial feeds shall be the Official Feed Terms adopted by the Association of American Feed Control Officials, except as the Board of Agriculture designates otherwise in specific cases. A list of the Official Feed Terms can be found in the AFFCO Official Publication. The publication can be purchased for a fee of seventy dollars (\$70.00) for members, or one-hundred twenty-five dollars (\$125.00) for non-members at [www.aafco.org/publications](http://www.aafco.org/publications). You may also contact the North Carolina Department of Agriculture and Consumer Services Food and Drug Protection Division at 919-733-7366.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Readopted Eff. March 1, 2017.*

**02 NCAC 09E .0103 COMMODITIES DECLARED EXEMPT**

The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of G.S. 106-284.33(4):

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

provided that these commodities are not adulterated within the meaning of G.S. 106-284.38(1).

*History Note: Authority G.S. 106-284.33(4); 106-284.41;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1987;  
Readopted Eff. March 1, 2017.*

**02 NCAC 09E .0104 LABEL FORMAT**

Commercial feeds shall be labeled with the information prescribed in this regulation on the principal display panel of the product and in the following general format:

- (1) Net weight;
- (2) Product name and brand name, if any;
- (3) If drugs are used, the following shall appear:
  - (a) The word "medicated" shall appear directly following and below the product name in type size no smaller than one half the type size of the product name;
  - (b) The purpose of medication (claim statement);
  - (c) The required direction for use and precautionary statements required by 02 NCAC 09E .0108 and 02 NCAC 09E .0109 appear elsewhere on the label;
  - (d) An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with 02 NCAC 09E .0106(d);
- (4) The guaranteed analysis of the feed as required under the provisions of Section 106-284.35(1)(c) of the North Carolina Commercial Feed Law of 1973 include the following items, unless exempted in (h) of this Subparagraph, and in the order listed:
  - (a) Minimum percentage of crude protein;
  - (b) Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in 02 NCAC 09E .0106(e);
  - (c) Minimum percentage of crude fat;
  - (d) Maximum percentage of crude fiber;
  - (e) Minerals, to include, in the following order:
    - (i) minimum and maximum percentages of calcium (Ca),
    - (ii) minimum percentages of phosphorus (P),
    - (iii) minimum and maximum percentages of salt (NaCl),

- (iv) other minerals;
  - (f) Vitamins in such terms as specified in 02 NCAC 09E .0106(c);
  - (g) Total sugars as invert on dried molasses products or products being sold primarily for their molasses content;
  - (h) Exemptions for guarantees will be as follows:
    - (i) Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent of mineral elements.
    - (ii) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.
    - (iii) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses;
- (5) Feed ingredients or collective terms for the grouping of feed ingredients as provided under the provisions of Section 106-284.35(1)(d) of the North Carolina Commercial Feed Law of 1973 shall be described as follows:
- (a) the name of each ingredient as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials, common or usual name, or one approved by the Board;
  - (b) collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publications of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:
    - (i) When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.
    - (ii) The manufacturer shall provide the feed control official upon request, with a listing of individual ingredients, within a defined group, that are to be or have been used at manufacturing facilities distributing in or into the state;
- (6) Name and principal mailing address of the manufacturer or person responsible for distributing the feed; The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory;
- (7) The information required in Section 106-284.35(1)(a) to (e) of the North Carolina Commercial Feed Law of 1973 must appear in its entirety on one side of the label or on one side of the container. The information required by Section 106-284.35(1)(f) to (g) of the North Carolina Commercial Feed Law of 1973 shall be displayed in a prominent place on the label or container but not necessarily on the same side as the above information. When the information required by Section 106-284.35(1)(f) to (g) is placed on a different side of the label or container, it must be referenced on the front side with a statement such as "see back of label for directions for use". None of the information required by Section 106-284.35 of the North Carolina Commercial Feed Law of 1973 shall be subordinated or obscured by other statements or designs.

*History Note: Authority G.S. 106-284.41;  
 Eff. February 1, 1976;  
 Amended Eff. December 20, 1980;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09E .0105 BRAND AND PRODUCT NAMES**

- (a) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of feed must conform therewith. A mixture labeled "Dairy Feed", for example, must be suitable for that purpose.
- (b) Commercial, registered brand or trade names are not permitted in guarantees or ingredient listing.
- (c) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of

the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

(d) The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen.

(e) When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. When a figure is used in the brand name (except in mineral, vitamin, or other products where the protein guarantee is nil or unimportant), it shall be preceded by the word "number" or some other suitable designation.

(f) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Board of Agriculture designates otherwise.

(g) The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in 02 NCAC 09E .0106(c).

(h) The term "mineralized" shall not be used in the name of a feed, except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

(i) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are from cattle, swine, sheep, and goats.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Amended Eff. December 20, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09E .0106 EXPRESSION OF GUARANTEES**

(a) The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight.

(b) Commercial feeds containing six and one-half percent or more mineral elements shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentages of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

(1) When the minimum is 5.0 percent or less, the maximum shall not exceed the minimum by more than one percentage point.

(2) When the minimum is above 5.0 percent, the maximum shall not exceed the minimum by more than 20 percent and in no case shall the maximum exceed the minimum by more than five percentage points.

(c) Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed with the following exceptions:

(1) Vitamin A, other than precursors of vitamin A, shall be stated in USP units per pound or International Units (IU) per pound.

(2) Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound.

(3) Vitamin D for other uses shall be stated in USP units per pound.

(4) Vitamin E shall be stated in International or USP Units per pound.

(5) Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, pyridoxine hydrochloride, choline chloride, thiamine, and d-pantothenic acid.

(6) Oils and premixes containing vitamin A or vitamin D or both may be labeled to show vitamin content in terms of units per gram.

(d) Guarantees for drugs shall be stated in terms of percent by weight, with the following exceptions:

(1) Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(2) Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

(3) Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except

as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

- (4) The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.
- (e) Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:
  - (1) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than five percent protein from natural sources shall be guaranteed as follows:

"Crude Protein, minimum,..... percent"  
(This includes not more than ..... percent equivalent protein from non-protein nitrogen)
  - (2) Mixed feed concentrates and supplements containing less than five percent protein from natural sources may be guaranteed as follows:

"Equivalent Crude Protein from Non-Protein Nitrogen, minimum, ..... percent."
  - (3) Ingredient sources of non-protein nitrogen such as urea, di-ammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

"Nitrogen, minimum, ..... percent Equivalent Crude Protein from Non-Protein Nitrogen, minimum, ..... percent."
- (f) Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **02 NCAC 09E .0107      INGREDIENTS**

- (a) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of American Feed Control Officials, the common or usual name, or one approved by the Board of Agriculture.
- (b) The name of each ingredient must be shown in letters or type of the same size.
- (c) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.
- (d) The term "dehydrated" may precede the name of any product that has been artificially dried.
- (e) A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.
- (f) Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that required no definition, (i.e., sugar).
- (g) When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **02 NCAC 09E .0108      DIRECTIONS FOR USE AND PRECAUTIONARY STATEMENTS**

- (a) Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall conform to the following:
  - (1) be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and
  - (2) include, but not be limited to, all information prescribed by all applicable regulations under the Federal Food, Drug and Cosmetic Act.
- (b) Adequate directions for use and precautionary statements are required for feeds containing non-protein nitrogen as specified in 02 NCAC 09E .0109.
- (c) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.



*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09E .0109 NON-PROTEIN NITROGEN**

(a) Urea and other non-protein nitrogen products defined in the Official Publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein and are not to be used in commercial feeds for other animals and birds.

(b) If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of non-protein nitrogen, added as such, or the equivalent crude protein from all forms of non-protein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement which reads as follows:

"CAUTION: USE AS DIRECTED"

The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

(c) The labeling of all feeds containing non-protein nitrogen ingredients, additional to other required feed labeling, shall bear the caution statement "Feed Only To Ruminants"; provided that, on labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added non-protein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of non-protein nitrogen.

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09E .0110 DRUG AND FEED ADDITIVES**

(a) Prior to approval of a registration application and/or approval of a label for commercial feed which contains additives (including drugs, other special purpose additives, or non-nutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

(b) Satisfactory evidence of safety and efficacy of a commercial feed may be as follows:

- (1) when the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use; or
- (2) when the commercial feed is itself a drug as defined in Section 106-284.33(8) of the North Carolina Commercial Feed Law of 1973 and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360(b).

*History Note: Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

#### **02 NCAC 09E .0111 ADULTERANTS**

(a) For the purpose of Section 106-284.38(1) of the North Carolina Commercial Feed Law of 1973, the terms "poisonous or deleterious substances" include but are not limited to the following:

- (1) fluorine and any mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.30 percent for cattle; 0.35 percent for sheep; and 0.45 percent for swine and 0.60 percent for poultry;
- (2) fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.009 percent for cattle; 0.01 percent for sheep; 0.014 percent for swine; and 0.035 percent for poultry;
- (3) soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents;

- (4) sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B-1 (Thiamine).
- (b) All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains no more than four whole prohibited weed seeds per pound and not more than 100 whole restricted weed seeds per pound.

(c) Definitions

- (1) For the purpose of Subsection (c)(2) of 02 NCAC 09E .0111, the terms "prohibited weed seed" and "restricted weed seed" shall conform to the definitions in Section 106-277.2(22)(a) and (b) of the North Carolina Seed Law. Notwithstanding the above mentioned tolerances, the presence of any seed in concentrations which are harmful to poultry or livestock shall be dealt with under Section 106-284.38 of the North Carolina Commercial Feed Law.
- (2) Prohibited weed seed shall include the following:
- (A) Crotalaria--Crotalaria spp.;
  - (B) Johnson grass--sorghum halepense;
  - (C) Nutgrass--Cyperus rotundus;
  - (D) Witchweed--Striga asiatica.
- (3) Restricted weed seed shall include the following:
- (A) Cocklebur (Xanthium spp.);
  - (B) Blessed thistle--Cnicus benedictus;
  - (C) Sandbur--Cenchrus pauciflorus;
  - (D) Wild onions and/or wild garlic--Allium spp.;
  - (E) Wild radish--Raphanus raphanistrum;
  - (F) Bermuda grass--Cynodon dactylon;
  - (G) Canada thistle--Cirsium arvense;
  - (H) Corncockle--Agrostemma githago;
  - (I) Field bindweed--Convolvulus arvensis;
  - (J) Quackgrass--Agropyron repens;
  - (K) Giant foxtail--Setaria faberi;
  - (L) Dodders--Cuscuta spp.;
  - (M) Dock--Rumex crispus and/or obtusifolius;
  - (N) Horsenettle--Solanum carolinense;
  - (O) Bracted plantain--Plantago aristata;
  - (P) Buckhorn plantain--Plantago lanceolata;
  - (Q) Wild mustard et al--Brassica spp.

*History Note:* Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

**02 NCAC 09E .0112 GOOD MANUFACTURING PRACTICES**

*History Note:* Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Amended Eff. April 8, 1977;  
Repealed Eff. January 1, 1987.

**02 NCAC 09E .0113 PERMITTED ANALYTICAL VARIATION**

Under the provisions of Section 106-284.42(h) of the North Carolina Commercial Feed Law of 1973, the Board of Agriculture adopts the following as permitted analytical variation (PAV) values, unless the Board of Agriculture by resolution specifically determines that a particular PAV value is not appropriate and not in the interest of the consumer; in such cases, the Board shall establish appropriate PAV values:

- (1) the PAV values as recommended by the Association of American Feed Control Officials (AAFCO) and published in the AAFCO Official Publication;

- (2) assay control limitations for new drugs and for a combination of drugs in medicated feeds as established by FDA, recommended by AAFCO and published in the AAFCO Official Publication.

*History Note:* Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1987; December 20, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

#### **02 NCAC 09E .0114 BAG OR PACKAGE WEIGHTS**

*History Note:* Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule Expired April 1, 2015.

#### **02 NCAC 09E .0115 CHANGES IN GUARANTEES AFTER REGISTRATION**

A guarantee and label for a brand of feed having been registered may not be subsequently modified in a way that permits the lowering of the quality of feed, unless it can be clearly shown that the modification sought to be made is consistent with the interest of the feeder. It is provided, however, that the ingredients of a feed mixture may be changed after registration on presentation of satisfactory reasons if such a change does not necessitate a lowering of the guaranteed analysis or the quality of the feed.

*History Note:* Authority G.S. 106-284.41;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

#### **02 NCAC 09E .0116 CURRENT GOOD MANUFACTURING PRACTICE OF THE NORTH CAROLINA COMMERCIAL ANIMAL FEED AND PET FOOD PROGRAM**

Any person that engages in activities regulated by the North Carolina Commercial Feed Law of 1973, G.S. 106, Article 31C, shall comply with the standards set forth under Subpart B of 21 C.F.R. Part 507, titled "Current Good Manufacturing Practice," as incorporated under 02 NCAC 09B .0116(o)(130).

*History Note:* Authority G.S. 106-284.41;  
Eff. March 1, 2020.

### **SUBCHAPTER 09F - INTERNAL COMBUSTION ENGINE ANTIFREEZES**

#### **SECTION .0100 - SPECIFICATIONS FOR ETHYLENE GLYCOL BASE ENGINE COOLANTS**

##### **02 NCAC 09F .0101 GENERAL**

(a) Ethylene glycol base engine coolant concentrate, when used at 40 to 70 percent concentration in water, functions effectively during both winter and summer in automotive vehicle cooling systems to provide protection against freezing, boiling and corrosion.

(b) Ethylene glycol base engine coolant concentrate shall consist of ethylene glycol and shall contain corrosion inhibitors, a foam suppressor, and sufficient water to dissolve the additives and to provide a packaged product that can be poured at temperatures as low as zero degrees Fahrenheit (-17.8 degrees C). Other glycols such as propylene and diethylene may be included up to a maximum of 15 percent if the chemical and physical properties referenced in Rules .0102 and .0103 of this Section are met.

(c) The product when installed in accordance with the vehicle manufacturers' recommendations and those on the product label shall not adversely affect fluid flow and heat transferred where used in a properly maintained cooling system in normal passenger car service, as defined in the vehicle owner's manual, for a minimum of one year.

*History Note:* Authority G.S. 106-579.7;  
Eff. February 1, 1976;

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09F .0102      PHYSICAL AND CHEMICAL REQUIREMENTS**

Ethylene glycol base engine coolant concentrate shall conform to the physical and chemical property requirements prescribed by "ASTM International Standards on Engine Coolants" for ethylene glycol base engine coolant concentrate, as set forth in 02 NCAC 09B .0116.

*History Note:      Authority G.S. 106-579.7;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09F .0103      PERFORMANCE REQUIREMENTS**

Ethylene glycol base engine coolant concentrate shall conform to the laboratory test performance requirements prescribed by "ASTM International Standards on Engine Coolants" for ethylene glycol base engine coolant.

*History Note:      Authority G.S. 106-579.7;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**SECTION .0200 - SPECIFICATIONS FOR ALCOHOL BASE ENGINE COOLANTS**

**02 NCAC 09F .0201      GENERAL**

Alcohol base engine coolant concentrate shall consist of at least 50 percent methyl alcohol. Other alcohols such as ethyl and isopropyl may be included if the chemical and physical properties conform to the "ASTM International Standards on Engine Coolants" for alcohol base coolant.

*History Note:      Authority G.S. 106-579.7;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09F .0202      PHYSICAL AND CHEMICAL REQUIREMENTS**

Alcohol base engine coolant concentrate shall conform to the physical and chemical property requirements prescribed by "ASTM International Standards on Engine Coolants" for alcohol base engine coolant.

*History Note:      Authority G.S. 106-579.7;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09F .0203      PERFORMANCE REQUIREMENTS**

Alcohol base engine coolant concentrate shall conform to the laboratory test performance requirements prescribed by "ASTM International Standards on Engine Coolants" for alcohol base engine concentrate.

*History Note:      Authority G.S. 106-579.7;*

*Eff. February 1, 1976;*

*Amended Eff. May 1, 2013;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

**02 NCAC 09F .0204      METHODS OF TESTING**

The methods of testing to be used in determining fidelity of ethylene glycol and alcohol base engine coolant products to the physical, chemical and performance requirements are those set forth in the "ASTM International Standards on Engine Coolants."

*History Note: Authority G.S. 106-579.7;  
Eff. February 1, 1976;  
Amended Eff. May 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

## **SECTION .0300 - SPECIFICATIONS FOR METHOXY PROPANOL BASE ENGINE COOLANTS**

### **02 NCAC 09F .0301 DEFINITIONS**

- (a) "Methoxy propanol base engine coolant concentrate" means a methoxy propanol base engine coolant used at a concentration level of 33 1/3 percent to 60 percent in water.
- (b) "Methoxy propanol base engine coolant full-fill mixture" means a methoxy propanol base engine coolant that is used as provided by the manufacturer, with no addition of water by the consumer.

*History Note: Authority G.S. 106-579.7;  
Eff. February 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09F .0302 GENERAL SPECIFICATIONS**

All methoxy propanol base engine coolants, when installed in accordance with the vehicle manufacturer's recommendations and those on the product label, shall function effectively in a properly maintained cooling system in heavy equipment, trucks or buses:

- (1) with or without diesel engines;
- (2) under normal service;
- (3) during both winter and summer;
- (4) for a minimum of one year without adversely affecting fluid flow and heat transfer; and
- (5) providing protection against freezing, boiling and corrosion in accordance with all other specifications of 02 NCAC 09F .0300.

*History Note: Authority G.S. 106-579.7; 106-579.14;  
Eff. February 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09F .0303 CONCENTRATES**

- (a) Methoxy propanol base engine coolant concentrate shall consist of:
- (1) essentially 1-methoxy, 2-propanol;
  - (2) suitable inhibitors;
  - (3) a foam suppressor; and
  - (4) sufficient water to dissolve the additives and provide a packaged product that can be poured at temperatures as low as 0 degrees F. (-17.8 degrees C.).
- (b) Methoxy propanol base engine coolant concentrate may include other glycols such as alkalene and polyalkalene up to a maximum of 15 percent of the total glycol content so long as the chemical and physical properties in 02 NCAC 09F .0305 and 02 NCAC 09F .0306 are met, as applicable.

*History Note: Authority G.S. 106-579.7;  
Eff. February 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.*

### **02 NCAC 09F .0304 FULL-FILL**

- (a) Methoxy propanol base engine coolant full-fill mixture may contain a maximum of 50 percent deionized or distilled water.
- (b) A person shall market methoxy propanol base engine coolant full-fill mixture in containers of no less than five gallons capacity.

(c) A person shall market methoxy propanol base engine coolant full-fill mixtures only in retail outlets engaged in marketing equipment utilizing diesel engines, diesel engine sales, diesel engine parts supply or service facilities, or similar heavy equipment establishments.

*History Note:* Authority G.S. 106-579.7; 106-579.14;  
Eff. February 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

#### **02 NCAC 09F .0305 PHYSICAL AND CHEMICAL REQUIREMENTS**

Methoxy propanol base engine coolant concentrate and full-fill mixtures shall conform to the physical and chemical properties prescribed by "ASTM International Standards on Engine Coolants" for methoxy propanol base engine coolant concentrate and full-fill mixtures.

*History Note:* Authority G.S. 106-579.7;  
Eff. February 1, 1982;  
Amended Eff. May 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

#### **02 NCAC 09F .0306 PERFORMANCE REQUIREMENTS**

Methoxy propanol base engine coolant concentrate and full-fill mixtures shall conform to the laboratory test performance requirements prescribed by "ASTM International Standards on Engine Coolants" for methoxy propanol base engine coolant concentrate and full-fill mixtures.

*History Note:* Authority G.S. 106-579.7;  
Eff. February 1, 1982;  
Amended Eff. May 1, 2013;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

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

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

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

The following are adopted by reference, including subsequent amendments and editions:

- (1) "Milk for Manufacturing Purposes and Its Production and Processing, Recommended Requirements," U.S. Department of Agriculture, Agricultural Marketing Service, Dairy Programs. A copy of this document is available at no cost from the USDA, Agricultural Marketing Service, at [www.ams.usda.gov](http://www.ams.usda.gov). A farmstead shall be exempt from all mandatory milk testing except the mastitic milk test and the appearance and odor test. For the purposes of this Section, "farmstead" means a milk or milk product production facility that uses only milk from its own animals in its product production and has no other source of milk.
- (2) "Grading and Inspection - General Specifications for Approved Dairy Plants and Standards for Grades of Dairy Products," 7 C.F.R. 58. A copy of this document is available at no cost from the Government Publishing Office at [www.gpo.gov](http://www.gpo.gov).

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2002; December 1, 1987; January 1, 1987; January 1, 1985; August 1, 1982;  
Readopted Eff. March 1, 2017.

##### **02 NCAC 09G .0102 APPLICATION OF THE PMO**

*History Note:* Authority G.S. 106-267; 106-267.2; 106-268;  
Eff. February 1, 1976;

*Amended Eff. March 12, 1981; December 23, 1976;  
Repealed Eff. January 1, 1985.*

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

Assays of vitamin content shall be made as required by the PMO. All assay costs shall be paid by the milk product processor.

*History Note: Authority G.S. 106-267;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1983; March 12, 1981;  
Readopted Eff. April 1, 2017.*

**SECTION .0200 - LABELING REGULATIONS FOR FLUID MILK AND FLUID MILK PRODUCTS**

- 02 NCAC 09G .0201 DEFINITIONS**
- 02 NCAC 09G .0202 APPROVED CONTAINERS FOR MILK AND MILK PRODUCTS**
- 02 NCAC 09G .0203 LOCATION OF REQUIRED INFORMATION ON CONTAINER**
- 02 NCAC 09G .0204 MILK DEEMED MISBRANDED**
- 02 NCAC 09G .0205 SUPPLEMENTARY DECLARATIONS**
- 02 NCAC 09G .0206 PROMINENCE OF REQUIRED INFORMATION**
- 02 NCAC 09G .0207 IDENTIFICATION OF FLUID MILK PROCESSING PLANTS**

*History Note: Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. March 12, 1981.*

**SECTION .0300 - MILK IMPORTS**

- 02 NCAC 09G .0301 IMPORTS AND PERMITS**
- 02 NCAC 09G .0302 INSPECTION OF DAIRY FARMS AND MILK PLANTS**
- 02 NCAC 09G .0303 THE EXAMINATION OF MILK AND MILK PRODUCTS**
- 02 NCAC 09G .0304 STANDARDS FOR MILK AND MILK PRODUCTS**

*History Note: Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. March 12, 1981.*

**SECTION .0400 - SANITATION REQUIREMENTS FOR GRADE A RAW MILK FOR PASTEURIZATION**

- 02 NCAC 09G .0401 ABNORMAL MILK**
- 02 NCAC 09G .0402 MILKING BARN: STABLE: OR PARLOR: CONSTRUCTION**
- 02 NCAC 09G .0403 MILKING BARN: STABLE: OR PARLOR: CLEANLINESS**
- 02 NCAC 09G .0404 COWYARD**
- 02 NCAC 09G .0405 MILKHOUSE OR ROOM: CONSTRUCTION AND FACILITIES**
- 02 NCAC 09G .0406 MILKHOUSE OR ROOM: CLEANLINESS**
- 02 NCAC 09G .0407 TOILET**
- 02 NCAC 09G .0408 WATER SUPPLY**
- 02 NCAC 09G .0409 UTENSILS AND EQUIPMENT: CONSTRUCTION**
- 02 NCAC 09G .0410 UTENSILS AND EQUIPMENT: CLEANING**
- 02 NCAC 09G .0411 UTENSILS AND EQUIPMENT: SANITIZATION**
- 02 NCAC 09G .0412 UTENSILS AND EQUIPMENT: STORAGE**
- 02 NCAC 09G .0413 UTENSILS AND EQUIPMENT: HANDLING**
- 02 NCAC 09G .0414 MILKING: FLANKS: UDDERS: AND TEATS**
- 02 NCAC 09G .0415 MILKING: SURCINGLES: MILK STOOLS: AND ANTICKICKERS**
- 02 NCAC 09G .0416 MILKING: TRANSFER AND PROTECTION OF MILK**
- 02 NCAC 09G .0417 PERSONNEL: HAND-WASHING FACILITIES**

<b>02 NCAC 09G .0418</b>	<b>PERSONNEL: CLEANLINESS</b>
<b>02 NCAC 09G .0419</b>	<b>COOLING</b>
<b>02 NCAC 09G .0420</b>	<b>VEHICLES</b>
<b>02 NCAC 09G .0421</b>	<b>INSECT AND RODENT CONTROL</b>

*History Note:* Authority G.S. 106-267;  
 Eff. February 1, 1976;  
 Repealed Eff. March 12, 1981.

**SECTION .0500 - SANITATION REQUIREMENTS FOR GRADE A PASTEURIZED MILK AND MILK PRODUCTS**

<b>02 NCAC 09G .0501</b>	<b>RECEIVING STATIONS</b>
<b>02 NCAC 09G .0502</b>	<b>TRANSFER STATIONS</b>
<b>02 NCAC 09G .0503</b>	<b>FLOORS: CONSTRUCTION</b>
<b>02 NCAC 09G .0504</b>	<b>WALLS AND CEILINGS: CONSTRUCTION</b>
<b>02 NCAC 09G .0505</b>	<b>DOOR AND WINDOWS</b>
<b>02 NCAC 09G .0506</b>	<b>LIGHTING AND VENTILATION</b>
<b>02 NCAC 09G .0507</b>	<b>SEPARATE ROOMS</b>
<b>02 NCAC 09G .0508</b>	<b>TOILET-SEWAGE DISPOSAL FACILITIES</b>
<b>02 NCAC 09G .0509</b>	<b>WATER SUPPLY</b>
<b>02 NCAC 09G .0510</b>	<b>HAND-WASHING FACILITIES</b>
<b>02 NCAC 09G .0511</b>	<b>MILK PLANT CLEANLINESS</b>
<b>02 NCAC 09G .0512</b>	<b>SANITARY PIPING</b>
<b>02 NCAC 09G .0513</b>	<b>CONSTRUCTION AND REPAIR OF CONTAINERS AND EQUIPMENT</b>
<b>02 NCAC 09G .0514</b>	<b>CLEANING AND SANITIZING OF CONTAINERS AND EQUIPMENT</b>
<b>02 NCAC 09G .0515</b>	<b>STORAGE OF CLEANED CONTAINERS AND EQUIPMENT</b>
<b>02 NCAC 09G .0516</b>	<b>STORAGE OF SINGLE-SERVICE CONTAINERS: UTENSILS: MATERIALS</b>
<b>02 NCAC 09G .0517</b>	<b>PROTECTION FROM CONTAMINATION</b>
<b>02 NCAC 09G .0518</b>	<b>PASTEURIZATION</b>
<b>02 NCAC 09G .0519</b>	<b>COOLING OF MILK</b>
<b>02 NCAC 09G .0520</b>	<b>BOTTLING AND PACKAGING</b>
<b>02 NCAC 09G .0521</b>	<b>CAPPING</b>
<b>02 NCAC 09G .0522</b>	<b>PERSONNEL: CLEANLINESS</b>
<b>02 NCAC 09G .0523</b>	<b>VEHICLES</b>
<b>02 NCAC 09G .0524</b>	<b>SURROUNDINGS</b>
<b>02 NCAC 09G .0525</b>	<b>PERSONNEL HEALTH</b>
<b>02 NCAC 09G .0526</b>	<b>PROCEDURE WHEN INFECTION IS SUSPECTED</b>

*History Note:* Authority G.S. 106-267; 106-268;  
 Eff. February 1, 1976;  
 Repealed Eff. March 12, 1981.

**SECTION .0600 - HEALTH REQUIREMENTS FOR GRADE A DAIRY HERDS**

<b>02 NCAC 09G .0601</b>	<b>OFFICIAL BRUCELLOSIS TEST</b>
<b>02 NCAC 09G .0602</b>	<b>BANG'S DISEASE: REMOVAL OF INFECTED ANIMALS</b>
<b>02 NCAC 09G .0603</b>	<b>OFFICIAL FORMS FOR REQUESTING RING TEST</b>
<b>02 NCAC 09G .0604</b>	<b>COWS: TUBERCULOSIS AND OTHER DISEASES</b>

*History Note:* Authority G.S. 106-267; 106-396; 106-348;  
 Eff. February 1, 1976;  
 Repealed Eff. March 12, 1981.

**SECTION .0700 - IMITATION MILK AND IMITATION MILK PRODUCTS**



<b>02 NCAC 09G .0701</b>	<b>INTENT: SCOPE: AND INTERPRETATION</b>
<b>02 NCAC 09G .0702</b>	<b>DEFINITIONS AND STANDARDS OF IDENTITY</b>
<b>02 NCAC 09G .0703</b>	<b>LABELING: IMITATION MILK AND IMITATION MILK PRODUCTS</b>
<b>02 NCAC 09G .0704</b>	<b>PLANT SANITATION</b>
<b>02 NCAC 09G .0705</b>	<b>PRODUCT QUALITY</b>

*History Note:* Authority G.S. 106-267; 106-268;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1983;  
Repealed Eff. June 1, 1984.

#### **SECTION .0800 - GRADE B MILK**

<b>02 NCAC 09G .0801</b>	<b>GRADE B RAW MILK</b>
<b>02 NCAC 09G .0802</b>	<b>GRADE B PASTEURIZED MILK</b>

*History Note:* Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. June 1, 1984.

#### **SECTION .0900 - GRADE C MILK**

<b>02 NCAC 09G .0901</b>	<b>GRADE C RAW MILK DEFINED</b>
<b>02 NCAC 09G .0902</b>	<b>GRADE C RAW MILK FOR MANUFACTURING PURPOSES</b>
<b>02 NCAC 09G .0903</b>	<b>GRADE C PASTEURIZED MILK</b>

*History Note:* Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. June 1, 1984.

#### **SECTION .1000 - FARM BULK MILK TANKS**

<b>02 NCAC 09G .1001</b>	<b>FARM BULK MILK HOLDING TANK: DEFINITION</b>
<b>02 NCAC 09G .1002</b>	<b>MILK HOUSE INSTALLATION: FACILITY FOR FARM BULK MILK TANK</b>
<b>02 NCAC 09G .1003</b>	<b>CONSTRUCTION OF FARM BULK TANKS</b>
<b>02 NCAC 09G .1004</b>	<b>CLEANING AND SANITIZING FARM MILK HANDLING EQUIPMENT</b>
<b>02 NCAC 09G .1005</b>	<b>TRANSPORT TANKS AND RELATED EQUIPMENT</b>
<b>02 NCAC 09G .1006</b>	<b>UNLOADING MILK FROM TRANSPORT TANKS</b>
<b>02 NCAC 09G .1007</b>	<b>CLEANING AND BACTERICIDAL TREATMENT OF TRANSPORT TANKS</b>
<b>02 NCAC 09G .1008</b>	<b>INTERPRETATION</b>

*History Note:* Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. March 12, 1981.

#### **SECTION .1100 - TRANSFERRING: DIPPING OR DISPENSING MILK**

<b>02 NCAC 09G .1101</b>	<b>TRANSFERRING DELIVERY: CONTAINERS: QUARANTINED RESIDENCES</b>
<b>02 NCAC 09G .1102</b>	<b>BULK MILK DISPENSERS</b>

*History Note:* Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. March 12, 1981.

**SECTION .1200 - SAMPLING AND TESTING MILK AND CREAM BY THE BABCOCK METHOD**

<b>02 NCAC 09G .1201</b>	<b>DEFINITIONS</b>
<b>02 NCAC 09G .1202</b>	<b>MILK AND CREAM TESTS</b>
<b>02 NCAC 09G .1203</b>	<b>LICENSED TESTER</b>
<b>02 NCAC 09G .1204</b>	<b>LICENSED SAMPLER</b>
<b>02 NCAC 09G .1205</b>	<b>FALSE READING TESTS</b>
<b>02 NCAC 09G .1206</b>	<b>WEIGH TANK</b>
<b>02 NCAC 09G .1207</b>	<b>SAMPLING MILK FROM THE WEIGH TANK</b>
<b>02 NCAC 09G .1208</b>	<b>SAMPLING PROCEDURES FOR FARM BULK TANKS</b>
<b>02 NCAC 09G .1209</b>	<b>COMPOSITE SAMPLING FROM FARM BULK TANKS</b>
<b>02 NCAC 09G .1210</b>	<b>CARE OF COMPOSITE SAMPLES: PRESERVATIVE</b>
<b>02 NCAC 09G .1211</b>	<b>PERIOD OF COMPOSITE SAMPLING</b>
<b>02 NCAC 09G .1212</b>	<b>QUANTITY OF MILK TO BE TAKEN</b>
<b>02 NCAC 09G .1213</b>	<b>SIZE AND CONDITION OF COMPOSITE SAMPLE BOTTLES</b>
<b>02 NCAC 09G .1214</b>	<b>METHOD OF COMPOSITE SAMPLING</b>
<b>02 NCAC 09G .1215</b>	<b>STORAGE OF COMPOSITE SAMPLES</b>
<b>02 NCAC 09G .1216</b>	<b>PERIOD SAMPLES HELD AFTER TESTING</b>
<b>02 NCAC 09G .1217</b>	<b>PLACE OF TESTING</b>
<b>02 NCAC 09G .1218</b>	<b>PREPARING BOTH FRESH AND COMPOSITE SAMPLES: TEMPERING</b>
<b>02 NCAC 09G .1219</b>	<b>MIXING BEFORE PIPETTING</b>
<b>02 NCAC 09G .1220</b>	<b>TEMPERATURE OF MILK FOR PIPETTING</b>
<b>02 NCAC 09G .1221</b>	<b>PIPETTING</b>
<b>02 NCAC 09G .1222</b>	<b>TESTING MILK FOR BUTTERFAT: SULPHURIC ACID</b>
<b>02 NCAC 09G .1223</b>	<b>ADDING ACID TO THE MILK</b>
<b>02 NCAC 09G .1224</b>	<b>CENTRIFUGE</b>
<b>02 NCAC 09G .1225</b>	<b>CENTRIFUGING PROCEDURE</b>
<b>02 NCAC 09G .1226</b>	<b>TEMPERING BATHS</b>
<b>02 NCAC 09G .1227</b>	<b>READING TESTS</b>
<b>02 NCAC 09G .1228</b>	<b>STANDARD METHODS</b>
<b>02 NCAC 09G .1229</b>	<b>SAMPLING CREAM</b>
<b>02 NCAC 09G .1230</b>	<b>PROCEDURE FOR TESTING CREAM</b>
<b>02 NCAC 09G .1231</b>	<b>HOLDING PERIOD FOR TESTED CREAM</b>
<b>02 NCAC 09G .1232</b>	<b>FAULTY EQUIPMENT CONDEMNED</b>

*History Note:* Authority G.S. 106-267;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1982.

**SECTION .1300 - ICE CREAM PLANTS**

<b>02 NCAC 09G .1301</b>	<b>BUILDINGS: APPROVAL BY COMMISSIONER OF AGRICULTURE</b>
<b>02 NCAC 09G .1302</b>	<b>WALLS AND CEILINGS</b>
<b>02 NCAC 09G .1303</b>	<b>WINDOWS AND GLASS PARTITIONS</b>
<b>02 NCAC 09G .1304</b>	<b>FLOORS</b>
<b>02 NCAC 09G .1305</b>	<b>LIGHT AND VENTILATION</b>
<b>02 NCAC 09G .1306</b>	<b>FLY AND VERMIN CONTROL</b>
<b>02 NCAC 09G .1307</b>	<b>PROTECTION OF PRODUCTS AND INGREDIENTS</b>
<b>02 NCAC 09G .1308</b>	<b>GENERAL PLANT ORDERLINESS</b>
<b>02 NCAC 09G .1309</b>	<b>HARDENING ROOMS: STORAGE SPACE: MERCHANDISING EQUIPMENT</b>
<b>02 NCAC 09G .1310</b>	<b>TOILETS AND LAVATORIES</b>
<b>02 NCAC 09G .1311</b>	<b>DRESSING ROOMS</b>
<b>02 NCAC 09G .1312</b>	<b>EQUIPMENT: CONSTRUCTION</b>
<b>02 NCAC 09G .1313</b>	<b>CLEANING AND STERILIZING EQUIPMENT</b>
<b>02 NCAC 09G .1314</b>	<b>STEAM AND HOT WATER</b>

<b>02 NCAC 09G .1315</b>	<b>FREQUENCY OF CLEANING AND STERILIZING</b>
<b>02 NCAC 09G .1316</b>	<b>FILLING CONTAINERS AND PACKAGES</b>
<b>02 NCAC 09G .1317</b>	<b>REMOVAL FROM MOLDS</b>
<b>02 NCAC 09G .1318</b>	<b>VEHICLES</b>
<b>02 NCAC 09G .1319</b>	<b>INGREDIENTS</b>
<b>02 NCAC 09G .1320</b>	<b>PASTEURIZATION</b>
<b>02 NCAC 09G .1321</b>	<b>RECORDING THERMOMETERS</b>
<b>02 NCAC 09G .1322</b>	<b>PERSONNEL</b>
<b>02 NCAC 09G .1323</b>	<b>BACTERIAL PLATE COUNT AND COLIFORM COUNTS</b>

*History Note:* Authority G.S. 106-253;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1982.

#### **SECTION .1400 - COUNTER ICE CREAM FREEZERS**

<b>02 NCAC 09G .1401</b>	<b>DEFINITIONS</b>
<b>02 NCAC 09G .1402</b>	<b>INSPECTION CERTIFICATE REQUIRED</b>
<b>02 NCAC 09G .1403</b>	<b>COUNTER FREEZER UNIT: INSTALLATION</b>
<b>02 NCAC 09G .1404</b>	<b>CLEANING AND STERILIZING EQUIPMENT</b>
<b>02 NCAC 09G .1405</b>	<b>PERSONS ENGAGED IN MANUFACTURE</b>
<b>02 NCAC 09G .1406</b>	<b>ICE CREAM MIXES: ETC.</b>

*History Note:* Authority G.S. 106-253;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1982.

#### **SECTION .1500 - MOBILE FROZEN DESSERT MANUFACTURING UNITS**

<b>02 NCAC 09G .1501</b>	<b>DEFINITION</b>
<b>02 NCAC 09G .1502</b>	<b>MIX</b>
<b>02 NCAC 09G .1503</b>	<b>ENCLOSURE</b>
<b>02 NCAC 09G .1504</b>	<b>MACHINES</b>
<b>02 NCAC 09G .1505</b>	<b>FACILITIES FOR CLEANING AND STERILIZING</b>
<b>02 NCAC 09G .1506</b>	<b>STORAGE FACILITIES FOR SUPPLIES</b>

*History Note:* Authority G.S. 106-253; 106-267;  
Eff. February 1, 1976;  
Repealed Eff. February 1, 1982.

#### **SECTION .1600 - DEFINITIONS AND STANDARDS FOR ICE CREAM: OTHER FROZEN MILK PRODUCTS AND WATER ICES**

<b>02 NCAC 09G .1601</b>	<b>FROZEN DESSERTS</b>
<b>02 NCAC 09G .1602</b>	<b>MILK PRODUCTS</b>
<b>02 NCAC 09G .1603</b>	<b>ICE CREAM</b>
<b>02 NCAC 09G .1604</b>	<b>FRUIT ICE CREAM</b>
<b>02 NCAC 09G .1605</b>	<b>NUT ICE CREAM</b>
<b>02 NCAC 09G .1606</b>	<b>CHOCOLATE OR COCOA ICE CREAM</b>
<b>02 NCAC 09G .1607</b>	<b>ICE MILK</b>
<b>02 NCAC 09G .1608</b>	<b>ICE MILK IN OPEN CONTAINERS</b>
<b>02 NCAC 09G .1609</b>	<b>DIETETIC ICE MILK</b>
<b>02 NCAC 09G .1610</b>	<b>DIETARY FROZEN DESSERT</b>

<b>02 NCAC 09G .1611</b>	<b>MILK SHERBET</b>
<b>02 NCAC 09G .1612</b>	<b>WATER ICE</b>
<b>02 NCAC 09G .1613</b>	<b>QUIESCENTLY FROZEN CONFECTIONS</b>
<b>02 NCAC 09G .1614</b>	<b>QUIESCENTLY FROZEN DAIRY CONFECTIONS</b>
<b>02 NCAC 09G .1615</b>	<b>LABELING QUIESCENTLY FROZEN PRODUCTS</b>
<b>02 NCAC 09G .1616</b>	<b>FROZEN DESSERT MIX</b>
<b>02 NCAC 09G .1617</b>	<b>FAT</b>
<b>02 NCAC 09G .1618</b>	<b>EXCEPTIONS</b>

*History Note:* Authority G.S. 106-253; 106-267;  
 Eff. February 1, 1976;  
 Repealed Eff. February 1, 1982.

#### **SECTION .1700 - MILK SHAKES AND MILK SHAKE BASE**

<b>02 NCAC 09G .1701</b>	<b>MILK SHAKE: DEFINITION</b>
<b>02 NCAC 09G .1702</b>	<b>MILK SHAKE BASE: DEFINITION</b>
<b>02 NCAC 09G .1703</b>	<b>DISPENSER MILK SHAKE MACHINE</b>

*History Note:* Authority G.S. 106-253;  
 Eff. February 1, 1976;  
 Repealed Eff. February 1, 1982.

#### **SECTION .1800 - DISPENSER MILK SHAKE MACHINES**

<b>02 NCAC 09G .1801</b>	<b>DEFINITIONS</b>
<b>02 NCAC 09G .1802</b>	<b>INSTALLATION</b>
<b>02 NCAC 09G .1803</b>	<b>MILK SHAKE MIX</b>
<b>02 NCAC 09G .1804</b>	<b>MIX STORAGE</b>
<b>02 NCAC 09G .1805</b>	<b>FACILITIES FOR CLEANING AND STERILIZATION</b>
<b>02 NCAC 09G .1806</b>	<b>WATER SUPPLY</b>
<b>02 NCAC 09G .1807</b>	<b>TOILET FACILITIES</b>
<b>02 NCAC 09G .1808</b>	<b>PERSONNEL</b>

*History Note:* Authority G.S. 106-267;  
 Eff. February 1, 1976;  
 Repealed Eff. February 1, 1982.

#### **SECTION .1900 - TESTING OF PRODUCER MILK BY THE MILKO-TESTER METHOD**

<b>02 NCAC 09G .1901</b>	<b>DEFINITIONS</b>
<b>02 NCAC 09G .1902</b>	<b>LICENSING REQUIREMENTS</b>
<b>02 NCAC 09G .1903</b>	<b>REFERENCE METHOD</b>
<b>02 NCAC 09G .1904</b>	<b>CALIBRATION OF MILKO-TESTER</b>
<b>02 NCAC 09G .1905</b>	<b>PREPARATION OF SAMPLES</b>
<b>02 NCAC 09G .1906</b>	<b>OPERATING PROCEDURES</b>

*History Note:* Authority G.S. 106-267;  
 Eff. February 1, 1976;  
 Repealed Eff. February 1, 1982.

#### **SECTION .2000 - GRADE A MILK SANITATION**

<b>02 NCAC 09G .2001</b>	<b>GENERAL - ADOPTION BY REFERENCE</b>
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The North Carolina Board of Agriculture incorporates by reference, including subsequent amendments and editions, the Pasteurized Milk Ordinance, including all appendices, supplements, memoranda, procedures, FDA's Milk Guidance methods, and administrative procedures recommended by the U.S. Public Health Service/Food and Drug Administration, published by the U.S. Department of Health and Human Services, Public Health Service and the Food and Drug Administration. A certified copy may be obtained from the Department of Health and Human Services, Public Health Service, Food and Drug Administration, Division of Plant and Dairy Food Safety (HFS-316), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

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

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

*History Note:* Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. January 1, 1999; September 1, 1991; December 1, 1990; July 1, 1985;  
Transferred from 15A NCAC 18A .1202 Eff. May 1, 2012;  
Repealed Eff. March 1, 2017.

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

The following definitions shall apply to this Section:

- (1) All definitions contained in the Pasteurized Milk Ordinance shall apply.
- (2) Whenever "the ..... of ....." appears in the Pasteurized Milk Ordinance, the word "State" shall be inserted in the first blank, and the words "North Carolina" shall be inserted in the second blank.
- (3) In all instances in the Pasteurized Milk Ordinance where the term "Regulatory Agency" appears, the "Regulatory Agency" shall be deemed to be the North Carolina Department of Agriculture & Consumer Services, Food and Drug Protection Division.
- (4) In all instances in the Pasteurized Milk Ordinance where the term "Government Water Control Authority" appears, the "Government Water Control Authority" shall be deemed to be the North Carolina Department of Environmental Quality, Division of Water Resources.
- (5) "Independent Milk Distributor" shall be defined as any person who is not under the control or ownership of a milk plant and who sells or offers for sale any Grade "A" pasteurized milk or milk products.
- (6) 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.

*History Note:* Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. December 1, 1990;  
Transferred from 15A NCAC 18A .1203 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.

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

- (a) It shall be unlawful for any person who does not possess a permit from the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, to manufacture, bring into, send into, or receive into this State or its jurisdiction, for sale, to sell, or to offer for sale therein or to have in storage any milk or milk products, as defined in the Pasteurized Milk Ordinance.
- (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.
- (c) No exemptions shall be allowed except those defined in the Pasteurized Milk Ordinance.

*History Note:* Authority G.S. 106-266.31;  
Eff. January 1, 1985;

*Amended Eff. December 1, 1990;  
Transferred from 15A NCAC 18A .1204 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.*

**02 NCAC 09G .2005      ISSUANCE OF PERMIT**

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

*History Note:      Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. April 1, 1994; December 1, 1990;  
Transferred from 15A NCAC 18A .1205 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09G .2006      PERMIT SUSPENSION AND REVOCATION**  
**02 NCAC 09G .2007      ENFORCEMENT AND PENALTIES**

*History Note:      Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. September 1, 1991; December 1, 1990; October 1, 1985;  
Transferred from 15A NCAC 18A .1206 Eff. May 1, 2012;  
Transferred from 15A NCAC 18A .1207 Eff. May 1, 2012;  
Repealed Eff. March 1, 2017.*

**02 NCAC 09G .2008      SEVERABILITY**

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

*History Note:      Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Transferred from 15A NCAC 18A .1208 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

**02 NCAC 09G .2009      APPEALS PROCEDURE**

Contested cases concerning the interpretation and enforcement of the rules in this Section shall be governed by Article 3 of G.S. 150B.

*History Note:      Authority G.S. 106-266.31;  
Eff. February 1, 1987;  
Transferred from 15A NCAC 18A .1209 Eff. May 1, 2012;  
Readopted Eff. April 1, 2017.*

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

- (a) Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility at which the processing of milk is permitted, graded, or regulated by a local, State, or federal agency.
- (b) The farmer or the owner of the raw milk or raw milk products may destroy the milk or dispense it for animal feed in accordance with any applicable state and federal regulations.

*History Note:      Authority G.S. 106-266.31; 106-266.35;  
Temporary Adoption Eff. April 2, 2001;  
Temporary Adoption Expired January 11, 2002;  
Temporary Adoption Eff. June 1, 2003;  
Eff. February 1, 2004;  
Transferred from 15A NCAC 18A .1210 Eff. May 1, 2012;*

*Readopted Eff. November 1, 2017.*

#### **SUBCHAPTER 9H - DISPOSITION OF DAMAGED OR UNCLEAN FOODS**

<b>02 NCAC 09H .0101</b>	<b>DISPOSAL OF FERTILIZER AND FEED SAMPLES</b>
<b>02 NCAC 09H .0102</b>	<b>DISPOSAL OF ANIMAL FEED SAMPLES</b>
<b>02 NCAC 09H .0103</b>	<b>DISPOSAL OF CANNED DOG FOOD</b>
<b>02 NCAC 09H .0104</b>	<b>HANDLING OF DAMAGED OR REFUSED PRESCRIPTION DRUGS</b>
<b>02 NCAC 09H .0105</b>	<b>HANDLING OF DAMAGED OR REFUSED OVER-THE-COUNTER DRUGS</b>
<b>02 NCAC 09H .0106</b>	<b>HANDLING OF DAMAGED OR REFUSED FOODS BY COMMON CARRIERS</b>
<b>02 NCAC 09H .0107</b>	<b>USE OF WAX OR RED DYE ON IRISH POTATOES</b>
<b>02 NCAC 09H .0108</b>	<b>DIVERTING OF CONTAMINATED FOODS INTO ANIMAL FEEDS</b>

*History Note: Authority G.S. 106-122(8); 106-129(1); 106-129(4); 106-140;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.*

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

Notwithstanding the limits set forth in FDA Compliance Policy Guide incorporated by reference in 02 NCAC 09B .0116(f), reaching or exceeding the following limits shall constitute product adulteration pursuant to G.S. 106-129(1)c. requiring embargo and voluntary recall by manufacturer:

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

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

<b>02 NCAC 09H .0110</b>	<b>RECALLS OF CORNMEAL AND FLOUR</b>
<b>02 NCAC 09H .0111</b>	<b>DISPOSITION OF ADULTERATED MERCHANDISE</b>
<b>02 NCAC 09H .0112</b>	<b>VOLUNTARY DESTRUCTION</b>
<b>02 NCAC 09H .0113</b>	<b>WRITTEN STATEMENTS</b>
<b>02 NCAC 09H .0114</b>	<b>RECONDITIONED GOODS</b>
<b>02 NCAC 09H .0115</b>	<b>RECONDITIONING</b>
<b>02 NCAC 09H .0116</b>	<b>FEES</b>
<b>02 NCAC 09H .0117</b>	<b>REIMBURSEMENT OF STATE</b>

*History Note: Authority G.S. 106-125; 106-128; 106-132;  
Eff. February 1, 1976;  
Repealed Eff. January 1, 1985.*

#### **SUBCHAPTER 9I - PROCEDURES FOR HANDLING COMPLAINTS**

##### **SECTION .0100 - SEALED INTACT SAMPLES WITH OBVIOUS CONTAMINATION: NO INJURY OR ILLNESS**

<b>02 NCAC 09I .0101</b>	<b>INTACT SAMPLES</b>
<b>02 NCAC 09I .0102</b>	<b>INSPECTION</b>





**02 NCAC 09I .0601      GENERAL INFORMATIONAL ANALYSIS**  
**02 NCAC 09I .0602      PRIVATE SAMPLES OF FOOD**

*History Note:*    *Authority G.S. 106-128;*  
                         *Eff. February 1, 1976;*  
                         *Repealed Eff. January 1, 1985.*

**SUBCHAPTER 09J - TESTING FOR AFLATOXIN IN CORNMEAL**

**02 NCAC 09J .0101      CORNMEAL TESTING**

(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 meet the standards set forth in the Official Methods of Analysis of the AOAC, incorporated by reference in 02 NCAC 09B .0116(a) shall be used.

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

(c) The Commissioner or his or her agent may require cornmeal products to be tested for aflatoxin whenever he deems it necessary to prevent the sale of adulterated cornmeal.

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

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

Records of all tests required by this Regulation shall be maintained for 12 months at the location where such products are produced and shall be available for inspection by the Commissioner or his or her agent during regular business hours.

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

**SUBCHAPTER 09K - SAMPLING AND TESTING OF MILK AND CREAM: FROZEN DESSERTS**

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

**02 NCAC 09K .0101      DEFINITIONS**

(a) "Automated Method" means the test for determining the percent of butterfat in raw, un-homogenized milk using an automated method set forth in either 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).

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

(c) "Bulk milk hauler/sampler" means any person who meets the definition of a bulk milk hauler/sampler in the PMO.

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

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

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. January 1, 1985; December 31, 1983;  
Readopted Eff. May 1, 2017.

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

- (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 in the Pasteurized Milk Ordinance Appendix B, Milk Sampling Hauling and Transportation, incorporated by reference in 02 NCAC 09G .2001.

*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;  
Readopted Eff. March 1, 2017.

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

- (a) A person shall request approval from the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, prior to using any method for determining the percent of butterfat in milk or cream other than methods outlined in Rule .0101(b) of this Section.
- (b) Approval for use of any method other than those outlined in Rule .0101(b) of this Section 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;  
Readopted Eff. May 1, 2017.

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

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

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

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

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

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

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

The test reading of milk shall be either 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).

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

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

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

- (b) A tester shall supply both individual sample butterfat test results and monthly average butter fat results to the persons responsible for making butter fat premium payments to each individual producer.
- (c) The payee of the butterfat premium payments to each individual milk producer shall submit the monthly averages for each individual milk producer to the North Carolina Department of Agriculture and Consumer Services, Food and Drug Protection Division, no later than the 15<sup>th</sup> day of the following month.

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

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

- (a) If the Commissioner determines that tests of milk or cream have been made erroneously by a tester, he shall notify in writing the manager of the plant from which the samples were collected that the test results are in error and inform the manager of the correct test results.
- (b) A manager of a plant shall cause payments to be made to all producers on the basis of the corrected test.

*History Note:* Authority G.S. 106-267; 106-267.2; 106-267.5;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

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

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

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. June 1, 1984; December 31, 1983;  
Readopted Eff. May 1, 2017.

#### **02 NCAC 09K .0110 SAMPLING AND TESTING FOR COMPOSITE SAMPLES GENERALLY** **02 NCAC 09K .0111 SAMPLING FOR SPECIFIC COMPOSITE METHODS**

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

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

- (a) Cream samples shall be obtained by following the same procedure as in sampling milk.
- (b) A sampler shall obtain at least a two-ounce sample of cream.

*History Note:* Authority G.S. 106-267; 106-267.2;  
Eff. February 1, 1982;  
Amended Eff. December 31, 1983;  
Readopted Eff. March 1, 2017.

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

Cream shall be tested as set forth in either 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).

*History Note:* Authority G.S. 106-139; 106-267; 106-267.2;  
Eff. February 1, 1982;

*Amended Eff. January 1, 1985; August 1, 1982;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 09K .0114 REFERENCE METHOD**

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). 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;  
Readopted Eff. May 1, 2017.*

### **SECTION .0200 - FROZEN DESSERTS**

#### **02 NCAC 09K .0201 SPECIFIC REQUIREMENTS**

The requirements in the rules of this Section shall apply in addition to the regulations set out in Title 21, Code of Federal Regulations, parts of 110 and 135 as adopted by reference in 02 NCAC 09B .0116(o)(49) and (61).

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

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

- (a) "Wholesale Frozen Dessert Manufacturer" means any owner or operator of an establishment where frozen desserts are made or stored for disposal at wholesale to retail dealers for resale in this State.
- (b) "Retail Frozen Dessert Manufacturer" means any owner, operator, or proprietor of a retail frozen dessert dispenser or a mobile frozen dessert manufacturing unit.
- (c) "Retail Frozen Dessert Dispenser" means any device that dispenses a frozen dessert at retail.  
Retail Frozen Dessert Dispenser shall not include the conventional spindle-type milkshake mixers, but shall include other dispenser milkshake machines.
- (d) "Mobile Frozen Dessert Manufacturing Unit" means a retail frozen dessert dispenser that is mounted on or connected to any vehicle from which frozen desserts are sold.
- (e) "Wholesale Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for disposal at wholesale to retail dealers for resale in this State.
- (f) "Retail Cheese Manufacturer" means any owner or operator of an establishment where cheese is produced for disposal at retail only in this State.
- (g) "Wholesale Butter Processing Manufacturer" means any owner or operator of an establishment where butter is manufactured or processed for disposal at wholesale to retail dealers for resale in this State.
- (h) "Frozen Dessert" means ice cream, ice milk, milkshake, milkshake base, milkshake mix, milk sherbet, sherbet, water ices, and other similar frozen or semi-frozen food products including yogurt, ice milk, and frozen custard.
- (i) "Frozen Dessert Mix" means any mixture or compound in liquid or dry form from which a frozen dessert is made.
- (j) "Rerun" means frozen dessert mix which has been drawn through a retail frozen dessert dispenser.
- (k) "Dispenser Milkshake Machine" means any fountain type or similar type machine dispensing a semi-frozen milkshake or imitation milkshake with a minimum temperature of 25 degrees F. in a retail establishment.
- (l) "Imitation Frozen Dessert" means any substance, mixture, or compound which is made in imitation of, or does in fact imitate, any frozen dessert or frozen dessert mix for which a standard of identity has been established in 21 CFR 135 or these Rules, and which does not conform to said standard of identity.
- (m) "Milk Products" includes cream, dried cream, plastic cream (sometimes known as concentrated milk fat), butter, butter oil, milk, concentrated milk, evaporated milk, sweetened condensed milk, superheated condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been

concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, lactose (pure milk sugar), concentrated cheese whey, and dried cheese whey.

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

#### **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 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 G.S. 106-254.
- (c) All inspection certificates shall expire on June 30 of each year and shall be non-transferable.

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

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

- (a) If, during the period for which an inspection certificate is in effect, the Commissioner determines that a retail frozen dessert freezer, dispenser milk machine, or mobile frozen dessert unit does not comply with G.S. 106, Article 26 or these Rules, he shall summarily suspend the inspection certificate.
- (b) Any person, firm, or corporation operating any of the equipment listed in Paragraph (a) of this Rule without a valid inspection certificate shall be guilty of a misdemeanor.

*History Note: Authority G.S. 106-252; 106-253; 106-254; 106-267;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

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

- (a) Mobile frozen dessert units shall operate out of a stationary depot, which shall provide storage, cleaning, and toilet facilities.
- (b) Floors, walls, and ceilings of mobile frozen dessert units shall be constructed of impervious material.
- (c) Openings for serving shall not be larger than necessary for their intended purpose.
- (d) Machinery shall be constructed to facilitate cleaning and avoid contamination of the product. All valves, piping and fitting shall be constructed of sanitary milk piping and shall be dismantled and thoroughly washed after each day's use.

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

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

- (a) No person shall use rerun in any retail frozen dessert dispenser.
- (b) Dry frozen dessert mixes shall be reconstituted with potable water or a pasteurized Grade A product and the resulting product shall be cooled to a temperature of between 33 degrees F and 45 degrees F within four hours of reconstitution.
- (c) Liquid frozen dessert mixes shall be stored 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 shall 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. 106-253; 106-267;  
Eff. February 1, 1982;  
Amended Eff. April 1, 1987; May 1, 1986;  
Readopted Eff. May 1, 2017.

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

A product shall not be labeled as "frozen dessert mix" unless the product resulting from the frozen dessert mix conforms to the standards of identity established for that product.

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

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

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

- (1) optional dairy ingredients permitted by 21 CFR 135;
- (2) safe, suitable stabilizers;
- (3) emulsifiers;
- (4) non-nutritive sweeteners; or
- (5) any optional, non-adulterated ingredients.

(b) The finished dietary frozen dessert product shall:

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

(c) Notwithstanding the provisions of Subparagraph (b)(3) of this Rule, if the optional ingredient micro-crystalline cellulose is used, the quantity of food solids shall not be less than 1.1 pounds per gallon exclusive of the weight of the micro-crystalline cellulose.

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

**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. 106-253; 106-267;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.

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

- (a) Quiescently frozen confections shall contain:
  - (1) water;
  - (2) sugar;
  - (3) flavoring; and
  - (4) not less than 17 percent by weight of total food solids.
- (b) Quiescently frozen confections may contain:
  - (1) milk solids;
  - (2) coloring;
  - (3) harmless organic acid; and
  - (4) not more than one-half of one percent by weight of stabilizer composed of wholesome, edible material.
- (c) The quiescently frozen confections shall be manufactured in the form of servings bagged or otherwise wrapped, and purveyed to the consumer in its original factory-filled package.
- (d) In the production of quiescently frozen confections, no processing or mixing prior to complete freezing shall be used that develops in the finished confections mix any physical expansion or overrun in excess of 10 percent.

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

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

- (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 by posting a sign near the product.
- (b) A person shall display all signs and notices required in Paragraph (a) of this Rule in a manner conspicuous to the public and in letters easily read under normal conditions of purchase.
- (c) A person shall not sell any imitation frozen dessert by dipping or scooping the imitation frozen dessert from packages or containers.
- (d) A person shall not sell or offer for sale any frozen dessert containing any ingredient(s) not recognized as safe by the Federal Food and Drug Administration.

*History Note: Authority G.S. 106-253; 106-267; 106-138;  
Eff. February 1, 1982;  
Readopted Eff. May 1, 2017.*

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

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

*History Note: Authority G.S. 106-253; 106-267;  
Eff. February 1, 1982;  
Amended Eff. January 1, 1987; May 1, 1986;  
Readopted Eff. May 1, 2017.*

#### **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) flavoring;
  - (2) ice cream;
  - (3) milkshake base; or
  - (4) ice milk, except as provided in Paragraph (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;
  - (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. 106-253; 106-267;  
 Eff. February 1, 1982;  
 Amended Eff. August 1, 1982;  
 Readopted Eff. May 1, 2017.

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

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

*History Note:* Authority G.S. 106-128; 106-253; 106-267;  
 Eff. December 1, 1985;  
 Amended Eff. July 1, 2000;  
 Readopted Eff. May 1, 2017.

## **SUBCHAPTER 09L - PESTICIDE SECTION**

### **SECTION .0100 - ORGANIZATIONAL RULES**

#### **02 NCAC 09L .0101 DUTIES OF THE PESTICIDE SECTION**

*History Note:* Authority G.S. 106-65.23; 143-461(5);  
 Eff. February 1, 1976;  
 Amended Eff. August 1, 1982; January 27, 1978;



*Repealed Eff. September 1, 2020.*

**02 NCAC 09L .0102 DUTIES (CONTINUED)**

The North Carolina Pesticide Board has delegated the following statutory powers, duties, and authorities to the Commissioner of Agriculture:

- (1) the first sentence of G.S. 143-442(a);
- (2) G.S. 143-442(c);
- (3) the first two sentences of G.S. 143-442(d);
- (4) G.S. 143-443(a)(1);
- (5) G.S. 143-443(a)(2);
- (6) G.S. 143-445(a)(3) and (b);
- (7) the first sentence of G.S. 143-446(a);
- (8) the first sentence of G.S. 143-446(c);
- (9) G.S. 143-447(b);
- (10) G.S. 143-448(c);
- (11) G.S. 143-448(e);
- (12) G.S. 143-448(f);
- (13) G.S. 143-449(a);
- (14) the first sentence of G.S. 143-449(b);
- (15) the first phrase of G.S. 143-450(a);
- (16) G.S. 143-452(a);
- (17) G.S. 143-452(b), excluding the first sentence;
- (18) G.S. 143-452(e);
- (19) the first sentence and last two sentences of G.S. 143-452(f);
- (20) G.S. 143-453(a);
- (21) the first sentence of G.S. 143-453(b);
- (22) G.S. 143-454(a);
- (23) the first sentence of G.S. 143-455(a);
- (24) G.S. 143-455(b);
- (25) the first sentence of G.S. 143-455(c);
- (26) G.S. 143-461(7);
- (27) G.S. 143-461(8);
- (28) G.S. 143-465(b);
- (29) G.S. 143-466(b);
- (30) the first sentence of G.S. 143-466(c);
- (31) the first sentence of G.S. 143-466(d); and
- (32) G.S. 143-466(e).

*History Note: Authority G.S. 143-461(5);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988; August 1, 1987;  
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0103 ASSIGNMENT OF DUTIES**

The Commissioner of Agriculture has assigned the administrative and enforcement duties and functions assigned to him in the North Carolina Pesticide Law of 1971 to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services.

*History Note: Authority G.S. 143-438(4);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978;  
Readopted Eff. August 1, 2020.*

**SECTION .0200 - RULES AND REGULATIONS ADOPTED BY REFERENCE**

<b>02 NCAC 09L .0201</b>	<b>INSPECTORS MANUAL</b>
<b>02 NCAC 09L .0202</b>	<b>E.P.A. INSPECTORS MANUAL</b>
<b>02 NCAC 09L .0203</b>	<b>REGISTRATION: REREGISTRATION AND CLASSIFICATION PROCEDURES</b>
<b>02 NCAC 09L .0204</b>	<b>UNIFORM POLICIES FOR REGISTRATION</b>
<b>02 NCAC 09L .0205</b>	<b>COMPENDIUM OF REGISTERED PESTICIDES</b>
<b>02 NCAC 09L .0206</b>	<b>COMMON AND CHEMICAL NAMES OF PESTICIDES</b>

*History Note:* Authority G.S. 143-461; 150B-14;  
 Eff. February 1, 1976;  
 Amended Eff. August 1, 1982; January 27, 1978;  
 Repealed Eff. November 1, 1988.

**02 NCAC 09L .0207 EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES**

*History Note:* Authority G.S. 143-437; 143-440; 143-461; 150B-14;  
 Eff. August 7, 1977;  
 Repealed Eff. November 1, 1988.

**SECTION .0300 - REGISTRATION**

**02 NCAC 09L .0301 REGISTRATION CUSTOM-BLENDED PESTICIDE-FERTILIZER MIXTURES**

(a) Custom-blended pesticide-fertilizer mixtures are hereby exempted from the registration requirement of the North Carolina Pesticide Law of 1971 provided the following requirements are met:

- (1) The custom blend is prepared to the order of the user and is not held in inventory; and
- (2) The pesticide used in the blend bears end-use labeling directions providing for mixing with fertilizer or mixing with fertilizer is recommended in writing by an appropriate federal or state agency or official; and
- (3) The custom blend is delivered to the user together with a copy of the pesticide end-use labeling which is registered and a statement specifying the composition of the mixture and proper application rate.

(b) In the context of these regulations, end-use labeling means labeling containing directions for use in pest control and otherwise meeting with federal requirements (40 CFR 156.10). Labeling stating that a product is intended for use only in manufacturing or formulating is not considered end-use labeling.

*History Note:* Authority G.S. 143-461(1);  
 Eff. February 1, 1976;  
 Amended Eff. November 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

<b>02 NCAC 09L .0302</b>	<b>NOTICE TO REGISTRANTS AND APPLICANTS</b>
<b>02 NCAC 09L .0303</b>	<b>COPIES</b>
<b>02 NCAC 09L .0304</b>	<b>ASSISTANCE</b>
<b>02 NCAC 09L .0305</b>	<b>APPLICATION FOR REGISTRATION REQUIREMENTS</b>

*History Note:* Authority G.S. 143-442;  
 Eff. February 1, 1976;  
 Amended Eff. August 1, 1982; November 30, 1978; January 27, 1978;  
 Repealed Eff. November 1, 1988.

**02 NCAC 09L .0306 ADDITIONAL INFORMATION**

(a) Other information as authorized by the North Carolina Pesticide Law of 1971 may be requested to support application for registration of a pesticide. Such other information may include but is not limited to the following:

- (1) additional details on directions for use;
- (2) a list of the specific pests for which control is claimed including efficacy data verifying control of said pest;
- (3) a complete formula including the active and inert ingredients, and physical properties of the product.

(b) Additional information shall be submitted in the form of a data sheet.

*History Note:* Authority G.S. 143-442;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

**02 NCAC 09L .0307 REVIEW OF APPLICATION FOR COMPLETENESS**

*History Note:* Authority G.S. 143-442;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; November 30, 1978; January 27, 1978;  
Repealed Eff. November 1, 1988.

**02 NCAC 09L .0308 REGISTRATION FOR THE FOLLOWING YEAR**

Registration of a pesticide registered the previous year will be renewed provided its registration status with the Environmental Protection Agency remains unchanged at the time of review and its continued use in North Carolina is in the best interest of the public as stated in G.S. 143-442(d).

*History Note:* Authority G.S. 143-442;  
Eff. February 1, 1976;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .0309 DISCONTINUED PRODUCTS**

*History Note:* Authority G.S. 143-442;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1988.

**02 NCAC 09L .0310 REREGISTRATION**

Reregistration of a pesticide registered the previous year with the label or labeling revised shall be accepted provided the following conditions are met:

- (1) The revision and amendment have been accepted by the Environmental Protection Agency or approved for special local needs; and
- (2) The revision and amendment shall cause no unreasonable adverse effects as defined in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 2 (bb).

*History Note:* Authority G.S. 143-442;  
Eff. February 1, 1976;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .0311 NEW REGISTRATIONS**

**02 NCAC 09L .0312 DENIAL OF REGISTRATION**

*History Note:* Authority G.S. 143-442; 143-464;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978;  
Repealed Eff. November 1, 1988.

**02 NCAC 09L .0313 REFUNDS OF FEES**

In the event registration is denied, the registration fee is refunded to the applicant along with reasons for denial.

*History Note:* Authority G.S. 143-442; 143-464;  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

**02 NCAC 09L .0314      PESTICIDE REGISTRATION CERTIFICATION**  
**02 NCAC 09L .0315      REGISTRATION RECORDS**

*History Note:*    Authority G.S. 143-442;  
                         Eff. February 1, 1976;  
                         Amended Eff. November 30, 1978;  
                         Repealed Eff. November 1, 1988.

**02 NCAC 09L .0316      COMMON AND CHEMICAL NAMES OF PESTICIDES**

The North Carolina Pesticide Board adopts by reference in accordance with G.S. 150B-14(c) the volume entitled "Acceptable Common Names and Chemical Names for the Ingredient Statement on Pesticide Labels," as published by the Office of Pesticide Programs of the Environmental Protection Agency, Washington, D.C. Copies of "Acceptable Common Names and Chemical Names for the Ingredient Statement on Pesticide Labels" are available for inspection in the Office of the Pesticide Administrator of the Food and Drug Protection Division and may be obtained at a cost as determined by the publisher by contacting National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22161.

*History Note:*    Authority G.S. 143-461; 150B-14;  
                         Eff. November 1, 1988;  
                         Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

**02 NCAC 09L .0317      REGISTRATION OF PESTICIDES TO MEET SPECIAL LOCAL NEEDS**

"Regulations Pertaining to State Registration of Pesticides to Meet Special Local Needs," 40 C.F.R. Part 162, Subpart D is incorporated by reference, including subsequent amendments and editions. This document may be obtained at no cost from the U.S. Government Printing Office at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40cfr162_main_02.tpl).

*History Note:*    Authority G.S. 143-437;143-440; 143-461;  
                         Eff. November 1, 1988;  
                         Readopted Eff. August 1, 2020.

**02 NCAC 09L .0318      EXEMPTION OF AGENCIES FOR USE OF PESTICIDES IN EMERGENCIES**

"Exemption of Federal and State Agencies for Use of Pesticides in Emergencies," 40 C.F.R. Section 166 is incorporated by reference including subsequent amendments and editions. This document may be obtained at no cost from the U.S. Government Printing Office at [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr166_main_02.tpl).

*History Note:*    Authority G.S. 143-437; 143-440; 143-461; 150B-14;  
                         Eff. November 1, 1988;  
                         Readopted Eff. August 1, 2020.

**SECTION .0400 - SAMPLES AND SUBMISSIONS**

**02 NCAC 09L .0401      SAMPLES: SUBMISSIONS**

*History Note:*    Authority G.S. 143-446;  
                         Eff. February 1, 1976;  
                         Amended Eff. August 1, 1982; January 27, 1978;  
                         Repealed Eff. November 1, 1988.

**02 NCAC 09L .0402      TOLERANCES**

In regards to establishing tolerances providing for deviations from the guaranteed analysis statement for official samples, the following enforcement standards shall apply:

- (1) A "passed" judgment on a pesticide formulation shall be made if the analytical results are within the following allowable deviations below guarantee:

Pesticide Active Ingredient Guarantee, Percent	Allowable Deviation Below Guarantee
<1.00	15 percent of Guarantee
1.00 - 19.99	0.1 plus 5 percent of Guarantee
20.00 - 49.99	0.5 plus 3 percent of Guarantee
50.00 - 100.00	1.0 plus 2 percent of Guarantee

- (2) A sample result falling outside of the allowable deviations below guarantee shall not be "deficient" if one of the following factors could have contributed to the off-limits analysis:
- (a) special sampling problems, such as fertilizer-pesticide mixtures and certain granular products; or
  - (b) accuracy, specificity, and reproducibility of the methods used when applied to the particular formulation;
- (3) Allowable deviations, similar to those for "deficiencies," shall not be applicable to pesticide formulations with active ingredients found to be in excess of the guarantee ("overages"). Each sample analysis shall be judged individually as to whether or not the overage is excessive by using the following criteria:
- (a) no illegal residues resulting from use according to directions;
  - (b) no unreasonable adverse effects to applicator or user;
  - (c) no unreasonable adverse effects to non-target organisms or the environment;
  - (d) stability of ingredients and the need for "over-formulating"; or
  - (e) accuracy, specificity, reproducibility, etc., of the methods used when applied to the particular formulation.

*History Note:* Authority G.S. 143-437(1); 143-446;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988; August 1, 1982; January 27, 1978;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .0403 PESTICIDE SAMPLING PROCEDURES**

*History Note:* Authority G.S. 143-443; 143-446;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1988.

### **SECTION .0500 - PESTICIDE LICENSES**

## **02 NCAC 09L .0501 CRITERIA FOR PESTICIDE DEALER**

*History Note:* Authority G.S. 143-448; 143-449; 143-460(30);  
Eff. February 1, 1976;  
Repealed Eff. September 1, 1987.

## **02 NCAC 09L .0502 LIST OF RESTRICTED USE PESTICIDES**

For the purpose of this Subchapter a "restricted use pesticide" shall be:

- (1) any pesticide required by the Environmental Protection Agency to bear the designation on its labeling "Restricted Use Pesticide;"
- (2) arsenic trioxide; and
- (3) any pesticide approved under Rule .0318 of this Subchapter.

*History Note:* Authority G.S. 143-440(a),(b); 143-441; 143-458;  
Eff. February 1, 1976;  
Amended Eff. April 21, 1977;  
Emergency Amendment [(e)] Eff. July 8, 1977, for a Period of 176 Days to Expire on December 31, 1977;

*Emergency Amendment [(e)] Expired Eff. December 31, 1977;*  
*Amended Eff. January 1, 1990; August 1, 1982; January 1, 1979; June 30, 1978;*  
*Readopted Eff. August 1, 2020;*  
*Emergency Amendment Eff. March 25, 2021;*  
*Temporary Amendment Eff. May 28, 2021;*  
*Temporary Amendment Expired Eff. March 12, 2022.*

## **02 NCAC 09L .0503 PESTICIDE APPLICATORS**

- (a) The Commissioner shall require the licensing of at least one person at each business location who shall be responsible for the application of pesticides for routine pest control situations.
- (b) The person licensed as the pesticide applicator shall supervise and guide the activities of all personnel applying pesticides from the business location of the licensee.

*History Note: Authority G.S. 143-452; 143-453; 143-458; 143-460(30);*  
*Eff. February 1, 1976;*  
*Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .0504 DEFINITIONS**

The following definitions apply to Rules .0505, .0506, and .0507 of this Section:

- (1) "Agricultural pest control":
  - (a) Plant. Includes pesticide applicators using or supervising the use of pesticides in production of agricultural crops, including tobacco, peanuts, cotton, feed grains, soybeans and forage; vegetables; small fruits; tree fruits and nuts; as well as on grasslands and non-crop agricultural lands; and
  - (b) Animal. Includes pesticide applicators using or supervising the use of pesticides on animals, including, but not limited to, the foregoing, beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock, and to places where animals are confined. Doctors of veterinary medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.
- (2) "Forest pest control" includes pesticide applicators using or supervising the use of pesticides in forests, forest nurseries, and forest seed-producing areas.
- (3) "Ornamental and turf pest control" includes pesticide applicators using or supervising the use of pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.
- (4) "Seed treatment" includes pesticide applicators using or supervising the use of pesticides on seeds.
- (5) "Aquatic pest control" includes pesticide applicators using or supervising the use of any pesticide intended to be applied to standing or running water, excluding applicators engaged in public health related activities included in Item (7) of this Rule.
- (6) "Right-of-way pest control" includes pesticide applicators using or supervising the use of pesticides in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way, or other similar areas.
- (7) "Public health pest control" includes primarily, but is not limited to, state, federal, or other governmental employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance.
- (8) "Regulatory pest control" includes state, federal, or other governmental employees who use or supervise the use of pesticides in the control of regulated pests.
- (9) "Demonstration and research pest control" includes the following:
  - (a) persons who demonstrate to the public the use and techniques of application of pesticides or supervise such demonstration, including extension specialists and county agents; commercial representatives demonstrating pesticide products, and those persons demonstrating methods used in public programs; and
  - (b) persons who use or supervise the use of pesticides while conducting field research with pesticides. This includes state, federal, commercial, and other persons conducting field research on or utilizing pesticides.
- (10) "Wood treatment" includes pesticide applicators using or supervising the use of restricted use pesticides in wood preservation and wood products treatment.

- (11) "Soil and growing media fumigation pest control" includes individuals using or supervising the use of any fumigant pesticide injected or applied to soils or growing media. This category excludes fumigation of raw agricultural commodities and all structural fumigation such as:
  - (a) boxcars;
  - (b) warehouses;
  - (c) tractor trailers; and
  - (d) grain bins.
- (12) "Growing media" includes a substance or substances through which roots grow and extract water and nutrients.

*History Note: Authority G.S. 143-452(d); 143-460(29); 40 C.F.R. 171.3; Eff. February 1, 1976; Amended Eff. June 1, 2016; November 1, 1984; August 1, 1982; October 27, 1979; Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .0505 CLASSIFICATIONS**

The following classifications and subclassifications shall apply to the licensing of pesticide applicators:

- (1) pesticide applicators and public operators utilizing ground equipment:
  - (a) agricultural pest control:
    - (i) plant; and
    - (ii) animal;
  - (b) forest pest control;
  - (c) ornamental and turf pest control;
  - (d) aquatic pest control;
  - (e) right-of-way pest control;
  - (f) public health pest control;
  - (g) regulatory pest control;
  - (h) demonstration and research pest control:
    - (i) agricultural pest control:
      - (A) plant; and
      - (B) animal;
    - (ii) forest pest control;
    - (iii) ornamental and turf pest control;
    - (iv) aquatic pest control;
    - (v) right-of-way pest control;
    - (vi) public health pest control;
    - (vii) regulatory pest control;
    - (viii) seed treatment;
    - (ix) wood treatment; and
    - (x) soil and growing media fumigation pest control;
  - (i) seed treatment;
  - (j) wood treatment; and
  - (k) soil and growing media fumigation pest control;
- (2) pesticide applicators and public operators utilizing aerial equipment:
  - (a) agricultural pest control: plant;
  - (b) forest pest control;
  - (c) ornamental and turf pest control;
  - (d) aquatic pest control;
  - (e) right-of-way pest control;
  - (f) public health pest control;
  - (g) regulatory pest control; and
  - (h) demonstration and research pest control:
    - (i) agricultural pest control: plant;
    - (ii) forest pest control;
    - (iii) ornamental and turf pest control;

- (iv) aquatic pest control;
- (v) right-of-way pest control;
- (vi) public health pest control; and
- (vii) regulatory pest control.

*History Note:* Authority G.S. 143-452(d); 143-460(29); 143-460(33);  
 Eff. February 1, 1976;  
 Amended Eff. June 1, 2016; November 1, 1984; August 26, 1976;  
 Readopted Eff. August 1, 2020.

**02 NCAC 09L .0506 GOVERNMENTAL WORKERS**

Persons in job classifications in the government unit or agencies listed below are required to be licensed as public operators:

- (1) North Carolina Department of Transportation, division of highway (14 divisions);
- (2) United States Department of Agriculture, Animal and Plant Health Inspection Service:
  - (a) staff specialist for witchweed control,
  - (b) assistant district director,
  - (c) work unit supervisors,
  - (d) designated inspectors who supervise pesticide applications,
  - (e) witchweed methods development laboratory supervisor,
  - (f) witchweed methods development assistant laboratory supervisor;
- (3) North Carolina Department of Agriculture plant industry division:
  - (a) plant pest administrator,
  - (b) entomological program specialist,
  - (c) plant pathologist,
  - (d) greenhouse manager,
  - (e) area supervisors,
  - (f) pest control specialists,
  - (g) all plant pest inspectors who have supervision of pesticide applications as part of their job assignments;
- (4) North Carolina Department of Environment, Health, and Natural Resources, Forest Resources Division, pest control unit:
  - (a) pest control foresters,
  - (b) pest control staff forester,
  - (c) nursery unit superintendents,
  - (d) tree improvement unit technicians,
  - (e) forestation unit rangers;
- (5) North Carolina Department of Environment, Health, and Natural Resources, Public Health Pest Management Section, Division of Environmental Health--one medical entomologist;
- (6) County boards of health and municipal governments:
  - (a) In counties where the health department employees apply all the pesticides or supervise, on a weekly or more frequent basis, the activities of all municipal employees applying pesticides, at least one county sanitarian must be licensed.
  - (b) One county sanitarian and one municipal employee for each municipality must be licensed in counties where the health department personnel apply pesticides but have no direct control over municipal employees who apply pesticides.
  - (c) One licensed supervisor for each municipality, sanitary district or mosquito control district must be licensed in counties where only municipal, sanitary district or mosquito control district personnel apply pesticides.

*History Note:* Authority G.S. 143-453(c)(1); 143-460(33);  
 Eff. February 1, 1976;  
 Amended Eff. May 1, 1991; August 1, 1982; January 27, 1978;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.



## **02 NCAC 09L .0507 CATEGORIES OF CONSULTANTS**

Each person acting as a pest control consultant as defined in G.S. 143-460(27) shall be licensed. The categories requiring a license may include the following:

- (1) agricultural pest control:
  - (a) plant; and
  - (b) animal;
- (2) forest pest control;
- (3) ornamental and turf pest control;
- (4) aquatic pest control;
- (5) right-of-way pest control;
- (6) public health pest control;
- (7) regulatory pest control;
- (8) seed treatment;
- (9) wood treatment; and
- (10) soil and growing media fumigation pest control.

*History Note:* Authority G.S. 143-455; 143-460(27);  
Eff. February 1, 1976;  
Amended Eff. June 1, 2016; November 1, 1984; October 28, 1978; January 27, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

## **02 NCAC 09L .0508 SUBCATEGORIES OF CONSULTANTS**

*History Note:* Authority G.S. 143-455; 143-460(27);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978;  
Repealed Eff. November 1, 1988.

## **02 NCAC 09L .0509 CONSULTANT EDUCATION REQUIREMENTS**

- (a) An applicant for a pest control consultant license shall possess a Ph.D., master's, or bachelor's degree in an agricultural or biological science from an accredited college or university with 30 semester hours or 45 quarter hours of credit in subject areas in which the applicant seeks to obtain a license. Emphasis of study shall include insect, plant, bacterial, and fungal pests, as applicable to the category, and integrated pest management. As used in this Rule, "accredited college or university" means an institution that is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation.
- (b) The provisions of this Section shall not apply to anyone holding a valid North Carolina pest control consultant license on or before July 1, 1992.

*History Note:* Authority G.S. 143-455; 143-460(27);  
Eff. February 1, 1976;  
Amended Eff. July 1, 1992; November 1, 1988;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .0510 EXAMINATION WAIVER**

## **02 NCAC 09L .0511 PESTICIDE LICENSES EXAMINATION REQUIREMENT**

*History Note:* Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455;  
143-460(27),(29),(30),(33);  
Eff. February 1, 1976;  
Amended Eff. October 28, 1978;  
Repealed Eff. November 1, 1988.

## **02 NCAC 09L .0512 AGE REQUIREMENT**

Each applicant for a license must be 18 years old by January 1 of the calendar year for which he has submitted an application for a license provided, however, in hardship cases persons below the age of 18 may be licensed by the Board on an individual

basis when they demonstrate to the Board by written, or written and oral, examination their qualifications to sell or apply pesticides.

*History Note:* Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);  
Eff. February 1, 1976;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

**02 NCAC 09L .0513 FEES REQUIREMENT**  
**02 NCAC 09L .0514 SCHEDULE OF EXAMINATIONS**

*History Note:* Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(a)(c);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; October 27, 1979; January 27, 1978;  
Repealed Eff. November 1, 1988.

**02 NCAC 09L .0515 RE-EXAMINATIONS**

*History Note:* Authority G.S. 143-449(b); 143-452(f); 143-453(b); 143-455(c);  
Eff. February 1, 1976;  
Amended Eff. October 27, 1979;  
Repealed Eff. September 1, 2020.

**02 NCAC 09L .0516 CONTINUANCES**

Any firm, corporation, or government unit that is deprived of the services of the sole individual at an business location who is licensed as a pesticide dealer may continue to operate in their usual manner for a maximum of two months, provided:

- (1) It directs a request for an examination appointment for a designated individual to the Structural Pest Control and Pesticides Division of the North Carolina Department of Agriculture and Consumer Services within two weeks of the date it terminates or loses the services of its licensed pesticide dealer;
- (2) It has available a designated individual who has worked in pesticide sales under a licensed pesticide dealers supervision for at least three months; and
- (3) The designated individual shall supervise pesticide sales during the interim period.

*History Note:* Authority G.S. 143-449(b); 143-461(a);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .0517 PASSING GRADES**

Passing grade for the examinations will be grade 70.

*History Note:* Authority G.S. 143-449(b); 143-453(b); 143-455(c);  
Eff. February 1, 1976;  
Amended Eff. September 1, 1987;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

**02 NCAC 09L .0518 FINANCIAL RESPONSIBILITY FOR PESTICIDE APPLICATORS**

*History Note:* Authority G.S. 143-467(a) through (c);  
Eff. February 1, 1976;  
Repealed Eff. December 31, 1977.

**02 NCAC 09L .0519 CERTIFICATION**

(a) Pesticide applicators, public operators, and pest control consultants, as defined by G.S. 143-460, who have completed the pesticide license examination requirements of G.S. 143-453 or 143-455, as applicable, are certified to use or supervise the use of any restricted use pesticide, as defined by Rule .0502(1) of this Section. Certification is valid only for those uses covered by the certified individual's certification category(ies), as defined by Rule .0504 of this Section.

(b) The term of certification shall be five years for individuals licensed to use ground equipment and two years for individuals (contractors and pilots) licensed to use aerial equipment. However, all individuals shall renew their pesticide license annually, as required in the North Carolina Pesticide Law of 1971.

*History Note:* Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);  
Eff. September 10, 1980;  
Amended Eff. January 1, 1990;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .0520 RECERTIFICATION REQUIREMENTS**

(a) In order to ensure that certified pesticide applicators, public operators, and pest control consultants continue to meet the needs of changing technology necessary for the use of pesticides, they shall be subject to recertification requirements as herein defined.

(b) The license of a certified pesticide applicator, public operator, or pest control consultant shall not be renewed annually for more than five years for individuals licensed to use ground equipment or two years for individuals (contractors and pilots) licensed to use aerial equipment unless the individual has been recertified through one of the options in Rule .0522 of this Section.

*History Note:* Authority G.S. 143-437(1); 143-440(b); 143-452(a); 143-453(c)(2); 143-455(d);  
Eff. September 10, 1980;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .0521 RECERTIFICATION CREDIT COMMITTEE**

*History Note:* Authority G.S. 143-437(1);  
Eff. September 10, 1980;  
Amended Eff. August 1, 1982;  
Repealed Eff. November 1, 1988.

## **02 NCAC 09L .0522 RECERTIFICATION OPTIONS**

(a) Pesticide applicators, public operators, and pest control consultants may be recertified by completion of approved continuing certification credit requirements in the pest control category in which the individual is certified and desires to retain certification. A "continuing certification credit" is defined as one hour of approved continuing certification training. Continuing certification training shall be approved by the Board based upon the US Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103, and "Standards for recertification of certified applicators," as contained in 40 CFR 171.107. Such training may consist of grower meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations approved by the Board. Continuing certification requirements for each pest control category are as follows:

- |      |                            |                              |
|------|----------------------------|------------------------------|
| (1)  | aquatic                    | 6 credits per 5-year period  |
| (2)  | public health              | 6 credits per 5-year period  |
| (3)  | forest                     | 6 credits per 5-year period  |
| (4)  | right-of-way               | 4 credits per 5-year period  |
| (5)  | regulatory                 | 6 credits per 5-year period  |
| (6)  | ag pest-animal             | 6 credits per 5-year period  |
| (7)  | ornamental and turf        | 10 credits per 5-year period |
| (8)  | seed treatment             | 3 credits per 5-year period  |
| (9)  | ag pest-plant              | 10 credits per 5-year period |
| (10) | demonstration and research | 10 credits per 5-year period |

The continuing certification credits required for demonstration and research may consist of any combination of credits divided between training in the primary categories set forth in Subparagraph (a)(1) through (a)(9) of this Rule and training in demonstration and research.

- (11) aerial 4 credits per 2-year period

The Continuing Certification Credits required for aerial applicators shall include one credit obtained through training in aerial methods.

- (12) wood treatment 4 credits per 5-year period

- (13) soil and growing media fumigation 3 credits per 5-year period

The Continuing Certification Credits established for each ground application pest control category shall be obtained in at least two years of the five-year period.

(b) Pesticide applicators, public operators, and pest control consultants may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based on training materials that have been approved by the Board.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);  
Eff. September 10, 1980;  
Amended Eff. June 1, 2016; November 1, 1984;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .0523 RECERTIFICATION IN ADDITIONAL CATEGORIES**

(a) Individuals desiring to retain certification in more than one pest control category shall complete for each category any one of the recertification options described in Rule .0522 of this Section.

(b) Individuals desiring to retain certification through Continuing Certification Training in more than one ground pest control category may do so upon completion of total Continuing Certification Credit Requirements in the category carrying the highest credit requirements, by completing three Continuing Certification Credits in each additional category.

(c) Individuals desiring to retain certification through Continuing Certification Training in more than one aerial pest control category may do so upon completion of total Continuing Certification Credit Requirements in any one category, by completing one Continuing Certification Credit in each additional category.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);  
Eff. September 10, 1980;  
Amended Eff. October 22, 1981;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .0524 EXPIRATION OF CERTIFICATION**

(a) The recertification period shall expire on June 30th.

(b) Each certified individual shall be notified 6-9 months prior to the recertification expiration date of the individual's remaining requirements for recertification.

(c) A certified individual who has completed none of the recertification options in Rule .0522 of this Section prior to the recertification expiration date shall retake and pass a comprehensive license examination defined in G.S. 143-453 or 143-455 before a license will be reissued in any category.

(d) No individual shall be allowed to carry over any Continuing Certification Credits from one recertification period to another.

*History Note: Authority G.S. 143-437(1); 143-440(b); 143-453(c)(2); 143-455(d);  
Eff. September 10, 1980;  
Amended Eff. February 4, 1993; November 1, 1988;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .0525 RECERTIFICATION OF PESTICIDE DEALERS**

(a) Pesticide dealers who have completed the pesticide license examination requirements of G.S. 143-449 are certified for a period of five years. However, all such individuals shall renew their pesticide licenses annually, as required in the North Carolina Pesticide Law of 1971.

(b) In order to ensure that certified pesticide dealers continue to meet the needs of changing technology necessary for the use of pesticides, they shall be subject to recertification requirements as defined in Rule .0526 of this Section.

(c) In no event shall the license of a pesticide dealer continue to be renewed annually for more than five years unless the individual has been recertified through one of the options in Rule .0526 of this Section.

*History Note:* Authority G.S. 143-448; 143-449;  
Eff. October 22, 1981;  
Amended Eff. November 1, 1988;  
Readopted Eff. August 1, 2020.

#### **02 NCAC 09L .0526 PESTICIDE DEALER RECERTIFICATION OPTIONS**

(a) A pesticide dealer may be recertified by completing five approved Pesticide Dealer Continuing Certification Credits. A "Pesticide Dealer Continuing Certification Credit" is defined as one hour of approved Pesticide Dealer Continuing Certification Training. Continuing certification training shall be approved by the Board based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103. Such training may consist of meetings, seminars, short courses, or other presentations taught by extension pesticide personnel, or other privately or publicly sponsored training organizations. The Continuing Certification Credits shall be obtained in at least two years of the five-year period.

(b) Instead of completing five certification credits, a pesticide dealer may be recertified by passing a written comprehensive examination administered by North Carolina Department of Agriculture and Consumer Services personnel and based upon the U.S. Environmental Protection Agency "Standards for certification of commercial applicators," as contained in 40 CFR 171.103.

*History Note:* Authority G.S. 143-448; 143-449;  
Eff. October 22, 1981;  
Readopted Eff. August 1, 2020.

#### **02 NCAC 09L .0527 EXPIRATION OF PESTICIDE DEALER CERTIFICATION**

Pesticide dealers shall be subject to the same certification expiration requirements as set forth in Rule .0524 of this Section.

*History Note:* Authority G.S. 143-448; 143-449;  
Eff. October 22, 1981;  
Readopted Eff. August 1, 2020.

#### **02 NCAC 09L .0528 RECERTIFICATION CREDIT APPROVAL**

(a) The pesticide section shall receive requests for approval of sponsored training toward recertification, evaluate each proposed program based on criteria approved by the Board, and assign appropriate Continuing Certification Credits for each program. Each such assignment shall be reviewable by the Board.

(b) Continuing Certification Credit assignment shall be in increments of no less than one-half hour.

*History Note:* Authority G.S. 143-437;  
Eff. November 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

#### **02 NCAC 09L .0529 SOIL AND GROWING MEDIA FUMIGATION EXAMINATION WAIVER**

*History Note:* Authority G.S. 143-453(b);  
Eff. August 1, 2015;  
Repealed Eff. September 1, 2020.

#### **02 NCAC 09L .0530 PROHIBITED ACTS**

A final order imposing civil liability under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (codified at 7 USC 136l(a)) against any pesticide dealer, pesticide applicator, public operator, or pest control consultant, or a criminal conviction or entry of a plea of guilty or of nolo contendere under Section 14(b) of FIFRA (7 USC 136l(b)) by any pesticide dealer, pesticide applicator, public operator, or pest control consultant shall constitute grounds for the denial, suspension, or revocation of any license or certification issued by the Board.

*History Note:* Authority G.S. 143-437; 143-451(a)(3); 143-456(a)(5); 143-461(1);  
Eff. July 1, 2022.

## **SECTION .0600 - PESTICIDE AND PESTICIDE CONTAINER DISPOSAL**

### **02 NCAC 09L .0601 DEFINITIONS**

The following definitions will be in effect throughout 2 NCAC 9L .0600:

- (1) "Container" means any package, can, bottle, bag, barrel, drum, tank, or other containing device (excluding spray applicator tanks) used to enclose a pesticide or pesticide-related wastes.
- (2) "Excess pesticides" means all pesticides which cannot be legally sold or which are to be discarded.
- (3) "Pesticide-related wastes" means all pesticide-containing wastes or by-products which are produced in the manufacturing or processing of a pesticide and which are to be discarded, but which, pursuant to acceptable pesticide manufacturing or processing operations, are not ordinarily a part of or contained within an industrial waste stream discharged into a sewer or the waters of the state.
- (4) "Safe disposal" means discarding pesticides or containers in a permanent manner so as to comply with these procedures and so as to avoid unreasonable adverse effects on the environment.

*History Note: Authority G.S. 143-441;  
Eff. February 1, 1976;  
Amended Eff. December 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .0602 DISPOSAL OF PESTICIDES**

- (a) Any person disposing of pesticides shall give first preference to recovering some useful value from excess pesticides. Whenever possible, excess pesticide shall be used according to its labeling for the purpose originally intended.
- (b) Excess pesticides and pesticide-related wastes shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, disposal of excess pesticides and pesticide-related wastes is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management.

*History Note: Authority G.S. 143-441;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1991; December 1, 1989;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .0603 DISPOSAL OF PESTICIDE CONTAINERS**

- (a) Prior to disposal, all pesticide containers shall be emptied, using the practices employed to remove materials from that type of container; including shaking, pumping, pouring, triple rinsing, or equivalent, and draining into the application tank. The materials so removed shall be applied to the labeled site or otherwise disposed of in accordance with this Section.
- (b) Pesticide containers shall be disposed of in accordance with labeling requirements. Note: In addition to the requirements of these rules, pesticide container disposal is also subject to rules adopted by the North Carolina Commission for Public Health as set forth in 15A NCAC 13A, Hazardous Waste Management, and 13B, Solid Waste Management, and to rules adopted by the North Carolina Environmental Management Commission as set forth in 15A NCAC 02D, Air Pollution Control Requirements.

*History Note: Authority G.S. 143-441;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1991; December 1, 1989;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .0604 PROHIBITED DISPOSAL PROCEDURES**

No person shall dispose of any pesticide or pesticide container in any of the following manners:

- (1) in a manner inconsistent with these rules;
- (2) so as to cause or allow open dumping of pesticides or pesticide containers;
- (3) so as to cause or allow open burning of pesticides or pesticide containers;
- (4) so as to cause or allow water dumping, or ocean dumping; or

- (5) so as to violate any applicable provisions of the North Carolina Pesticide Law.

*History Note:* Authority G.S. 143-441;  
Eff. February 1, 1976;  
Amended Eff. December 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

## **SECTION .0700 - DECLARATION OF PESTS AND RESTRICTIONS ON THEIR CONTROL**

### **02 NCAC 09L .0701 ORCHARD RATS**

The North Carolina Pesticide Board hereby declares as a pest pine voles (*Pitymys*, or *Microtus Pinetorum*) and meadow voles (*Microtus pennsylvanicus*), (called orchard rats) on or adjacent to cultivated land; forest plantations; ornamentals nurseries; orchards; or horticultural plantings in institutional, recreational, and residential areas.

*History Note:* Authority G.S. 143-444(1);  
Eff. February 1, 1976;  
Amended Eff. March 1, 1993;  
Readopted Eff. August 1, 2020.

### **02 NCAC 09L .0702 RESTRICTIONS CONCERNING CONTROL OF ORCHARD RATS**

Pesticides used to control Orchard Rats shall be applied according to label directions to minimize the hazards to nontarget species.

*History Note:* Authority G.S. 143-458;  
Eff. February 1, 1976;  
Readopted Eff. August 1, 2020.

### **02 NCAC 09L .0703 GULLS**

The North Carolina Pesticide Board hereby declares as a pest gulls (members of the genus *Larus*) on or adjacent airport runways when they occur in such manner that may endanger air traffic by impacting landings and take-offs.

*History Note:* Authority G.S. 143-444(1);  
Eff. February 1, 1976;  
Readopted Eff. August 1, 2020.

### **02 NCAC 09L .0704 RESTRICTIONS CONCERNING CONTROL OF GULLS**

*History Note:* Authority G.S. 143-458;  
Eff. February 1, 1976;  
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

### **02 NCAC 09L .0705 RESTRICTIONS CONCERNING CONTROL OF PIGEONS**

The following restrictions apply concerning the use of pesticides in controlling the pigeon (*Columba livia*), also known as rock dove:

- (1) only materials registered for pigeons shall be used;
- (2) the pesticides shall be used in accordance with the directions on the label;
- (3) the pesticides shall be distributed in such a manner as to minimize hazard to non-target species, and that all unconsumed bait that is not in protected bait stations shall be picked up within one week; and
- (4) in municipalities dead birds shall be picked up and disposed of by incineration or buried at intervals not to exceed 24 hours.

*History Note:* Authority G.S. 143-458;  
Eff. February 1, 1976;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .0706 RED-WINGED BLACKBIRD**

(a) The North Carolina Pesticide Board hereby declares the red-winged blackbird, *agelaius phoeniceus* (linnaeus) to be a pest.

(b) Pesticides registered for use to control the red-winged blackbird may be used when it is committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers or manner as to constitute a health hazard or other nuisance.

*History Note: Authority G.S. 143-444(1); 143-458; 50 CFR 21.43;  
Eff. July 11, 1976;  
Readopted Eff. August 1, 2020.*

**02 NCAC 09L .0707 EASTERN AND HAIRY-TAILED MOLES**

(a) The North Carolina Pesticide Board hereby declares the eastern mole, *Scalopus aquaticus*, and the hairy-tailed mole, *Parascalops breweri*, to be pests.

(b) Pesticides registered for use to control the eastern mole and the hairy-tailed mole may be used when either species is tunneling in managed turf in the following areas:

- (1) residential;
- (2) commercial;
- (3) government property, excluding federal and State parks;
- (4) golf courses, driving ranges, and golf instructional facilities;
- (5) sod farms;
- (6) athletic fields; or
- (7) cemeteries.

(c) For purposes of this Rule, managed turf shall not include pastures.

(d) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied within 100 feet of natural or man-made bodies of water, including streams, rivers, ponds, swamps, lakes, and wetlands.

(e) Pesticides used to control the eastern mole and the hairy-tailed mole shall not be applied at elevations of 4000 feet or greater.

*History Note: Authority G.S. 143-444(1); 143-458;  
Eff. April 1, 2015;  
Readopted Eff. August 1, 2020.*

**SECTION .0800 - BULK DISTRIBUTION OF PESTICIDES**

- 02 NCAC 09L .0801 PROPRIETORSHIP**
- 02 NCAC 09L .0802 NOTIFICATION PRIOR TO DELIVERY**
- 02 NCAC 09L .0803 STORAGE TANK SPECIFICATIONS**
- 02 NCAC 09L .0804 LABELING REQUIREMENTS**
- 02 NCAC 09L .0805 RECORD REQUIREMENTS**
- 02 NCAC 09L .0806 LOCATION REQUIREMENTS**
- 02 NCAC 09L .0807 SAFETY REQUIREMENTS**
- 02 NCAC 09L .0808 NOTIFICATION OF STORAGE TANK REQUIREMENTS**
- 02 NCAC 09L .0809 COMPLIANCE REQUIREMENTS**

*History Note: Authority G.S. 143-434 through 143-470;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978; April 21, 1977;  
Repealed Eff. April 1, 2009.*

**02 NCAC 09L .0810 ADOPTION BY REFERENCE**

Part 165 of Title 40: Protection of Environment of the Code of Federal Regulations, entitled "Pesticides Management and Disposal Subpart E – Standards for Pesticide Containment Structures is incorporated by reference, including subsequent amendments and editions. This document may be accessed at no cost at [www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html).



*History Note:* Authority G.S. 143-441; 143-461;  
Eff. April 1, 2009;  
Readopted Eff. August 1, 2020.

## **SECTION .0900 - FORMS**

### **02 NCAC 09L .0901 DESIGNATIONS**

*History Note:* Authority G.S. 143-461;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1988; January 1, 1984; August 1, 1982; November 30, 1978;  
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

### **02 NCAC 09L .0902 FORM PC-400**

*History Note:* Authority G.S. 143-461;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1988.

### **02 NCAC 09L .0903 FORM PC-401**

*History Note:* Authority G.S. 143-442; 143-461;  
Eff. February 1, 1976;  
Repealed Eff. November 30, 1978.

### **02 NCAC 09L .0904 FORM PC-402**

### **02 NCAC 09L .0905 FORM PC-403**

### **02 NCAC 09L .0906 FORM PC-404**

### **02 NCAC 09L .0907 FORM PC-405**

### **02 NCAC 09L .0908 FORM PC-406**

### **02 NCAC 09L .0909 FORM PC-407**

### **02 NCAC 09L .0910 FORM PC-408**

### **02 NCAC 09L .0911 FORM PC-409**

### **02 NCAC 09L .0912 FORM PC-410**

### **02 NCAC 09L .0913 FORM PC-411**

### **02 NCAC 09L .0914 FORM PC-412**

### **02 NCAC 09L .0915 FORM PC-413**

### **02 NCAC 09L .0916 COPIES AND SUBMISSIONS OF FORMS**

*History Note:* Authority G.S. 143-446; 143-448(b); 143-450; 143-452; 143-454; 143-455;  
143-460(27),(29),(30),(33); 143-461; 143-466; 143-467;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1982; January 27, 1978;  
Repealed Eff. November 1, 1988.

### **02 NCAC 09L .0917 FORM PC-414**

### **02 NCAC 09L .0918 FORM PC-415**

### **02 NCAC 09L .0919 FORM PC-416**

*History Note:* Authority G.S. 143-442; 143-461;  
Eff. November 30, 1978;  
Amended Eff. August 1, 1982; January 29, 1979;  
Repealed Eff. November 1, 1988.

**02 NCAC 09L .0920      FORM PC-417**

*History Note:      Authority G.S. 143-441; 143-461;  
                         Eff. January 1, 1984;  
                         Repealed Eff. November 1, 1988.*

**SECTION .1000 - AERIAL APPLICATION OF PESTICIDES**

**02 NCAC 09L .1001      DEFINITIONS**

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, unless the context otherwise requires.

- (1) "Agricultural Aircraft Operation" means the operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation.
- (2) "Adverse Effect" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (3) "Aircraft" means a weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces. This shall include either fixed-wing or rotary-wing aircraft.
- (4) "Congested Areas" means the same meaning as described in case law opinions interpreting Title 14 CFR Part 137, Subpart C.
- (5) "Contractor" means any person who owns or manages an aerial application business that is engaged in the custom application of pesticides.
- (6) "Custom Application" means any application of pesticides by aircraft for which service a payment is made.
- (7) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (8) "Emergency" means an occurrence that can impair public health or safety or result in injury, damage, or loss of life that calls for action. An emergency may be minor or of such magnitude as to create a disaster.
- (9) "Environment" means water, air, land, plants, man and other animals living therein and the interrelationships which exist among these.
- (10) "F.A.R.-137" means Title 14 CFR Part 137, incorporated by reference, including subsequent amendments and editions, relating to agricultural aircraft operations. This document may be accessed at <https://www.law.cornell.edu/cfr/text/14/part-137>.
- (11) "Pilot" means the person in control of the aircraft during the application of a pesticide.
- (12) "Registered Apiary" means any place where one or more colonies of bees are kept and registered with the North Carolina Department of Agriculture and Consumer Services.
- (13) "Respirator" means a respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being used.
- (14) "Spray Equipment" means the equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation.
- (15) "Target Area" means intended site of pesticide application.
- (16) "Toxicity Category I Pesticides" means any pesticide products that are required to display the signal word "Danger" on the label.

*History Note:      Authority G.S. 143-458; 143-463;  
                         Eff. July 2, 1976;  
                         Amended Eff. January 1, 1985;  
                         Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1002      GENERAL REQUIREMENTS**

(a) All agricultural aircraft operations in North Carolina shall comply with the Federal Occupational Safety and Health Act of 1971 (OSHA), Title 29 U.S.C. Chapter 15, the North Carolina Occupational Safety and Health Law, G.S. Chapter 95 Article 16, all rules and regulations promulgated thereunder and the Federal Aviation Regulations Part 137. In any case of conflict, a provision of the aforementioned authorities takes precedence over any of these Rules.

(b) Each aerial application business shall have a licensed contractor. The contractor shall be responsible for the compliance of the business with the North Carolina Pesticide Law of 1971 and all rules promulgated thereunder except where the responsibility is designated to another person(s) this Section.

(c) All agricultural aircraft operations (pilot or contractor) shall keep a written record to be completed within 72 hours after each application, unless requested sooner by an employee of the Pesticide Section for the purposes of a pesticide incident investigation. The record shall show the following:

- (1) name of contractor;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or land sites treated with pesticide(s);
- (4) name of crop which was treated;
- (5) total number of acres treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed;
- (7) the brand name of the pesticide(s) and EPA registration number;
- (8) amount of formulated product or active material applied per acre shall be specified;
- (9) total gallons or pounds per acre of the final tank mix applied per acre;
- (10) name of pilot; and
- (11) signature of person completing this record.

(d) Each day of application shall be recorded as a separate record.

(e) The pilot shall, prior to application, learn and confirm:

- (1) the boundaries and exact location of the target area(s); and
- (2) the identity of nontarget areas and safety hazards located on or adjacent to the target areas.

(f) Spray and spreading equipment shall be rinsed after each agricultural aircraft operation except when the next agricultural aircraft operation will be made using the same pesticide, or if another pesticide, compatible with the previous pesticide according to the manufacturer's recommendations was previously in the equipment, and will not result in any adverse effects or created by the drainage or disposal of waste materials and conducted with methods which will not create an adverse effect as defined in this Section.

(g) During application, the flow and mixture of the pesticide(s) shall be uniform. Pilots and contractors shall utilize equipment which will maintain a uniform mixture and flow during application.

(h) Pilots and contractors shall use and operate, in any agricultural aircraft operation, aircraft equipped with spray or spreading equipment suited, according to its manufacturer's recommendations for the pesticide(s) to be applied. All aerial spray or spreading equipment shall be free of leaks and shall have a positive shutoff system to prevent leaking and dissemination of pesticides on any nontarget areas over which the flight is made. Such equipment shall not allow spillage, dripping and backflow or create a hazard from vapors or drift.

(i) The loading area shall be kept free of pesticide contamination.

(j) No pesticide(s) shall be applied by an aerial applicator while any persons other than those assisting in the application are in the target area.

(k) The shape of the tank or hopper of the spray or spreading equipment shall be such as to allow complete drainage during flight and on ground.

(l) The contractor or pilot shall notify the Secretary of the Board of any emergency or accidental release of pesticide(s) from the application or auxiliary equipment. They shall provide the following information:

- (1) the name of the pilot;
- (2) the contractor involved;
- (3) the name of the property owner or operator;
- (4) the location of the incident;
- (5) the name of the pesticide;
- (6) the estimated amount of pesticide involved;
- (7) the estimated size of the area that received the spill;
- (8) the description of what is located within 300 feet from the edge of the spill in all directions;
- (9) the number of humans or animals known to have been contaminated; and
- (10) the weather conditions at the site of the emergency or accidental release of pesticide(s).

*History Note:* Authority G.S. 143-458; 143-463; 143-466;  
Eff. July 2, 1976;  
Amended Eff. May 1, 2009; February 1, 1989; January 1, 1985; August 1, 1982;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1003      DRIFT CONTROL**

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (4) All applications of the following liquid pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward:
  - (a) phenoxy herbicides,
  - (b) paraquat,
  - (c) picloram (Tordon), and
  - (d) dicamba.
- (5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:
  - (a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or
  - (b) a system producing a droplet size range not smaller than the above system, except for rotary-wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or
  - (c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.

*History Note:* Authority G.S. 143-458; 143-463;  
Eff. July 2, 1976;  
Amended Eff. January 1, 1985;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1004      HANDLING AND LOADING OF PESTICIDES**

*History Note:* Authority G.S. 143-458; 143-463;  
Eff. July 2, 1976;  
Amended Eff. January 1, 1985;  
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

## **02 NCAC 09L .1005      RESTRICTED AREAS**

- (a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under 14 CFR Part 137.
- (b) No pesticide shall be deposited by aircraft within 300 feet of the premises of schools, hospitals, nursing homes, churches, or any building, other than a residence which is used for business or social activities if any person is in the building or on the premises.
- (c) No pesticide shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance.
- (d) No pesticide labeled toxic or harmful to aquatic life shall be deposited in or adjacent to any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.
- (e) No pesticide shall be deposited within 100 feet of any residence.

(f) No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that an adverse effect will occur.

*History Note: Authority G.S. 143-458;  
Eff. July 2, 1976;  
Amended Eff. July 1, 1988; January 1, 1985; December 1, 1976;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .1006 EXEMPTIONS**

There shall be no exemptions from this Section except under the following conditions:

- (1) During an emergency proclaimed by the Commissioner, under G.S. 143.461(2), specific aerial applicators may, on a temporary basis, be exempted from all, or from specific regulations by the Commissioner.
- (2) The North Carolina Pesticide Board may authorize exemptions:
  - (a) from specific rules for specific aerial applications when deemed appropriate for specific aerial applications upon consideration of public health, environmental, and economic impact; or
  - (b) from specific rules for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any State, federal, or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from Rule .1002(j) of this Section, and Rule .1005(b) through (e) of this Section provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation that meets or exceeds the following standards:
  - (a) Project Description. The application shall include all of the following:
    - (i) explanation of why the project is needed;
    - (ii) identification of target pest or pests;
    - (iii) map showing treatment area;
    - (iv) total acreage to be treated; and
    - (v) proposed date or dates of application (range).
  - (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
    - (i) a statement that the pesticide product(s) proposed for use carries current State and federal registration and are labeled for the proposed use. The EPA registration number for each pesticide shall be included in the statement;
    - (ii) a Safety Data Sheet (SDS) for each pesticide proposed for use;
    - (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
  - (c) Aircraft Information. The description shall include the following:
    - (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.); and
    - (ii) identification of equipment specifications.
  - (d) Environmental Evaluation. The description shall include the following:
    - (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive environmental areas in or near the proposed treatment area;
    - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures, if any, to lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
    - (iii) describe alternative methods of pest control (options). A no treatment alternative shall be included. Describe probable environmental consequences of each alternative; and
    - (iv) describe measures, if any, to mitigate the adverse environmental impacts of the proposed project.
  - (e) Notification and Public Input Plan. The application shall contain the following:
    - (i) Preliminary Notification:

- (A) For small projects less than 50 acres or fewer than 20 landowners, individual notification by written, oral, digital communication, or mailings, may be used. This notification shall include the information in criteria (a) through (c);
- (B) For larger projects, print, broadcast, or internet news media may be used for preliminary notification. A public meeting may also be used as a preliminary notification tool. This notification shall include the information in criteria (a) through (c);
- (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
- (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project shall be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media shall be an appropriate avenue of notification;
- (iv) A contact person and telephone number shall be listed in the public notice; and
- (v) Evacuation Plan. For persons concerned about the project because of health reasons, there shall be a notification procedure so they may leave the treatment area while the project is underway.

The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all applications for exemption.

- (4) Any local health director or aerial applicator licensed under the subcategory of public health pest control, under supervision of such local health director when conducting a control operation for disease vectors or other pest of public health significance shall be exempted from 02 NCAC 09L .1002(j) General Requirements; .1003, Drift Control; and .1005(b) through (e), Restricted Areas, provided such local health director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation and submits the following information:
  - (a) name of aerial applicator or contractor,
  - (b) location and general description of operation area(s),
  - (c) identity of target pest(s),
  - (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
  - (e) scheduled date(s) of application(s), and
  - (f) outline of nature of operation.

All pesticide(s) shall be applied in compliance with label requirements.

*History Note:* Authority G.S. 143-458; 143-461(1),(2),(5); 143-463;  
Eff. July 2, 1976;  
Amended Eff. October 1, 1988; January 1, 1985; August 1, 1982; July 21, 1978;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .1007 EMERGENCY EXEMPTION: PAMLICO COUNTY: MOSQUITOES**

*History Note:* Filed as an Emergency Regulation Eff. September 30, 1977, for a Period of 20 Days to Expire on October 20, 1977;  
Authority G.S. 143-458;  
Expired Eff. October 20, 1977.

**02 NCAC 09L .1008 EMERGENCY EXEMPTION: BEAUFORT COUNTY: MIDGES**

*History Note:* Filed as an Emergency Regulation Eff. July 17, 1978, for a Period of 30 Days to Expire on August 16, 1978;  
Authority G.S. 143-458; 143-461;  
Expired Eff. August 16, 1978.

**02 NCAC 09L .1009 NOTIFICATION OF APIARIES**

- (a) Any person who hires the services of an aerial applicator to apply a pesticide labeled as toxic to bees shall notify, based on available listings of registered apiaries, the owner or operator of any registered apiary located within one mile of the target

area not less than 48 hours nor more than 10 days prior to the beginning of a single application or a seasonal spray schedule, giving the approximate time of day of application and type of pesticide to be used.

(b) "Notification" for the purposes of this Paragraph is defined as follows:

- (1) written communication by:
  - (A) U.S. mail,
  - (B) Notification left at residence, or
  - (C) Notification left at alternate address as designated on the honeybee registration list.
- (2) oral communication by:
  - (A) telephone,
  - (B) personal communication, or
  - (C) verbal communication with an alternate person as designated on the honeybee registration list.
- (3) digital communication by:
  - (A) electronic mail or
  - (B) instant cellular text messaging.

(c) The Pesticide Section shall distribute new registrations of beekeepers and their alternates by U.S. mail on the first of each quarter (January 1, April 1, July 1, and October 1) to all farmers growing crops within one mile of the apiaries that are identified on the "Apiary Registration Form" of the Plant Industry Division. The list of revised registered apiaries shall become effective on the fifth day of the first month in the quarter stated in this Rule. The registration of apiaries shall be effective for the calendar year that they are registered.

*History Note: Authority G.S. 143-443(b)(4); 143-458; 143-463; 143-466;  
Eff. January 1, 1985;  
Amended Eff. January 1, 2016;  
Readopted Eff. August 1, 2020.*

## **SECTION .1100 - PRIVATE PESTICIDE APPLICATOR CERTIFICATION**

### **02 NCAC 09L .1101 CERTIFICATION**

*History Note: Authority G.S. 143-440;  
Eff. October 21, 1977;  
Amended Eff. August 1, 1987;  
Repealed Eff. October 1, 2002.*

### **02 NCAC 09L .1102 DEFINITIONS**

The following definitions apply in this Section.

- (1) "Certified applicator" means any individual who is certified to use or supervise the use of any restricted use pesticide.
- (2) "Private pesticide applicator" means a person who uses or supervises the use of any restricted use pesticide under the following conditions:
  - (a) for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer; or
  - (b) if the pesticide is applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (3) "Private pesticide applicator certification standards review" means a training session designed by the North Carolina State University Pesticide Safety Extension Specialist to advance a private pesticide applicator's practical knowledge in areas such as:
  - (a) the pest problems and pest control practices associated with agricultural operations;
  - (b) storage, use, handling, and disposal of pesticides and their containers;
  - (c) labels and labeling information;
  - (d) local environmental situations to consider during application to avoid contamination;
  - (e) recognition of poisoning symptoms and procedures to follow in case of a pesticide accident;
  - (f) protective clothing, equipment, and other worker protection standards;
  - (g) federal and State pesticide laws, rules, and regulations and the applicator's related legal responsibility;

- (h) current agricultural production-related pesticide technology; and
- (i) sources of advice and guidance necessary for the safe and proper use of each pesticide related to his or her certification including EPA guidance, extension publications and court decisions.

These training sessions shall be taught by Cooperative Extension Service pesticide training agents or other individuals approved by the Board on a case-by-case basis, based upon the individual's education, experience, and knowledge of Subparagraph (c)(1) through (9) of this Rule.

(4) "Continuing certification credit" means one hour of continuing certification training. Such training may be offered during grower meetings, seminars, short courses, or other presentations taught by Cooperative Extension Service pesticide training agents, or other privately or publicly sponsored training organizations. Private applicators may also earn continuing certification credits by attending training sessions for which credit has been assigned in the following commercial categories as set forth in Rule .0505(1)(a) through (1)(k):

- (a) aquatic;
- (b) agricultural pest - animal;
- (c) agricultural pest - plant;
- (d) ornamental and turf;
- (e) forest;
- (f) seed treatment; and
- (g) soil and growing media fumigation.

*History Note: Authority G.S. 143-440; 143-453;  
Eff. December 1, 1976;  
Amended Eff. June 1, 2016; October 1, 2002; November 1, 1988; July 1, 1987; February 5, 1978; April 20, 1977;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .1103 CERTIFICATION EXAMINATION**

(a) An applicant for an initial private pesticide applicator's certification shall demonstrate by written examination his or her knowledge of pesticides and their usefulness and hazards; his or her competence to act as a private pesticide applicator; and his or her knowledge of the laws and rules governing the use and application of pesticides by private pesticide applicators. Passing grade shall be 70 percent.

(b) Any applicant for initial certification in any private applicator certification subclass shall first become certified as a private pesticide applicator.

*History Note: Authority G.S. 143-440;  
Eff. December 1, 1976;  
Amended Eff. August 1, 2015; October 1, 2002; July 1, 1987; February 5, 1978;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .1104 SINGLE PURCHASE EMERGENCY CERTIFICATION PERMIT**

(a) For emergency certification of any applicant who has not previously been certified and did not anticipate the need for a restricted use pesticide, a 10-day Single Purchase Emergency Certification Permit may be issued by his or her resident county agricultural extension service pesticide coordinator authorizing the purchase and use of one restricted use pesticide for one application to a crop or site. Permits shall not be issued if:

- (1) there is sufficient time prior to the needed use for the individual to become certified;
- (2) an individual had been previously certified, but let the certification lapse; or
- (3) after discussion with the Cooperative Extension Agent, it is determined that a general pesticide, one available to the general public and not requiring certification to purchase and apply, may be used.

(b) Prior to issuance of the permit, the resident county agricultural extension service pesticide coordinator shall:

- (1) provide the applicant with a training manual and information relative to obtaining full private pesticide applicator certification; and
- (2) discuss with the applicant proper use of the restricted use pesticide.

(c) If the individual requires further use of restricted use pesticides, he or she shall complete one of the certification options set forth in Rule .1103 of this Section.



(d) The agricultural extension service pesticide coordinator shall keep a copy of the permit provided by the North Carolina Department of Agriculture and Consumer Services that contains the following information:

- (1) the name and address of the applicant;
- (2) the name and amount of restricted use pesticide;
- (3) the crop or site to be treated; and
- (4) the date the permit was issued.

Copies of the permits shall be available for review by the North Carolina Department of Agriculture and Consumer Services.

(e) A Single Purchase Emergency Certification Permit shall not be issued for fumigation of soil, growing media, or agricultural commodities.

*History Note: Authority G.S. 143-440;  
Eff. December 1, 1976;  
Amended Eff. June 1, 2016; August 26, 1977;  
Readopted Eff. August 1, 2020.*

#### **02 NCAC 09L .1105 APPLICATIONS UNDER SUPERVISION OF CERTIFIED APPLICATOR**

(a) The certified applicator acting in a supervisory role shall be available to the non-certified applicator in the event he is needed. It shall be the responsibility of the certified applicator to keep the non-certified applicator aware of all directions for use and cautions for safe use and application of any restricted use pesticide he or she may be directed to apply.

(b) All non-certified applicators applying any restricted use pesticide under the direct supervision of a certified applicator shall have available at the application site or at the loading and mixing site, if different from the application site, the following:

- (1) written or printed directions for applying the restricted use pesticide, which may include pesticide product labeling;
- (2) written or printed instructions describing procedures to be followed in order to prevent injury to the applicator, other persons and unreasonable adverse effects on the environment which may include pesticide product labeling; and
- (3) instructions for direct communication with the certified applicator under whose supervision the non-certified applicator is working (i.e., name, location, telephone number, radio contact, etc.); Such instructions, when followed, shall be considered direct communication with the certified applicator.

*History Note: Authority G.S. 143-440;  
Eff. December 1, 1976;  
Amended Eff. February 5, 1978;  
Readopted Eff. August 1, 2020.*

#### **02 NCAC 09L .1106 RECERTIFICATION**

*History Note: Authority G.S. 143-440;  
Eff. December 1, 1976;  
Repealed Eff. October 1, 2002.*

#### **02 NCAC 09L .1107 AGE LIMITATIONS**

Individuals who wish to be certified as private pesticide applicators shall be 16 years old prior to participating in a certification option or being issued a single purchase permit under the emergency certification procedure; however, in hardship cases individuals below the age of 16 may be licensed by the Board on an individual basis when they demonstrate to the Board by written, or written and oral examination their qualifications as a private pesticide applicator.

*History Note: Authority G.S. 143-440;  
Eff. December 1, 1976;  
Readopted Eff. August 1, 2020.*

#### **02 NCAC 09L .1108 TERM OF CERTIFICATION; RECERTIFICATION**

(a) The term of certification shall be for a period of three years.

(b) In order to be recertified as a private pesticide applicator without a written examination, a person shall complete two hours of private pesticide applicator certification standards review, plus two continuing certification credit hours, as defined in Rule .1102(d) of this Section.

(c) A private pesticide applicator certified in the subclass of soil and growing media fumigation or agricultural commodity fumigation shall earn one hour of continuing certification credit specific to each applicable subclass to retain the subclass certification.

*History Note:* Authority G.S. 143-440; 143-453;  
Eff. July 1, 1987;  
Amended Eff. June 1, 2016; October 1, 2002;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1109 CERTIFICATION OF PRIVATE APPLICATORS**

The following subclassifications are established for the certification of private pesticide applicators:

- (1) "Soil and growing media fumigation" means private pesticide applicators utilizing ground equipment applying restricted use fumigants to property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.
- (2) "Agricultural commodity fumigation" means private pesticide applicators applying restricted use fumigants to agricultural commodities on property they own or lease, their employer's property, or applied without compensation other than the trading of personal services between producers of agricultural commodities on the property of another person.

*History Note:* Authority G.S. 143-440;  
Eff. August 1, 2015;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1110 RECERTIFICATION BY EXAMINATION**

(a) A certified private pesticide applicator who has not completed the continuing certification requirements in 02 NCAC 09L .1108 on or before September 30 of the year of certification expiration must pass a comprehensive examination administered by the North Carolina Department of Agriculture and Consumer Services, in order to renew his/her certification.

(b) No individual will be allowed to carry over any continuing certification credits from one recertification period to another.

*History Note:* Authority G.S. 143-440;  
Eff. July 1, 1987;  
Amended Eff. October 1, 2002;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

## **02 NCAC 09L .1111 CERTIFICATION/RECERTIFICATION FEE**

A nonrefundable fee of ten dollars (\$10.00) shall be required for private pesticide applicator certification or recertification.

*History Note:* Authority G.S. 143-440(b);  
Temporary Adoption Eff. October 1, 1987, for a Period of 180 Days to Expire on March 29, 1988;  
Eff. March 1, 1988;  
Amended Eff. May 1, 2010;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1112 PROHIBITED ACTS**

A final order imposing civil liability under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (codified at 7 USC 136l(a)) against any private pesticide applicator, or a criminal conviction or entry of a plea of guilty or of nolo contendere under Section 14(b) of FIFRA (7 USC 136l(b)) by any private pesticide applicator, shall constitute grounds for the denial, suspension, or revocation of any license or certification issued by the Board.

*History Note:* Authority G.S. 143-437(1); 143-451(a)(3); 143-456(a)(5); 143-461(1);

*Eff. July 1, 2022.*

## **SECTION .1200 - ARSENIC TRIOXIDE**

### **02 NCAC 09L .1201 RESTRICTIONS ON USE AND STORAGE**

All pesticide formulations containing the active ingredient arsenic trioxide shall not be used or stored inside or adjacent to any building used as a human dwelling.

*History Note: Authority G.S. 143-440(b); 143-441;  
Eff. April 21, 1977;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .1202 PESTICIDE DEALER AND PURCHASER RESPONSIBILITY**

The pesticide dealer shall secure the signature of the purchaser attesting to the fact that the purchaser has knowledge of the use restrictions on arsenic trioxide contained in this Section. However, any licensed pesticide applicator under the authority of G.S. 143-452 or G.S. 106-65.25 may use formulations containing arsenic trioxide in or around human dwellings provided such use is performed in a manner consistent with the product label keeps the pesticide product out of the reach of children.

*History Note: Authority G.S. 143-440(b); 143-441; 143-466;  
Eff. April 21, 1977;  
Amended Eff. November 1, 1988;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .1203 EXEMPTION OF LICENSED PESTICIDE APPLICATOR**

*History Note: Authority G.S. 143-440(b); 143-441;  
Eff. April 21, 1977;  
Repealed Eff. November 1, 1988.*

## **SECTION .1300 - AVAILABILITY OF RESTRICTED USE PESTICIDES**

### **02 NCAC 09L .1301 DEFINITIONS**

(a) The term "end use" as used in this Section means those activities attendant to the application of a pesticide to a site.  
(b) All other specific words or terms used in this Regulation shall have the same definition or meaning as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460 and regulations thereunder, and the North Carolina Structural Pest Control Law, G.S. 106-65.24 and regulations thereunder.

*History Note: Authority G.S. 143-440; 143-463;  
Eff. August 26, 1977;  
Amended Eff. November 1, 1988; February 5, 1978;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .1302 GENERAL REQUIREMENTS**

It shall be unlawful for any person to make any restricted use pesticide available for use to any person other than a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, structural pest control licensee, or any individual who holds an emergency certification permit pursuant to Rule .1104 of this Subchapter.

*History Note: Authority G.S. 143-440; 143-463;  
Eff. August 26, 1977;  
Amended Eff. February 5, 1978;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .1303 EXEMPTIONS**

(a) Restricted use pesticides may be made available to an employee under the supervision of a certified private or licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee provided the employee is acting under the direction and supervision of said applicators or licensees and provided further that said employee is 16 years of age or older.

(b) This exemption applies to restricted use pesticides in channels of trade prior to making them available for end use.

(c) Prior to making available restricted use pesticides to an employee under the supervision of a certified private applicator, licensed pesticide applicator, certified structural pest control applicator, or structural pest control licensee, all persons shall require the employee to sign his or her name and list the certification number of employer under whose direction and supervision the employee is acting. Such information shall be available for routine inspection by the North Carolina Pesticide Board or its agent.

*History Note:* Authority G.S. 143-437; 143-440; 143-466;  
Eff. August 26, 1977;  
Amended Eff. November 1, 1988; February 5, 1978;  
Temporary Amendment Eff. November 1, 2001;  
Amended Eff. August 1, 2002;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1304 RESTRICTIONS**

*History Note:* Authority G.S. 143-440; 143-463; 143-466;  
Eff. August 26, 1977;  
Amended Eff. February 5, 1978;  
Repealed Eff. November 1, 1988.

## **02 NCAC 09L .1305 RECORD KEEPING REQUIREMENTS**

All licensed pesticide dealers, as defined in G.S. 143-460, shall keep records of all sales of restricted use pesticides showing the following:

- (1) date of sale;
- (2) initials of sales clerk;
- (3) name of certified or licensed applicator as set out in Rule .1302 of this Section or employees as set out in Rule .1303 of this Section;
- (4) certification or license number of certified or licensed applicator as set out in Rule .1302 of this Section;
- (5) certification or license expiration date as shown on the certified or licensed applicator's certification card;
- (6) product brand name;
- (7) EPA registration number;
- (8) number of individual containers;
- (9) size of individual containers; and
- (10) total quantity sold.

*History Note:* Authority G.S. 143-437; 143-440; 143-466;  
Temporary Adoption Eff. November 1, 2001;  
Eff. August 1, 2002;  
Readopted Eff. August 1, 2020.

## **02 NCAC 09L .1306 RECIPIENT IDENTIFICATION**

Prior to making restricted use pesticides available to those identified in Rule .1302 of this Section or the employee as identified in Rule .1303 of this Section, the pesticide dealer or the designated representative of the pesticide dealer shall verify the identity of the recipient.

*History Note:* Authority G.S. 143-437; 143-440; 143-466;  
Temporary Adoption Eff. November 1, 2001;  
Eff. August 1, 2002;  
Readopted Eff. August 1, 2020.

## SECTION .1400 - GROUND APPLICATION OF PESTICIDES

### 02 NCAC 09L .1401 DEFINITIONS

All specific words or terms used in this Section other than those defined below shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460:

- (1) "Adverse Effect" means personal injury, damage to personal property, damage to real property, damage to the environment, or any combination of these.
- (2) "Drift" means the airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area.
- (3) "Environment" means water, air, land, all plants, man, and other animals living therein and the interrelationships which exist among these.
- (4) record keeping purposes, licensed pesticide applicators shall use the Farm Service Agency (FSA) farm number, common name of farm, address of farm, or other means of identification of farm.
- (5) "Identification of Site" means for record keeping purposes, licensed pesticide applicators under contractual agreement with or under supervision of a federal, State, or public agency shall use name(s) of county(s), name(s) of city(s), name(s) of body(s) of water, or other means of identification of site. All other licensed pesticide applicators shall use name of specific right-of-way, name and address of golf course, specific address of site, or other means of identification of site.
- (6) "Object" means a physical or living thing occurring on a site including a structure, animal, tree, ornamental plant, or material.

*History Note:* Authority G.S. 143-458; 143-463; 143-466(a);  
Eff. October 21, 1977;  
Amended Eff. November 1, 1988; August 1, 1985; February 5, 1978;  
Readopted Eff. August 1, 2020.

### 02 NCAC 09L .1402 RECORD KEEPING REQUIREMENTS

All pesticide applicators, as defined in G.S. 143-460 utilizing ground equipment shall keep for three years records of all applications of restricted use pesticides. The records shall show the following:

- (1) name of licensed pesticide applicator or licensed public operator;
- (2) name and address of the person for whom the pesticide was applied;
- (3) identification of farm or site(s) treated with pesticide(s);
- (4) name of crop, commodity, or object(s) that was treated with pesticide(s);
- (5) approximate acres, size, or number of other object(s) treated;
- (6) the year, month, date, and the specific time of day when each pesticide application was completed and each day of application shall be recorded as a separate record;
- (7) the brand name of the pesticide(s) and EPA registration number(s);
- (8) amount (volume or weight) of pesticide formulation(s) or active ingredient(s) applied per unit of measure; and
- (9) name(s) of person(s) applying pesticide(s).

*History Note:* Authority G.S. 143-458; 143-463; 143-466(a);  
Eff. October 21, 1977;  
Amended Eff. April 1, 2009;  
Readopted Eff. August 1, 2020.

### 02 NCAC 09L .1403 EXEMPTIONS TO 2 NCAC 9L .1402

*History Note:* Authority G.S. 143-458; 143-463; 143-466(a);  
Eff. October 21, 1977;  
Amended Eff. August 1, 1985; August 1, 1982;  
Repealed Eff. November 1, 1988.

### 02 NCAC 09L .1404 DRIFT CONTROL

No person shall apply a pesticide(s) under such conditions that drift from pesticide(s) particles or vapors results in adverse effect.

*History Note:* Authority G.S. 143-458; 143-463;  
Eff. August 1, 1985;  
Readopted Eff. August 1, 2020.

**02 NCAC 09L .1405 EXEMPTIONS TO 2 NCAC 9L .1404**

*History Note:* Authority G.S. 143-458; 143-463;  
Eff. August 1, 1985;  
Repealed Eff. November 1, 1988.

**SECTION .1500 - EXEMPTED PESTICIDES**

**02 NCAC 09L .1501 DEFINITIONS**  
**02 NCAC 09L .1502 RESTRICTED INSECTICIDES: COTTON BOLLWORM/TOBACCO BUDWORM**

*History Note:* Authority G.S. 143-437; 143-440; 143-442; 143-450; 143-463;  
Eff. June 30, 1978;  
Repealed Eff. January 1, 1979.

**SECTION .1600 - PESTICIDE EMERGENCY PLAN**

**02 NCAC 09L .1601 GENERAL**  
**02 NCAC 09L .1602 PROCEDURE**

*History Note:* Authority G.S. 143-436; 143-437; 143-441;  
Eff. September 2, 1979;  
Repealed Eff. November 1, 1988.

**SECTION .1700 - ULTRA LOW VOLUME (ULV) AND LOW VOLUME (LV) APPLICATION OF PESTICIDES**

**02 NCAC 09L .1701 DEFINITIONS**  
**02 NCAC 09L .1702 ULTRA LOW VOLUME (ULV) APPLICATION OF PESTICIDES**  
**02 NCAC 09L .1703 LOW VOLUME (LV) APPLICATION OF PESTICIDES**  
**02 NCAC 09L .1704 CONTENTS OF THE RECOMMENDATION**  
**02 NCAC 09L .1705 NOTIFICATION REQUIREMENTS**  
**02 NCAC 09L .1706 LIMITATIONS**  
**02 NCAC 09L .1707 REVOCATION OF RECOMMENDATION**

*History Note:* Authority G.S. 143-458(a);  
Eff. January 1, 1982;  
Amended Eff. August 1, 1982;  
Repealed Eff. November 1, 1988.

**SECTION .1800 - WORKER PROTECTION STANDARDS FOR AGRICULTURAL PESTICIDES**

**02 NCAC 09L .1801 DEFINITIONS**  
**02 NCAC 09L .1802 WARNINGS**  
**02 NCAC 09L .1803 REENTRY TIMES**  
**02 NCAC 09L .1804 LABELS AND EXEMPTIONS**

*History Note:* Authority G.S. 143-458(a);

*Eff. November 1, 1982;*  
*Amended Eff. January 1, 1983;*  
*Repealed Eff. July 1, 1993.*

#### **02 NCAC 09L .1805 ADOPTION BY REFERENCE**

40 CFR Part 170, "Worker Protection Standard" is incorporated by reference, including subsequent amendments and editions. Copies of this material may be obtained from the U.S. Government Printing Office, Washington, D.C. 20402, at no cost at <https://www.ecfr.gov/cgi-bin/text-idx?mc=true&node+pt40.24..170&rgn=div5>.

*History Note: Authority G.S. 143-458(a);*  
*Eff. July 1, 1993;*  
*Readopted Eff. August 1, 2020.*

#### **02 NCAC 09L .1806 CROP ADVISOR EXEMPTION**

For the purposes of exemptions contained in 40 CFR Part 170.601 of the Worker Protection Standard, the following definitions shall be in effect throughout this Section:

- (1) "Crop Advisor" means any certified and licensed "pest control consultant" as defined in G.S. 143-460(27) while engaged in the performance of crop advisor tasks as defined in this Rule and any "pesticide applicator" as defined in G.S. 143-460(29) who is currently certified and licensed in the subcategory "Demonstration and Research Pest Control" as defined in Rule .0504(9) of this Subchapter, but only while performing or supervising the performance of crop advisor tasks as defined in this Rule.
- (2) "Crop Advisor Tasks" means assessing pest numbers or damage, pesticide distribution, or status or requirements of agricultural plants.

*History Note: Authority G.S. 143-458(a);*  
*Eff. April 1, 1996;*  
*Readopted Eff. August 1, 2020.*

#### **02 NCAC 09L .1807 SPECIFIC INFORMATION ABOUT APPLICATIONS**

*History Note: Authority G.S. 143-466(a);*  
*Eff. May 1, 2009;*  
*Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.*

### **SECTION .1900 - PESTICIDE STORAGE**

#### **02 NCAC 09L .1901 DEFINITIONS**

All specific words or terms used in this Section other than those defined in this Rule shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

- (1) "Storage" means the act of storing a pesticide or pesticide container unless the pesticide or pesticide container is being transported or used. It does not include:
  - (a) pesticide containers which are empty and triple-rinsed, or equivalent;
  - (b) pesticides that meet the requirements of a Resource Conservation and Recovery Act (RCRA) hazardous waste (40 CFR 261.33) and are in the possession of a person possessing a valid EPA RCRA identification number as a generator (40 CFR 261.12) or transporter (40 CFR 263.11) of hazardous waste or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste (40 CFR 264.11).
- (2) "Commercial Storage" means storage of a pesticide by any person from the time of manufacture, prior to possession by the end user.
- (3) "Storage Facility" means any property or contiguous properties under the same ownership used for commercial storage of pesticides. Multiple storage areas in or on single or contiguous properties under the same ownership are considered to be in the same storage facility.
- (4) "Large Storage Facility" means any storage facility that stores 10,000 pounds or more of restricted use pesticides at any time.
- (5) "Storage Area" means that portion of a storage facility actually used to store pesticides.

- (6) "Contingency Plan" means a description of a facility's plans and capabilities to deal with a pesticide emergency resulting from operational procedures, accidental releases, fires, or other emergencies, to contain or otherwise prevent the release of pesticides so as to minimize unreasonable adverse effects on public health or the environment.
- (7) "Bulk Storage" means Commercial Storage of any pesticide held in stationary pesticide containers designed to hold undivided quantities equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to this Rule unless any of the following conditions exists:
  - (a) The container is empty, that is, all pesticide that can be removed by the methods such as draining, pumping, or aspirating has been removed, whether or not the container has been rinsed or washed.
  - (b) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.
  - (c) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.
  - (d) The container is dedicated to non-pesticide use, and is labeled accordingly.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;  
 Eff. January 1, 1984;  
 Amended Eff. April 1, 2009; November 1, 1989; November 1, 1988;  
 Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1902 STORAGE REQUIREMENTS FOR ALL PESTICIDES**

- (a) The requirements of this Rule shall apply to all pesticides.
- (b) Pesticides shall be stored to prevent leaking and to facilitate inspection.
- (c) Formulated pesticide products shall not be stored in unlabeled containers. The following minimum information shall be legible and obvious on any containers of formulated pesticide:
  - (1) Common chemical name;
  - (2) Percentage of each active ingredient;
  - (3) EPA registration number;
  - (4) Signal word;
  - (5) Use classification (restricted use or general use).

Pesticide products which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971, and rules and regulations promulgated thereunder shall be deemed to have met the requirements of Paragraph (c) of this Rule.

- (d) Pesticides (formulated products or dilutions) shall not be stored in any food, feed, beverage, or medicine container that has previously been used for such purposes, or that is designed to contain only those products.
- (e) Pesticides shall not be stored in a manner that could cause the contamination of foods, feeds, beverages, eating utensils, tobacco, tobacco products, other pesticides, seeds, or fertilizers, or otherwise likely to result in accidental ingestion by humans or domestic animals.
- (f) Pesticides shall be stored in accordance with the following:
  - (1) storage recommendations, if any, on their labeling; and
  - (2) labeling on all other products, including non-pesticide products, held in the same storage area.
- (g) When unattended, pesticides shall be stored to prevent unauthorized access.
- (h) Pesticides shall be stored in an area that is dry, does not accumulate water, and ventilated.
- (i) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes which may provide an ignition source, and shall be separated from other operations which present a fire hazard such as welding or burning. Care shall be taken to minimize fire hazard potential when providing supplemental heating to storage during winter months.

*History Note: Authority G.S. 143-437; 143-441; 143-461; 143-466;  
 Eff. January 1, 1984;  
 Amended Eff. November 1, 1989;  
 Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1903 COMMERCIAL STORAGE: RESTRICTED USE PESTICIDES**



*History Note:* Authority G.S. 143-437; 143-440 through 143-443; 143-447; 143-461; 143-466;  
Eff. January 1, 1984;  
Repealed Eff. November 1, 1988.

## **02 NCAC 09L .1904 NOTIFICATION REQUIREMENTS: RESTRICTED USE PESTICIDES**

*History Note:* Authority G.S. 143-437; 143-441; 143-461; 143-466;  
Eff. January 1, 1984;  
Amended Eff. November 1, 1989;  
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

## **02 NCAC 09L .1905 STORAGE FACILITY REQUIREMENTS: RUP**

(a) In addition to the requirements as set forth in Rule .1902 of this Section, the requirements of this Rule shall apply to any quantity of restricted use pesticides in commercial storage.

(b) Storage areas shall utilize security precautions that prevent unauthorized access to pesticides. Non-display pesticide storage areas shall be locked when unattended. A warning sign shall be posted beside all entrances to non-display pesticide storage areas stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL \_\_\_\_\_."

(c) Pesticide spills shall be cleaned up with regard to personnel safety by wearing appropriate personal protective equipment (PPE) and handling the pesticide in accordance with the manufacturer's product labeling. Floor-sweeping compounds such as adsorptive clay, sand, sawdust, lime, or similar suitable materials shall be kept on hand to absorb spills or leaks. Safe disposal techniques in accordance with the labeling shall be employed when disposing of pesticide contaminated adsorptive materials.

(d) Pesticides shall be stored to prevent contact with water resulting from area cleanup, the intrusion of storm waters, leaks, or impounded or flowing waters, or any other source which represents a likely potential for flooding.

(e) Pesticides shall not be stored within 100 feet horizontally of a public water supply. Pesticides shall not be stored within 50 feet horizontally of a private water supply. An exemption from the requirements of this Paragraph may be granted by the Board upon receipt of written request for such exemption from the owner or operator of a storage facility. Each request shall describe existing conditions requiring such exemption. When reviewing exemption requests, the Board shall consider the potential for groundwater or aquifer contamination, such as whether drainage from the facility is designed to protect the public water supply and ensure that runoff from the facility would be directed away from the water source, or if the source is no longer used as a public or private water supply, or whether a well has been properly closed and sealed according to 15A NCAC 02C .0113.

(f) The person responsible for each pesticide storage facility shall also be responsible for the following:

- (1) compliance with all State and local fire codes and building codes and with all applicable State environmental laws and rules applicable to the type of facility;
- (2) development of a prefire plan for the storage facility. The plan shall be a description of the facility's plans and procedures for management of fires involving pesticides.
  - (A) one copy of the plan approved by the fire department or emergency services office having jurisdiction shall be maintained in the office of the storage facility for inspection by the Board;
  - (B) one copy of the plan shall be filed with the fire department or emergency services office having jurisdiction;
  - (C) a request shall be made in writing to the local fire department or emergency services office having jurisdiction for no less than an annual inspection of the facility.

(g) The person responsible for the storage facility shall upon discovery of any emergency such as a fire, spill, or unintended release of pesticides into the environment from the facility, notify the secretary of the Board if such emergency threatens the health, safety or welfare of man, animals, aquatic life, or damage to property. Such notification of the secretary does not preclude notification being given to the appropriate local fire department, emergency services office, or other State or federal agencies requiring such notification.

(h) Any person operating a storage facility shall maintain a current inventory list of the kinds of stored pesticides by brand name and formulation. An inventory list shall be considered current if it is updated every 30 days. A copy of this list shall be maintained in a separate location from the storage facility. This list shall be made available to the Board or its agents upon request.

(i) Pesticide applicators storing restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

*History Note:* Authority G.S. 143-437; 143-441; 143-461; 143-466;

*Eff. January 1, 1984;*  
*Amended Eff. November 1, 1989;*  
*Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1906      LARGE STORAGE FACILITY REQUIREMENTS: RUP**

- (a) In addition to Rule .1905 of this Section, the requirements of this Rule shall apply to large storage facilities.
- (b) Pesticides shall not be stored within 200 feet of the property line of any schools, hospitals, nursing homes, or other institutional facilities.
- (c) The person responsible for a large storage facility shall have a Board-approved contingency plan for the facility. The contingency plan shall be submitted to the Board. The Board shall consider such factors as the size of the facility, location in relation to the sensitive environmental areas, proximity to industrial, institutional and residential areas, type of pesticides to be stored, and description of the facility's capabilities to deal with emergencies resulting from operational procedures, accidental release, fires, floods, or other emergencies, to minimize, contain and prevent adverse effects from any release of pesticide.
- (d) Pesticide applicators storing 10,000 pounds or more of restricted use pesticides shall be subject to the same requirements as set forth in this Rule.

*History Note:      Authority G.S. 143-437; 143-441; 143-461; 143-466;*  
*Eff. January 1, 1984;*  
*Amended Eff. November 1, 1989;*  
*Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1907      PURPOSE AND IMPLEMENTATION OF CONTINGENCY PLAN**

The provisions of the contingency plan shall be carried out whenever there is a fire, explosion, spill, or other release of pesticides or pesticide contaminated materials which could threaten human health or the environment.

*History Note:      Authority G.S. 143-437; 143-441; 143-461; 143-466;*  
*Eff. January 1, 1984;*  
*Amended Eff. November 1, 1989;*  
*Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1908      CONTENT OF CONTINGENCY PLAN**

- (a) The contingency plan shall describe the actions facility personnel shall take to respond to fires, explosions, spills, or any other release of pesticides or pesticide contaminated materials to air, soil, or surface water at the facility.
- (b) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services.
- (c) The plan shall list names, addresses, and office and home phone numbers of all persons designated by the facility owner or operator to act as alternates who can be reached at any time of the day, seven days a week, and who are knowledgeable of the facility operational and emergency procedures. Where more than one person is listed, one shall be named as primary alternate, and others shall be listed in the order in which they will assume responsibility as alternates.

*History Note:      Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;*  
*Eff. January 1, 1984;*  
*Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1909      COPIES OF CONTINGENCY PLAN**

A copy of the contingency plan and all revisions to the plan shall be:

- (1) maintained at the facility; and
- (2) submitted to the North Carolina Pesticide Board in care of the North Carolina Department of Agriculture and Consumer Services, Pesticide Section.

*History Note:      Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;*  
*Eff. January 1, 1984;*  
*Readopted Eff. August 1, 2020.*

**02 NCAC 09L .1910      REVIEW AND RETURN OF CONTINGENCY PLAN**

*History Note:* Authority G.S. 143-437; 143-441; 143-461; 143-466;  
Eff. January 1, 1984;  
Amended Eff. November 1, 1989;  
Expired Eff. December 1, 2018 pursuant to G.S. 150B-21.3A.

#### **02 NCAC 09L .1911 AMENDMENT OF CONTINGENCY PLAN**

The contingency plan shall be reviewed and immediately amended and resubmitted to the Board, if necessary, whenever:

- (1) the plan fails in an emergency;
- (2) the facility changes -- in its design, construction, operation, or maintenance;
- (3) the list of alternate changes; or
- (4) the list of emergency equipment changes.

*History Note:* Authority G.S. 143-437; 143-441; 143-461; 143-466;  
Eff. January 1, 1984;  
Amended Eff. November 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.

#### **02 NCAC 09L .1912 COMMERCIAL PESTICIDE APPL STORAGE REQ: RUP**

*History Note:* Authority G.S. 143-437; 143-440; 143-441; 143-461; 143-466;  
Eff. January 1, 1984;  
Repealed Eff. November 1, 1989.

#### **02 NCAC 09L .1913 EFFECTIVE DATE OF STORAGE REGULATION**

*History Note:* Authority G.S. 143-441; 143-461;  
Eff. January 1, 1984;  
Repealed Eff. August 1, 2020.

#### **02 NCAC 09L .1914 BULK STORAGE REQUIREMENTS**

- (a) Outlets, filler, and access ports shall be locked at all times when not in use. Keys to the outlet, filler, and access ports shall be in the possession of the purchaser and his or her authorized employees only. Locks on ports are not required if bulk tanks are stored inside a facility to prevent unauthorized access to the bulk pesticide storage area.
- (b) All bulk pesticide storage tanks shall display the signal word as shown on the pesticide product label on all sides exposed to view. The words shall be either stenciled on the containers or storage tanks or placed on a sign of durable construction which is attached to the containers and storage tanks. All letters of said words shall be a minimum of four inches in height and one inch in width, and shall be printed in contrasting colors to the containers and storage tanks which are visible.
- (c) All bulk storage areas shall be posted with a durable sign stating "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY CALL \_\_\_\_\_"
- (d) Pesticide applicators utilizing bulk storage containers shall be subject to the same requirements as set forth in this Rule.

*History Note:* Authority G.S. 143-441; 143-461;  
Eff. April 1, 2009;  
Readopted Eff. August 1, 2020.

### **SECTION .2000 - CHEMIGATION**

#### **02 NCAC 09L .2001 DEFINITIONS**

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- (1) "Antisiphon Device" means any equipment that prevents the backflow of a pesticide into any water supply or the backflow of water into a pesticide supply. Antisiphon devices include automatic low pressure drain, check valve, flow interrupter, and vacuum relief valve.

- (2) "Automatic Low Pressure Drain" means a self-activating device to drain that portion of an irrigation pipeline whose contents could enter the water supply when operation of the irrigation system pumping plant fails or is shut down.
- (3) "Check Valve" means a device to provide a positive closure of an irrigation pipeline or pesticide injection line that prohibits the flow of pesticide or water in the opposite direction of that desired when operation of the irrigation system pumping plant or pesticide injection unit fails or is shut down.
- (4) "Chemigation" means any process whereby pesticides are applied to land, crops, or plants utilizing an irrigation system. Some examples are agricultural, nursery, turf, lawn, golf course, and greenhouse sites.
- (5) "Chemigation and/or Irrigation Water Supplies" means any source of water that is used for chemigation and/or irrigation to include private wells, public water systems, ground or surface water sources.
- (6) "Flow Interrupter" means a device that provides positive interruption or cessation of pesticide or water flow in either direction upon pesticide injection unit shutdown or failure.
- (7) "Functional Systems Interlock" means a system used to link irrigation pumps and pesticide injection units, other pumps or supply tanks so designed that in the event of irrigation pump malfunction or failure, shutdown of the pesticide injection units will occur.
- (8) "Inspection Port" means a place on the irrigation pipeline that can be utilized to determine visually if the check valve leaks.
- (9) "Irrigation" means the act of mechanically supplying water to land, crops and/or plants.
- (10) "Irrigation System" means any device or combination of devices having hose, pipe, or other conduit which connects directly to any water supply. The term does not include any handheld hose-end sprayer which is constructed so that an interruption in water flow prevents any backflow to the water supply.
- (11) "Public Water System" means:
  - (a) a system for the provision to the public of piped water for human consumption if such system has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes:
    - (i) any collection, treatment, storage, and distribution facility under control of the operator of such system and used in connection with such system; and
    - (ii) any collection or pre-treatment storage facility not under such control which is used primarily in connection with such system.
  - (b) It is either a "community water system" or a "non-community water system":
    - (i) Community Water System. A public water system which serves at least 15 service connections or regularly serves at least 25 year-round residents.
    - (ii) Non-Community Water System. A public water system which is not a community water system.
- (12) "Vacuum Relief Valve" means a device to relieve or break vacuum in an irrigation pipeline.

*History Note: Authority G.S. 143-463; 143-466;  
Eff. January 1, 1987;  
Readopted Eff. August 1, 2020.*

## **02 NCAC 09L .2002 APPLICATION OF PESTICIDES THROUGH IRRIGATION SYSTEMS**

- (a) Irrigation systems shall be fitted with antisiphon devices and a functional systems interlock that will prevent the backflow of pesticide or pesticide-water mixtures into water supplies or the backflow of water or pesticide-water mixtures into pesticide supplies during times of irrigation system failure or equipment shutdown.
- (b) Pesticides shall not be injected into an irrigation system on the suction side of the irrigation pump.
- (c) Safety devices or valves shall be installed between:
  - (1) the irrigation system pump discharge and the point of pesticide injection into the irrigation system, and
  - (2) the point of pesticide injection into the irrigation system and the pesticide tank or container in accordance with Rule .2002(d).
- (d) Such systems shall meet the following criteria:
  - (1) double check valves shall be located between the irrigation pump discharge and the point of pesticide injection into the irrigation pipeline. These valves, when installed, shall be on a horizontal plane and level. A deviation of not more than 10 degrees from the horizontal shall be set;
  - (2) an inspection port shall be located between the irrigation pump discharge and the mainline check valves. In many cases, the vacuum relief valve connection can serve as the inspection port;

- (3) a vacuum relief valve shall be located on the top of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. The vacuum relief valve shall have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter;
- (4) an automatic low pressure drain shall be located on the bottom of the horizontal irrigation pipeline between the discharge side of the irrigation pump and the inlet side of the double check valves. Such device shall be level and have an orifice size of at least 3/4 inch for a 4-inch diameter irrigation pipe. The orifice size shall increase proportionally to an increase in irrigation pipe diameter. The drain shall not extend beyond the inside surface of the bottom of the irrigation pipeline and shall be at least two inches above grade. The automatic low pressure drain shall discharge at least 20 feet from any water supply. The discharge from the drain shall be controlled to prevent the drainage from reentering the water supply;
- (5) a flow interrupter device shall be located in the pesticide supply line between the pesticide injection unit and the pesticide supply tank or container. A closed solenoid-operated valve or other similar device is an acceptable method to prevent flow of pesticide or water in either direction during pesticide injection system failure or shutdown;
- (6) a check valve shall be located on the pesticide injection line between the point of pesticide injection into the irrigation system and the pesticide injection unit to prevent the overflow of the pesticide supply tank or container; and
- (7) a functional systems interlock shall be provided. If interruption of the irrigation water flow occurs, the interlock must, at a minimum, cause the shutdown of the pesticide injection unit. If the irrigation pump and pesticide injection unit are at different sites, a low pressure cutoff, located near the point of pesticide injection into the irrigation system, may be electrically connected to the pesticide injection unit to provide for its shutdown in the event of low water pressure.

*History Note:* Authority G.S. 143-463; 143-466;  
Eff. January 1, 1987;  
Readopted Eff. August 1, 2020.

#### **02 NCAC 09L .2003 PROHIBITION OF CONNECTION TO A PUBLIC WATER SYSTEM**

- (a) An irrigation system used for pesticide application shall not be connected to a public water system.
- (b) The water from a public water system shall be discharged into a reservoir tank.
- (c) There shall be a physical break (air gap) between the outlet end of the fill pipe and the top or overflow rim of the reservoir tank of at least twice the inside diameter of the fill pipe.

*History Note:* Authority G.S. 143-463; 143-466;  
Eff. January 1, 1987;  
Readopted Eff. August 1, 2020.

#### **02 NCAC 09L .2004 INSPECTION: INSTALLATION: MAINTENANCE AND MODIFICATIONS**

- (a) Antisiphon devices and a functional systems interlock, used for chemigation purposes, shall be installed and maintained in accordance with manufacturer's directions during chemigation.
- (b) During periods of chemigation, the system operator shall inspect the antisiphon devices and the functional systems interlock to ensure that they are functioning properly per the manufacturer's directions.
- (c) If modifications or changes in design, technology, irrigation practices, or other reasons warrant the use or placement of equipment in lieu of that specified in Paragraphs (a) and (b) of this Rule, the Pesticide Board may allow for such changes in advance of use, provided protection to the water supply is at least equal to that provided by the equipment, or placement thereof, required in this Rule.
- (d) Inspections of an irrigation system utilized for chemigation may be made at any time by a representative of the Pesticide Section, North Carolina Department of Agriculture. Whenever any such equipment is determined not to be in compliance with this Section, the owner or operator shall be issued a stop use order, and the equipment shall not be used for the purpose of applying pesticide(s) until such time as proper repairs or alterations are made and the stop use order is released by official notice from the North Carolina Department of Agriculture.

*History Note:* Authority G.S. 143-463; 143-466;  
Eff. January 1, 1987;

*Readopted Eff. August 1, 2020.*

## **SECTION .2100 - HEARING RULES OF THE NORTH CAROLINA PESTICIDE BOARD**

### **02 NCAC 09L .2101 NOTICE OF HEARING: ANSWER**

- (a) The contents and manner of service of notice of hearing in a contested case shall be as prescribed in G.S. 150B-38(b) and (c).
- (b) Any party who has been served with notice of hearing may file a written response as prescribed in G.S. 150B-38(d).

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .2102 RIGHT TO HEARING**

- (a) Contested Cases. Disciplinary proceedings to enforce the provisions of North Carolina Pesticide Law of 1971 and 2 NCAC 9L are deemed to be "contested cases" within the meaning of G.S. 150B-2, and any person subject to such proceedings shall be given notice and the opportunity to be heard.
- (b) Summary Suspension. Nothing within Paragraph (a) of this Rule shall abridge the right of the Board to summarily suspend a license or certification prior to hearing pursuant to G.S. 150B-3(c).

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .2103 LOCATION OF HEARING**

The location of the hearing in a contested case shall be as prescribed in G.S. 150B-38(e).

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .2104 INTERVENTION; DISCOVERY**

- (a) The intervention of persons not initially parties to a contested case is governed by G.S. 150B-38(f). Petitions or motions to intervene must be in writing. The Board shall promptly determine whether to grant or deny intervention and shall so notify the petitioner and all parties in writing.
- (b) Parties in a contested case may engage in discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

*History Note: Authority G.S. 143-437; 150B-38; 150B-39;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

### **02 NCAC 09L .2105 SUBPOENAS**

The authority of the Board to issue or revoke subpoenas in preparation for, or in the conduct of, contested cases is governed by G.S. 150B-39. If a subpoena is issued at the request of a party and not on the Board's own motion, that party shall bear the cost of service.

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

## **02 NCAC 09L .2106 CONDUCT OF HEARING**

(a) Hearings in contested cases shall be conducted by a majority of the Board. The chairman shall serve as presiding officer unless he is absent or disqualified, in which case the vice-chairman shall preside. Hearings shall be conducted as prescribed in G.S. 150B-40.

(b) Disqualification. An affidavit seeking disqualification of any Board member, if filed in good faith and in a timely manner, will be ruled on by the remaining members of the Board. An affidavit is considered timely if it is filed:

- (1) Prior to the hearing; or
- (2) As soon after the commencement of the hearing as the affiant becomes aware of facts which give rise to his belief that a Board member should be disqualified.

(c) Evidence. The admission of evidence in a hearing in a contested case shall be as prescribed in G.S. 150B-41.

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

## **02 NCAC 09L .2107 DECISION OF BOARD**

(a) The form and content of the Board's decision in a contested case shall be as prescribed by G.S. 150B-42(a), and its decision shall be served upon the parties in a manner consistent with said statute.

(b) The official record of the hearing in a contested case shall contain those items specified in G.S. 150B-42(b).

*History Note: Authority G.S. 143-437; 150B-38;  
Eff. February 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*

## **SECTION .2200 - INTERIM PROTECTION MEASURES FOR THE CAROLINA HEELSPLITTER MUSSEL**

### **02 NCAC 09L .2201 DEFINITIONS**

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460.

*History Note: Authority G.S. 143-458; 143-466(a);  
Eff. July 1, 2009;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .2202 PESTICIDE USE LIMITATION AREAS**

The table in 02 NCAC 09L .2203 contains pesticide active ingredients that have specific limitations on pesticide use in order to protect the federally listed endangered species Carolina heelsplitter (*Lasmigona decorata*) in Union County, NC, in the vicinity of:

- (1) the main stem of Goose Creek from the NC Highway 218 bridge, downstream to its confluence with the Rocky River;
- (2) the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek; and
- (3) the main stem of Waxhaw Creek, from NC Highway 200 bridge, downstream to the North Carolina/South Carolina State line.

*History Note: Authority G.S. 143-458; 143-466(a);  
Eff. July 1, 2009;  
Readopted Eff. August 1, 2020.*

### **02 NCAC 09L .2203 PESTICIDES WITH ADDITIONAL USE LIMITATIONS**

The application of any of the following pesticides in the vicinity of the areas identified in Rule .2202 of this Section shall not occur within the areas identified by the codes in the following table:

<b>Pesticide Active Ingredient</b>	<b>Code</b>
Azinphos-methyl	2x
Benomyl	1x
Captan	1x
Carbaryl	2x
Carbofuran	1x
Chlorpyrifos	3z
Diazinon	2x
Dicofol	2x
Dimethoate	2x
Endosulfan	2x
Esfenvalerate	1x
Ethion	2x
Ethoprop	1x
Fenamiphos	2x
Fonofos	2x
Malathion	2x
Methidathion	2x
Methomyl	1x
Mevinphos	2x
Naled	1x
Parathion (ethyl)	2x
Pendimethalin	2x
Permethrin	1x
Phorate	1x
Phosmet	1x
Phosphamidon	1x
Propiconazole	1x
Pyrethrins	2x
Terbufos	2x
Trichlorfon	2x

Code/Limitations:

- (1) 1x - Within the area described in Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 20 yards from the edge of water for ground applications and within 100 yards for aerial applications;
- (2) 2x - Within the area described in Rule .2202 of this Section, and one-half mile up all streams that join the area, this pesticide shall not be applied within 40 yards from the edge of water for ground applications and within 200 yards for aerial applications;
- (3) 3z - Within the area described in Rule .2202 of this Section, this pesticide shall not be applied within 100 yards from the edge of water for ground applications and within one-fourth mile for aerial applications.

*History Note:* Authority G.S. 143-458; 143-466(a);  
 Eff. July 1, 2009;  
 Readopted Eff. August 1, 2020.

## **SUBCHAPTER 09M - DRUGS**

### **02 NCAC 09M .0101 MANUFACTURER REGISTRATION**

(a) Every person doing business in North Carolina and operating as a prescription drug manufacturer, repackager or wholesaler shall submit a completed prescription drug registration form to the department. A separate registration form shall be submitted for each establishment operating in the State of North Carolina. Each registration form shall be signed by the owner or individual in charge.



- (b) A fee of five hundred dollars (\$500.00) for manufacturers or repackagers and a fee of three hundred fifty dollars (\$350.00) for wholesalers shall be submitted with each registration or renewal form.
- (c) On or before December 31 of each year, every person registered in accordance with Paragraph (a) of this Rule shall submit a renewal form furnished by the division.
- (d) Prescription Drug Registration Forms may be obtained from the Food and Drug Protection Division.

*History Note:* Authority G.S. 106-140.1;  
Eff. June 1, 1988;  
Amended Eff. January 1, 1992;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

**02 NCAC 09M .0102 ADOPTION BY REFERENCE**

*History Note:* Authority G.S. 106-145.12; 106-145.10;  
Eff. July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule Expired April 1, 2015.

**02 NCAC 09M .0103 DUTY TO VERIFY SUPPLIERS**

Wholesale prescription drug distributors that have distribution facilities in North Carolina shall not purchase or accept delivery of a prescription drug from suppliers that are not licensed or registered to ship or sell in or into North Carolina.

*History Note:* Authority G.S. 106-145.12; 106-145.1;  
Eff. July 1, 2010;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

**SUBCHAPTER 09N – INFANT FORMULA**

**02 NCAC 09N .0101 INFANT FORMULA STANDARD OF QUALITY**

- (a) Infant formula shall not be sold, held for sale or offered for sale after the "use by" date appearing on the label.
- (b) For the purpose of this Rule, "infant formula" shall have the same meaning as in the Federal Food Drug and Cosmetic Act at 21 United States Code, Section 321.

*History Note:* Authority G.S. 106-128;  
Eff. January 1, 2005;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22, 2015.

**SUBCHAPTER 09O – MARKETING OF SHELL EGGS**

**SECTION .0100 - DEFINITIONS AND STANDARDS**

**02 NCAC 09O .0101 DEFINITIONS**

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

- (1) "Inedible" means eggs of the following descriptions: black rots, yellow rots, white rots, mixed rots, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).
- (2) "Leaker" means an individual egg that has a crack or break in the shell.
- (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, 21 U.S.C. 342.

- (4) "Ungraded Eggs" means eggs as collected from the production unit and placed into retail channels without being graded or segregated for quality, soundness of shell, or size; except that checks, dirties, or other obvious defects may have been removed at time of collection.
- (5) "Baluts" means eggs that are fertile and incubated beyond the blood ring stage.
- (6) "Fertile" means an egg capable of developing into an embryo.
- (7) "Organic" means eggs produced in accordance with applicable federal standards for organic product, according to the United States Department of Agriculture's National Organic Program.
- (8) "Free Range" means eggs produced from laying chickens that are "cage free" or have access to a outdoors environment.

*History Note: Authority G.S. 106-245.16; 106-245.21;  
Eff. August 1, 1982;  
Amended Eff. July 1, 1998; December 1, 1987;  
Transferred from 02 NCAC 43H .0101 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*

#### **02 NCAC 090 .0102 LOOSE EGG DISPLAYS**

- (a) A loose egg display shall be deemed to meet the requirements of G.S. 106-245.18 when the display is labeled with the correct grade and size.
- (b) The block letters of the label shall be at least three-eighths of an inch in height.
- (c) The grade and size shall be written or printed on or otherwise attached to or associated with the container or display of such eggs, and such designation shall be visible to the public when the eggs or containers of such eggs are visible to the public.
- (d) Retailers may display eggs in bulk without the grade and size designated thereon when such eggs are purchased directly from persons eligible to sell ungraded eggs, and if the display is labeled with the words, "Ungraded Eggs". This label shall be bold legible letters at least three-eighths inch high.

*History Note: Authority G.S. 106-245.15; 106-245.18; 106-245.21;  
Eff. August 1, 1982;  
Amended Eff. December 1, 2011;  
Transferred from 02 NCAC 43H .0102 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.*

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

- (a) The United States Standards, Grades, and Weight Classes for Shell Eggs, adopted by the Agricultural Marketing Service of the United States Department of Agriculture as AMS-56, are incorporated by reference including subsequent amendments and editions, and shall apply to all shell eggs sold, offered for sale, or advertised for sale in this State, except the term "ungraded eggs" may be used to designate eggs exempt from grading pursuant to G.S. 106-245.15. Copies can be found on the USDA AMS website at <https://www.ams.usda.gov/grades-standards/shell-egg-grades-and-standards>.
- (b) Title 9, Code of Federal Regulations, Part 590, Inspection of Eggs and Egg Products, is incorporated by reference including subsequent amendments and editions.
- (c) Cracked or checked eggs may be sold by producers or processors to a consumer for his or her personal use, but shall not be sold to an "institutional consumer" as defined in G.S. 106-245.14. Such sales shall be made only at the premises where the cracked or checked eggs were produced or processed.
- (d) Cracked or checked eggs may also be sold to a processing plant by a producer or processor for further processing.
- (e) It shall be unlawful for cracked or checked eggs to be displayed, sold, or offered for sale in a retail outlet except as permitted by Rule .0101(4) of this Section and Paragraph (a) of this Rule.
- (f) Except when sold directly by the producer to the consumer, it shall be unlawful to offer for sale any repackaged eggs at any retail outlet.

*History Note: Authority G.S. 106-245.16; 106-245.21;  
Eff. August 1, 1982;  
Amended Eff. July 1, 2005; April 1, 1988; December 1, 1987;  
Transferred from 02 NCAC 43H .0103 Eff. May 1, 2012;  
Amended Eff. January 1, 2015;  
Readopted Eff. March 1, 2017.*

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

(a) The sanitation requirements of G.S. 106-245.22 shall be deemed to be met when facilities conform to the requirements of 7 C.F.R. Section 56.76 which is incorporated by reference including subsequent amendments and editions.

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

*History Note: Authority G.S. 106-245.16; 106-245.21; 106-245.22;  
Eff. August 1, 1982;  
Amended Eff. December 1, 1991; December 1, 1987;  
Transferred from 02 NCAC 43H .0104 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.*

**02 NCAC 090 .0105 SALE OF INEDIBLE OR LOSS EGGS TO CONSUMER PROHIBITED**

Inedible or loss eggs shall not be sold or offered for sale for human consumption in North Carolina.

*History Note: Authority G.S. 106-245.16; 106-245.21; 106-245.22;  
Eff. August 1, 1982;  
Transferred from 02 NCAC 43H .0105 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.*

**02 NCAC 090 .0106 DETERMINING GRADES**

The final determination as to eggs meeting grade requirements shall be made by candling.

*History Note: Authority G.S. 106-245.15; 106-245.16; 106-245.19; 106-245.21;  
Eff. August 1, 1982;  
Transferred from 02 NCAC 43H .0106 Eff. May 1, 2012;  
Readopted Eff. March 1, 2017.*

**02 NCAC 090 .0107 SPECIAL REQUIREMENTS**

(a) Baluts are exempt from the standards for shell eggs set forth in Rules .0103 and .0105 of this Section. After incubation, eggs suited for use as baluts shall be labeled with the word "embryo" or "balut" preceded by the name of the kind of poultry, or labeled as "Incubated Fertile Eggs." Labeling must include the complete name and address of the hatchery with letters no less than three-eighths of one inch high.

(b) In addition to all other applicable labeling requirements, eggs marketed and labeled as organically produced shall be certified by a State or federal agency or an accrediting organization recognized by a State or Federal agency, and shall be identified on primary container.

(c) In addition to all other marketing requirements, eggs labeled and marketed as free range eggs shall be identified and otherwise handled to maintain their identity through processing and packaging. Satisfactory evidence that the eggs are from production locations with cage-free birds or that have access to an outdoors range shall be furnished by any person marketing these eggs to a retailer, institutional consumer, or other person and shall be kept on file by both the person selling and the purchaser at their respective places of business for a period of at least 30 days.

(d) Eggs of a specific nature such as "Fertile" or "Brown" and eggs produced in accordance with applicable federal or State standards may be labeled as such if these eggs meet all other applicable requirements.

*History Note: Authority G.S. 106-245.16; 106-245.21;  
Eff. July 1, 1998;  
Transferred from 02 NCAC 43H .0107 Eff. May 1, 2012;  
Readopted Eff. May 1, 2017.*