INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF RULES

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

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

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

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

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

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

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

NORTH CAROLINA ADMINISTRATIVE CODE

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

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

(1) In looseleaf pages at a minimum cost of two dollars and 50 cents ($2.50) for 10 pages or less, plus fifteen cents ($0.15) per each additional page.

(2) On microfiche. The microfiche edition is revised semi-annually (March and October) and can be purchased for forty dollars ($40.00) per edition. Due to the volume of the Code, the complete copy can only be purchased on microfiche. The NCAC on microfiche is updated monthly by publication of a “List of Rules Affected” which sets out rules filed the previous month, the action taken, and the effective date of the change. This list is published in the North Carolina Register.

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

NOTE

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

CITATION TO THE NORTH CAROLINA REGISTER

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

North Carolina Register. Published monthly by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions ninety-five dollars ($95.00) per year.

North Carolina Administrative Code. Published in March and October by the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, North Carolina 27604, pursuant to Chapter 150B of the General Statutes. Subscriptions forty dollars ($40.00) per edition.
ISSUE CONTENTS

I. STATEMENT OF ORGANIZATION
   CPA Examiners .................. 133
   Natural Resources and Community Development ..... 133

II. PROPOSED RULES
   Commerce
      Milk Commission ............... 135
   Human Resources
      Div. of Health Services ..... 169
      Div. of Medical Assistance 181
   Labor
      Boiler and Pressure Vessel Division ............. 189
   Natural Resources and Community Development
      Environmental Management Commission .......... 190
      Marine Fisheries
         Commission ................... 191
      Wildlife Resources Commission ................. 205
   Licensing Boards
      CPA Examiners ................ 206
      Board of Occupational Therapy ................. 206
      Board of Pharmacy ................ 208
   Department of Community Colleges
      Community Colleges ................ 210

III. FINAL RULES
   Department of Corrections ........ 213
   Department of Transportation ........ 213

IV. LIST OF RULES AFFECTED
   Volume 10, No. 4 ................ 217
      (July 1, 1986)

V. CUMULATIVE INDEX .............. 221
NORTH CAROLINA REGISTER
Publication Deadlines and Schedules
(April 1986 - March 1987)

<table>
<thead>
<tr>
<th>Issue Date</th>
<th>Last Day for Filing</th>
<th>Last Day for Electronic Filing</th>
<th>Earliest Date for Hearing</th>
<th>Earliest Date for Adoption</th>
<th>Earliest Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>04/15/86</td>
<td>03/25/86</td>
<td>04/01/86</td>
<td>05/15/86</td>
<td>06/14/86</td>
<td>08/01/86</td>
</tr>
<tr>
<td>05/15/86</td>
<td>04/24/86</td>
<td>05/01/86</td>
<td>06/14/86</td>
<td>07/14/86</td>
<td>09/01/86</td>
</tr>
<tr>
<td>06/16/86</td>
<td>05/27/86</td>
<td>06/03/86</td>
<td>07/16/86</td>
<td>08/15/86</td>
<td>10/01/86</td>
</tr>
<tr>
<td>07/15/86</td>
<td>06/25/86</td>
<td>07/02/86</td>
<td>08/14/86</td>
<td>09/13/86</td>
<td>11/01/86</td>
</tr>
<tr>
<td>08/15/86</td>
<td>07/28/86</td>
<td>08/04/86</td>
<td>09/14/86</td>
<td>10/14/86</td>
<td>12/01/86</td>
</tr>
<tr>
<td>09/15/86</td>
<td>08/26/86</td>
<td>09/02/86</td>
<td>10/15/86</td>
<td>11/14/86</td>
<td>01/01/87</td>
</tr>
<tr>
<td>10/15/86</td>
<td>09/25/86</td>
<td>10/02/86</td>
<td>11/14/86</td>
<td>12/14/86</td>
<td>02/01/87</td>
</tr>
<tr>
<td>11/14/86</td>
<td>10/23/86</td>
<td>10/30/86</td>
<td>12/14/86</td>
<td>01/13/87</td>
<td>03/01/87</td>
</tr>
<tr>
<td>12/15/86</td>
<td>11/25/86</td>
<td>12/02/86</td>
<td>01/14/87</td>
<td>02/13/87</td>
<td>04/01/87</td>
</tr>
<tr>
<td>01/15/87</td>
<td>12/29/86</td>
<td>01/05/87</td>
<td>02/14/87</td>
<td>03/16/87</td>
<td>05/01/87</td>
</tr>
<tr>
<td>02/16/87</td>
<td>01/26/87</td>
<td>02/02/87</td>
<td>03/12/87</td>
<td>04/17/87</td>
<td>06/01/87</td>
</tr>
<tr>
<td>03/16/87</td>
<td>02/23/87</td>
<td>03/02/87</td>
<td>04/15/87</td>
<td>05/15/87</td>
<td>07/01/87</td>
</tr>
</tbody>
</table>
STATEMENT OF ORGANIZATION

NORTH CAROLINA
STATE BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

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

The board has these primary responsibilities:

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

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

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

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

NORTH CAROLINA DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

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

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

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

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

The Department is organized into twelve divisions as follows:

1. Environmental management;
2. Marine fisheries;
3. Parks & recreation;
4. Forest resources;
5. Land resources;
6. Community assistance;
7. Economic opportunity;
8. Employment & training;
9. Soil & water;
10. N.C. Zoological Park;
11. Water resources; and
12. Coastal management.

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

The public may obtain

NORTH CAROLINA REGISTER 133
information about and make submissions or requests to the Department of Natural Resources and Community Development in person at 512 N. Salisbury Street, Raleigh, North Carolina 27611, and by telephone at (919) 733-4984.
PROPOSED RULES

NORTH CAROLINA MILK COMMISSION

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

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

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

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

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

TITLE 4 - COMMERCE
CHAPTER 7 - MILK COMMISSION
SECTION .0300 - PETITIONS:
HEARINGS: EMERGENCY RULES:
DECLARATORY RULINGS:
CONTESTED CASES

.0302 RULE-MAKING HEARINGS
(3) Notice of a rule-making hearing shall be made by the commission at least 10 days prior to the date such hearing is to be held. The notice shall set forth the matters to be heard and the time and place of the hearing. Notice shall be given those persons likely to be affected by any commission action arising from the hearing, and to those persons who have requested in writing, notice of commission hearings in the particular subject area. Notice of hearing on matters of general or widespread interest shall be made by publication of the hearing notice in one or more daily newspapers of general circulation in the North Carolina Register.

.0303 EMERGENCY
TEMPORARY
RULES

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

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

.0501 DEFINITIONS
For the purpose of the marketing regulations, the following terms or words shall mean:
(2) "Marketing area" means the area designated by the commission including all the

NORTH CAROLINA REGISTER 135
territory within the counties designated for the area.

(5) "Classification" means the classifying of milk and fluid milk products into classes according to utilization for a designated delivery period.

(6) "Delivery period" means the calendar month or approved accounting period.

(7) "Breed milk" means milk produced by a herd of registered or American grade cattle of a specified nationally recognized breed which is labeled advertised and sold by a distributor as breed milk for a premium price, not less than one cent ($0.01) per quart.

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


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

(a) "Lowfat Fresh White Milk." Lowfat fresh white milk is fresh milk from which a sufficient portion of milkfat has been removed to reduce its milkfat content to not less than 0.50 percent and not more than 2.0 percent.

(b) "Lowfat Reconstituted or Recombined Milk." Lowfat white reconstituted or recombined milk which shall mean milk which is a result of the mixing of milk solids and water with any off or combination of fresh whole milk, fresh skim milk, milkfat, which results in a product containing not less than 0.50 percent and not more than 2.0 percent milkfat.

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

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

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

(f) "Ultra Pasteurized Milk." Ultra pasteurized milk is milk which has been thermally processed at or above 250 degrees F. (120 degrees C) for at least two seconds so as to produce a product which has an extended shelf life under refrigerated conditions.

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


(2) "North Carolina Marketing Area." The "North Carolina marketing area", hereinafter called the marketing area.
means all the territory within the boundaries of the state of North Carolina including all waterfront facilities connected therewith and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments.

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

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

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


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

(8) "Filled Milk." Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milk fat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid product, and contains less than 6 percent nonmilk fat (or oil).

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

(10) "Ultra Pasteurized Milk." Ultra pasteurized milk is milk which has been thermally processed at or above 260 degrees F. (138 degrees C.) for at least 2 seconds so as to produce a product which has an extended shelf life under refrigerated conditions.

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

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

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

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

(a) A plant located within a marketing area that is approved by a duly constituted regulatory agency for the processing or packaging of Grade A milk and from which the
the marketing area. Such plant shall be exempt from all pooling provisions of these Rules and regulations.

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

(16) "Handler" means:
(a) Any person in his capacity as the operator of one or more pool plants;
(b) A cooperative association with respect to milk of producers diverted to nonpool plants for the account of such association pursuant to subsection (20) of this Rule, excluding the milk of producers diverted by the association as a handler pursuant to paragraph (a) of this subsection;
(c) Any cooperative association with respect to milk, excluding the milk of producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this subsection, that is received for its account from the farm of a producer for delivery to a pool plant of another handler, in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the Milk Commission prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler of such milk and will purchase such milk on the basis of weights determined or from the measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;
(d) Any person who operates an unregulated plant; and
(e) A producer-handler.
(17) "Producer-handler" means any person:
(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;
(b) Who receives no fluid milk products from sources other than his own farm production, pool plants and other Federal order plants;
(c) Whose receipts of fluid milk products from pool plants and other Federal order plants do not exceed a daily average of 1,500 pounds during the month;
(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants;

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

(19) "Baseholding Producer" means a producer who holds a North Carolina Milk Commission base that has been established or acquired in accordance with Rule 139 (16) and who produces milk approved by a duly constituted regulatory agency for fluid consumption, whose milk is:
(a) Received at a pool plant directly from such person;
(ii) Received by a handler described in subsection (16) of this Rule; or,
(iii) Diverted from a pool plant in accordance with subsection (20) of this Rule.

(b) "Baseholding Producer" shall not include:
(i) A producer-handler as described in subsection (17) of this Rule;
(ii) A governmental agency operating a plant exempt pursuant to subsection (15)(d) of this Rule; or,
(iii) A producer whose milk qualifies for pooling in another pool.

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

NORTH CAROLINA REGISTER 139
baseholding producer milk that, such cooperative caused that month to be diverted to or diverted from pool plants;
(iii) A handler described in subsection (16) of this Rule, that is not a cooperative association may divert for its account any milk that is not under the control of a cooperative association. The total quantity of milk so diverted shall not exceed one-fourth of the milk that is physically received at or diverted from pool plants as producer milk of such handler in each month of August through November and January and February.

(2) Any milk diverted "from any and using "baselholding producer milk" means the skim milk and butterfat contained in the milk of North Carolina base-holding producers that is not eligible to participate in the North Carolina pool for the following reasons:
(a) Any milk diverted in excess of the limits prescribed in paragraph (20)(d)(i) or (iii) of this Rule shall not be pool baseholding producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be pool baseholding producer milk. If the handler fails to make such designation, no milk diverted by such handler pursuant to this paragraph shall be pool producer baseholding milk.
(b) To the extent that it would result in nonpool status for the pool plant from which diverted, milk diverted for the account of a cooperative association shall not be baseholding producer milk:
(c) The cooperative association shall designate the dairy farmer deliveries that are not baseholding producer milk pursuant to paragraph (2) of this subsection. If the diverting handler fails to make such designation, no milk diverted by such handler shall be baseholding producer milk.
(d) Any milk produced by a baseholding producer that qualifies for pooling in another pool shall not be included in the North Carolina pool.

(22) "Other source milk" means all skim milk and butterfat contained in or represented by:
(a) Receipts of fluid milk products and bulk products specified in Rule .0504 from any source other than producers or handlers described in subsection (16) of this Rule, or pool plants;
(b) Receipts in packaged form from other plants of products specified in Rule .0504;
(c) Products (other than fluid milk products, products specified in Rule .0504, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month and;
(d) Receipts of any milk products (other than fluid milk products or a product specified in Rule .0504) for which the handler fails to establish disposition.

(23) "Cooperative association" means any cooperative association of producers which the Milk Commission determines, after application by the association:
(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as "Capper-Volstead Act"; and,
(b) To have and to be exercising full authority in the sale of milk of its members.

.0503 DISTRIBUTOR (HANDLER) LICENSES

(a) No distributor (handler), subdistributor or any other person shall sell or offer for sale or otherwise distribute milk in any county located in any marketing area until a license has been obtained from the Milk Commission.
(b) The principal distributor or processing plant (handler) shall be charged with the responsibility of obtaining a license for his plant and his subdistributor before beginning distribution of milk in any county of a controlled area.
(c) A new applicant for a distributor (handler) or subdistributor license shall make application and receive a
license before handling, distributing, or offering for sale milk and/or milk products in fluid form for fluid consumption or use in any county of any marketing area.

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

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

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

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

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

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

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

5. Licenses issued by the commission shall be classified as follows:

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

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

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

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

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

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

.0504 CLASSIFICATION OF MILK

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

(b) Class I includes:

but is not limited to the following type milk product:

- homogenized milk
- raw milk
- white ice cream milk
- buttermilk
- plain and flake buttermilk
- lowfat flavored fresh milk
- lowfat flavored reconstituted or recombined milk
- lowfat white reconstituted or recombined milk
- skin milk fortified with added solids
- chocolate or flavored milks
- or milk drinks
- dietary modified milk
- sterile milk
- reconstituted milk and concentrated milk.

(c) Class I shall also include any volume of fluid loss or shrinkage in excess of three percent of each month’s reconciliation as computed in accordance with .0506(c) of this Section.
Any excessive loss computed which is to be paid as Class I to producers shall be paid in the producer payroll for the month following the month in which such loss occurred.

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

(4) Class I shall also include UHT milk and ultra pasteurized milk as defined in Rule 0.506(e) and (f).

(a) Class IA. Class IA shall include all bulk milk sold to other distributors or transferred between branches of the same company for fluid use as defined in Rule 0.506(a) of this Rule, including transfers for military usage for which a different producer price may apply. Also, Class IA shall include the sales of milk made directly to military installations for which a producer price different from the Class I price may apply.

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

(d) Class II. Class II includes all milk received and not accounted for in Class I and Class IA, including plant loss or shrinkage in excess of the specified portion of the total weight to account for as determined by the provisions of 0.506(f)(1) of this Section. Class II utilization must be supported by complete and accurate records maintained by the distributor which will account for the disposition and use of all milk and milk products received including the allowable shrinkage or plant loss.

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

The following provisions are also applicable to Class I:

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

(2) Class I shall also include any volume of fluid milk loss or shrinkage in excess of three percent of each month's reconciliation as computed in accordance with Rule 0.507. Any excessive loss computed which is to be paid in Class I shall be paid in the pool computation for the month following the month in which such loss occurred.

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

(b) Class IA. Class IA shall include all bulk milk sold to North Carolina distributors for fluid use as defined in Rule 0.508(a) of this Rule including transfers for military usage for which a different producer price may apply. The Class IA also includes the sales of milk made directly to military installations for which a producer price different from the Class I price may apply.

(c) Class II. Class II includes all milk received and not accounted for in Class I and Class IA, including plant loss or shrinkage in excess of three percent of the total weight to account for as determined by the provisions of Rule 0.508(a)(1). Class II utilization must be supported by complete and accurate records maintained by the distributor which will account for the disposition and use of all milk and milk products received including the allowable shrinkage or plant loss.

(d) Classification of transferred or diverted bulk milk and transfer of packaged milk.

NORTH CAROLINA REGISTER
(1) Transfer or diversion of bulk milk from the producers of a pool plant or pool cooperative to another pool plant shall be classified according to the classification usage of the receiving plant at North Carolina minimum prices. Hauling and handling charges incurred by a pool plant or cooperative in shipping such milk may be deducted from producers after the notification of classification of producer milk is received from the pool and shall be deducted in accordance with Rule .0513(f). The classified use of the milk shall be accounted for to the pool at the Class II price. Handling and hauling charges are permitted after the notification of classification of producer milk is received from the pool in accordance with Rule .0513(f) of this section.

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

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

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

.0505 RULES OF CLASSIFICATION (REPEAL)
.0506 COMPUTATION OF MILK

IN EACH CLASS WEIGHT FACTORS

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

<table>
<thead>
<tr>
<th>Producer Base Delivered</th>
<th>Class I</th>
<th>Class IA</th>
<th>Class II</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>15,000</td>
<td>10,000</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td>17,000</td>
<td>12,000</td>
<td>8,000</td>
</tr>
<tr>
<td></td>
<td>21,000</td>
<td>18,000</td>
<td>12,000</td>
</tr>
<tr>
<td></td>
<td>29,000</td>
<td>22,000</td>
<td>14,000</td>
</tr>
</tbody>
</table>

To obtain the Class I usage percent divide total Class I sales by total base. Example: 55,000 divided by 55,000 = 99.99%

This percent should be applied to each producer's sales however we find that producer #4 did not deliver 99.99% of his base.... (4,840 pounds) which he is entitled to in Class I. Therefore producer #4 is given all of his milk at Class I and a new percentage must be obtained so that the 4,840 pounds (4,840 - 5,000 = 1,160) of Class I milk may be divided between the other producers. This is obtained by subtracting the pounds #4 is given in Class I from the total Class I sales. The base of #4 is subtracted from the total bases (Example: 55,000 - 5,000 = 50,000).

A new percentage is obtained by dividing the new Class I total by the new base total (Example: 29,000 divided by 29,000 = 100%). This percent will then apply to each producer's base (except those eliminated as was producer #4). The quantity obtained for each producer will then be Class I milk and the total of all milk will account for the total Class I sales. Example:
1. $15,000 x 103.57\% = 15,526 \text{ pounds}
2. $8,000 x 103.57\% = 8,286 \text{ pounds}
3. $5,000 x 103.57\% = 5,170 \text{ pounds}
4. $5,000 x \text{determined} \neq 5,000 \text{ pounds}

**Total Class I 32,000 pounds**

**Class IA sales or use** is applied to producer's bases by the same procedure that is divide the last aggregate bases obtained for Class I into the total Class IA sales or use (Example: 2,000 divided by 20,000 = 7.14%).

Each producer's base is multiplied by this percent to obtain his quantity of Class IA milk except those eliminated as was producer #4.

1. $15,000 x 7.14\% = 1,071 \text{ pounds}
2. $8,000 x 7.14\% = 578 \text{ pounds}
3. $5,000 x 7.14\% = 357 \text{ pounds}
4. __________

**Total Class IA 2,000 pounds**

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

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

<table>
<thead>
<tr>
<th>Product</th>
<th>Weight Per Quart</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milk</td>
<td></td>
</tr>
<tr>
<td>Creamed Buttermilk (whole)</td>
<td></td>
</tr>
<tr>
<td>Flavored Milk/Milk Drink (net)</td>
<td></td>
</tr>
<tr>
<td>Skim Milk</td>
<td></td>
</tr>
<tr>
<td>Buttermilk</td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Weight Per Quart</th>
<th>Product</th>
<th>Product</th>
<th>Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.10</td>
<td>Cream (49.17%)</td>
<td>2.10</td>
<td>Cream (49.17%)</td>
</tr>
<tr>
<td>2.15</td>
<td>Cream (49.21%)</td>
<td>2.15</td>
<td>Cream (49.21%)</td>
</tr>
<tr>
<td>2.20</td>
<td>Cream (49.32%)</td>
<td>2.20</td>
<td>Cream (49.32%)</td>
</tr>
<tr>
<td>2.20</td>
<td>Cream (49.32%)</td>
<td>2.20</td>
<td>Cream (49.32%)</td>
</tr>
<tr>
<td>2.20</td>
<td>Cream (49.32%)</td>
<td>2.20</td>
<td>Cream (49.32%)</td>
</tr>
</tbody>
</table>

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

(c) The total pounds of breed milk sold by each distributor may be allocated in a uniform manner to producers of breed milk (including distributor-owned herds) and the remaining amount of milk delivered by breed producers (if any) shall be classified in Class II if the regular pool; if breed milk sales are classified in the regular pool, the minimum premium of twenty cents (20.00) per hundredweight for breed milk sales should be prorated to breed producers as a percentage of their established base.

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

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

(f) Add the weight of all milk and cream products containing butterfat or milk solids in any form received from producers or other sources; and the weight for any volume of milk reconstituted. Deduct from the resulting total weight computed in accordance with the above the weight of any cream powder or condensed received which is transferred directly for use in the manufacture of by-products such as ice cream and cottage cheese to determine a sub-total — Not receipts to account for.

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

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

Packaged and bulk sales and transfers (do not include animal feed sales) ending inventories.
solids in reconstitution, the weight of any unusual loss which is allowable as provided for in §509(h) of this Section; transfers to the manufacturing of by-products such as ice cream and cottage cheese less the weight of ingredients deducted in accordance with (e)(4) of this Rule, which were purchased for direct use in manufacturing by-products. The transfer weights to manufacturing must be supported by complete and adequate records. Such manufacturing records must be made available for inspection and audit purposes.

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

<table>
<thead>
<tr>
<th>Producer</th>
<th>Base Delivered</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15,000</td>
</tr>
<tr>
<td>2</td>
<td>8,000</td>
</tr>
<tr>
<td>3</td>
<td>5,000</td>
</tr>
<tr>
<td>4</td>
<td>3,000</td>
</tr>
<tr>
<td>--------</td>
<td>----------------</td>
</tr>
<tr>
<td>33,000</td>
<td>36,000</td>
</tr>
<tr>
<td>(28,000)</td>
<td></td>
</tr>
</tbody>
</table>

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

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

A new percentage is obtained by dividing the new Class I total by the new base total (Example: 29,000 divided by 28,000 = 103.57%). This percent will then be applied to each producer's base (except those eliminated, as was producer number 4). The quantity obtained for each producer will then be his Class I milk and the total...
of all will account for the total Class I sales. Example:

1. 15,000 x 103.57% = 15,536 lbs.
2. 8,000 x 103.57% = 8,285 lbs.
3. 5,000 x 103.57% = 5,178 lbs.
4. 5,000 x determined = 3,000 lbs.
Total Class I = 32,000 lbs.

The Class II milk is determined by subtracting the total Class I from the total deliveries of each producer.
(b) To compute the weight of product pounds to be classified in each class, multiply the respective units by the proper weight factor determined on the basis of the following weights per quart:

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

Butterfat Weight Content Per Quart
(3.25% min.) 2.15
(1-2%) 2.15
(.5-1%) 2.16
(.97%) 2.16
(.92%) 2.16
(3.25%) 2.00
(1.2% - 1.99%) 2.00
(4.0%) 2.00
(6% and above) 1.95
(10-17%) 2.13
(18-28%) 2.11
(29-44%) 2.09
(40-49%) 2.06

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

.0507 MINIMUM CLASS PRICES
AND BUTTERFAT DIFFERENTIALS
(a) Class I price for North Carolina Sales. Effective May 3, 1986, the minimum Class I price to be used for pool computations for all milk which is processed in North Carolina and sold or disposed of for consumption or use as processed fluid milk products in North Carolina and classified as Class I shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to a 3.5% butterfat basis as reported by the U.S. Department of Agriculture for the second preceding month plus four dollars ($4.00) per hundredweight. The price generated under this procedure shall be adjusted according to the procedures outlined in subparagraphs (a)(1) and (a)(2) of this Rule and the resulting price shall be announced in accordance with the procedure outlined in paragraph (a)(3) of this Rule.

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

The prevailing price shall be defined as the most frequently utilized, most common, or predominant price offered or quoted by producers or associations of producers to processors handlers or distributors located outside North Carolina for Class I fluid milk which is sold or disposed of for consumption or use as processed fluid milk products in North Carolina. The Class I fluid milk price offered or quoted by any cooperative or federation of cooperatives for at least 5% of the volume of Class I fluid milk sales shipped into North Carolina by processors handlers or distributors located outside North Carolina shall be considered to be the prevailing price.

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

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

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

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

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

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

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

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

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

(B) Federal Order Areas and South Carolina.

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

Prior to announcing the prevailing price, the Commission shall:

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

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

(ii) Should the Commission determine that processors handlers are paying various Class I prices and that a "prevailing price" as
defined for a state or federal order area cannot be conclu-
dsively determined, the
Commission may:
(I) announce the "prevailing price" for
regions, geographic territories or locales
within such state or federal order area; or
(II) announce as the price for an entire
state or entire federal order area a
price which it
considers to be fairly
representative of the
various prices in
effect in each state
or federal order area
by computing the
weighted average of
the Class I prices in
effect for an
appropriate area based
upon documented
invoice prices or
Class I payrolls for
non-members; or
(III) announce as the
price a weighted
average price as near
as it can be
determined of the
varying Class I
prices.

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

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

(c) Class IA Price.
The price to be paid North
Carolina producers or North
Carolina associations of
producers used for pool
computations for the product
pounds classified as Class IA
shall be the weighted average
price on a three and one-half
percent butterfat basis for sales
or transfers of milk
computed in accordance with the
provisions as outlined in
-0504(d) Rule -0504(b) of this
section. Further, the Executive
Secretary is authorized to
announce the minimum prices to
be paid producers used for pool
computations for milk used to
supply general issue and
commissary contracts for
military installations. The
minimum prices announced shall
be applicable to the paid made
during a specified period and
remain in effect for the
duration of the contract. After
all handler utilization reports
are received by the Commission,
Class IA product pounds shall be
pooled with Class I, and when
payment notification is returned
to the producer, Class IA
payment will be combined with
Class I.

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

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

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

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

In making payment to
each producer, a distributor
handler shall add the minimum of
the applicable butterfat
differential per
hundredweight for each 1/10 of one percent that each producer's milk is above three and one-half percent butterfat and shall not deduct more than the minimum of the applicable butterfat differential per hundredweight for each 1/10 of one percent that each producer's milk is below three and one-half percent butterfat.

(5) Premium for Breed Milk Sales. Each handler shall pay breed producers a minimum of twenty cents ($0.20) per hundredweight for all breed milk (sold by the distributor handler as breed milk at a premium price) in addition to the established Class I price.

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

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

.0508 PLANT SHRINKAGE

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

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

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

(3) Add to this sub-total

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

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

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

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

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

(5) When the actual loss or shrinkage exceeds the three percent amount determined in (a)(3) of this Rule, the excess loss or shrinkage must be added to the Class I volume for pool computations, except that the excess loss or shrinkage may be prorated based on the source of net receipts as computed in the net sub-total in (a)(1) of this Rule when the net receipts to account for in (a)(1) of this Rule include receipts of ingredients from sources other than producers or from reconstitution, determine the percent that producer receipts are to the sub-total -- not receipts to
account for. Apply this percent to any excessive loss or shrinkage to determine the weight adjustment to be added to Class I. Such adjustment shall be classified as Class I in the month following the month in which such loss occurs.

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

.0509 PRODUCER SETTLEMENT FUND

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

.0510 HANDLER AND PRODUCER PAYROLL REPORTS

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

(1) Receipts of all North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handler.

(2) Receipts of packaged milk from other handlers, receipts from reconstitution, and any or all other fluid milk products and bulk milk and cream products.

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

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

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

(1) Receipts of all North Carolina baseholding milk and receipts of milk from other sources including milk diverted from other pool plants to such handlers.

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

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

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

(a) After receiving the preliminary utilization reports filed by the handlers and associations of producers under the provisions of .0510 of this section, the Commission shall determine uniform prices for Class I and Class II milk.
containing 3.5 percent butterfat as follows:

(1) Determine the value of Class I milk utilized by each handler and association of producers.

(2) Determine the value of Class II milk utilized by each handler and association of producers.

(3) For any handler plant which is also fully regulated under a federal milk marketing order, adjust the Class I value computed for such handler either by:

(A) subtracting an amount equal to the amount of any payment remitted to a producer settlement fund of such federal milk marketing order for the previous settlement period, or by

(B) adding an amount equal to the amount of any payment received from the producer settlement fund of such federal milk marketing order for the previous settlement period, or by

(4) Add or deduct from the respective class any amount owed to, or credit due from the North Carolina pool for previous months resulting from corrections or adjustments.

(5) Combine the values in subsections (a)(1) through (a)(4) of this Rule to determine the Class I value and the Class II value upon the total pool obligation for each handler.

(6) Aggregate the values for Class I and Class II for all pool handlers to determine the total pool value for the Class I and Class II milk.

(7) To the resulting total pool values for Class I and Class II milk, add one-half of the reserve balance in the producer settlement fund for the previous month, operated between Class I and Class II on the basis of the percentage of utilization in each class.

(8) Divide the value determined for Class I and Class II milk for all handlers by the total volume of Class I and Class II milk respectively; the results being the average price per hundredweight for Class I and Class II milk respectively.

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

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

.0512 COMPUTATION OF SETTLEMENT FUND AMOUNTS

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

(1) Aggregate the total monthly bases of all active producers.

(2) Should the total bases of any handler group exceed production for the month, adjust the total bases to equal the total production for that handler for such month.

(3) Combine the total bases for each handler to determine the total base for the pool to be used in the allocation of Class I and Class II milk for each handler.

(4) Calculate the percentage of volume utilized in Class I to the total base for the pool and use this percentage to determine the volume to allocate to each handler in the pool as Class I.

(5) Subtract the Class I volume from the total volume purchased by each handler to determine the Class II volume.

(b) After determining the allocation of Class I and Class II milk due each handler group, apply the Class I and Class II uniform prices determined in .0510(h) of this section to these values to determine the value of milk due each group from the producer pool.

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

.0506 METHOD OF SETTLEMENT
(a) Final Settlement:
Each distributor in the
marketing area shall make full
and complete payment to
producers on or before the 15th day following the close of each
calendar month or approved
accounting period at not less
than the minimum class prices as
specified in .0507 of this Section.
(b) Partial Payments:
Upon request a partial
payment shall be paid to a
producer not later than the last
day of the delivery period for
milk received during the first
half of such delivery period. A
producer’s request for a partial
payment shall be honored for an
amount up to 40 percent of his
previous month’s net utilization
value computed to the nearest
one hundred dollars (+100.00); provided a sufficient volume of
milk has been delivered for the
first half of the month or pay
period to justify such payment.
Furthermore in determining the
amount of the partial payment to
be made the distributor may
make deductions for such partial
payments and such other deductions as are
authorized by the producer.
A producer may request
that a partial payment be made
on a regular basis or may request a single or limited
number of partial payments in
addition to the procedure
outlined. A distributor may make
partial payments to a producer
at such time or times and in
such amounts as may be agreed
upon between the two parties.
(c) Each distributor
shall make such deductions from
funds owed to a producer as
authorized by the producer.
(d) Each distributor shall
make the necessary adjustments
to such charge or deduction for
classification or payments to
producers for past delivery
periods.
(e) Statement to Producers:
Each distributor shall furnish
to each producer or association
of producers for each delivery
period a statement in writing
which may be retained by the
producer showing the following:
(1) the identity of
the distributor;
(2) the delivery period;
(3) producer base for
period;
(4) butterfat test;
(5) pounds of milk in
each class;
(6) class price;
(7) gross amount for
each class;
(8) each deduction made
by the distributor;
(9) not amount paid;
(10) An association of
producers may reimburse
processors to whom they sell
milk or a processor may make a
deduction from an individual
producer from whom milk is
purchased for the following
services and cost savings at the
rates listed:
(1) field services: four
cents (0.04) per
hundredweight;
(2) testing for butterfat,
bacteria and antibiotics:
three cents (0.03) per
hundredweight;
(3) preparing and compiling
receipts, payroll, filing
reports and preparing
checks: three cents (0.03)
per hundredweight;
(4) cost savings to an
association or an individual
producer resulting from the
receiving of milk on the
basis of producer weights
and tests:
ine cents (0.09) per
hundredweight;
(5) cost savings to an
association or an
individual producer
resulting from receiving
milk on a uniform basis:
three cents (0.03) per
hundred weight;
Prior to receiving a
reimbursement from an
association of producers a
written agreement between the
processor and the association of
producers must be on file with
the processor identifying those
services and cost savings which
will be performed by the
processor to whom such
association sells.
Prior to making a
deduction from an individual
producer a processor must have
a written authorization from
such producer identifying the
services and cost savings which
will be performed by the

NORTH CAROLINA REGISTER 153
processor to whom such producer sells.  

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

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

-0509 FINANCIAL RESPONSIBILITY FOR MILK RECEIVED BY BULK TANKER

A licensed milk distributor shall be financially responsible as determined by such distributor's monthly utilization for each producer's milk received from a farm bulk tank by the distributor or its agent or employee. In the absence of a written contract or agreement between the hauler and the producer (copy of which must be on file with the commission), a contract hauler or an independent hauler shall be deemed to be the agent of the distributor provided that any distributor within 20 days after the promulgation of this Regulation for within 40 days after any contract is hereafter made with a hauler may petition the commission for a hearing to determine whether the hauler is in fact the agent of the distributor. Nothing herein contained shall prevent the distributor from requiring the hauler (a) to obtain insurance, (b) to post bond, or (c) to agree to save the distributor harmless from any loss in connection with the handling of said milk; but no such agreement shall relieve the distributor from liability to the producer in the event the hauler or his insurer fails to pay the producer for said loss. Where milk is received from a producer's farm tank and transported to market by a producer cooperative association which is not a licensed milk distributor, the association shall be financially responsible to the producer for said milk until the milk is received by a licensed milk distributor.

-0510 ESTABLISHMENT OF PRODUCER'S BASES  

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

(1) Base Building Period: The base building period shall be September through December each year except for any group of producers for whom a different base building period has been approved by the Milk Commission. The commission will, however, give consideration to a different base building period approved by any group of producers provided such request is received by the commission at least 60 months prior to the effective date of such proposed period.

(2) Determination of Average Daily Bases: To compute the average daily bases, divide the total pounds of milk received by a distributor from each producer for the base forming period in effect by the number of days (from the first day of delivery during such base building period to the last day inclusive) but not less than 90 days. This 90-day requirement does not apply to a new producer establishing a base under the provisions set forth for new producers but applies only to established base holding producers who are off the market for a period of time during the base building period. The base for a producer who delivers on an every other day delivery schedule shall be computed by using the total number of days in the period calculated from the first day of delivery of such producer but not less than 90 days.

(3) Determination of Base and Establishing Use of Three-Year Average: The base for 1962 shall be computed in accordance with the rules in effect at the time of computation. Effective with the computation of bases for
1963 and for subsequent years, the average daily base for each producer shall be the simple average of the daily base earned or the daily average allocated to a producer in accordance with the provisions outlined in this Subsection for the three base building periods immediately preceding.

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

When the computation of base for a producer results in a base for the next year which exceeds +5 percent or the specified percentage of the base for the previous year, the base history for all three years shall be adjusted to +5 percent or the specified percentage of the base for the previous year.

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

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

(6) Filing of Bases with Commission and Notice to Individual Producers: On or before the 25th day of the month following the end of the base building period each year, every distributor shall file with the Milk Commission a complete record of the name and address of each producer and the base established in accordance with the provisions as outlined. At the time of the first payment under the new base or prior thereto each distributor shall notify each producer of the daily base established.

(b) Establishment of a Base for a New Producer: The establishment of a base for a new producer who enters or has entered the market after June 1, 1967 and who meets the qualifications outlined in this Subsection shall be calculated under the following plan:

<table>
<thead>
<tr>
<th>Month</th>
<th>Base Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Month</td>
<td>No Base</td>
</tr>
<tr>
<td>Second Month</td>
<td>25% of first month deliveries</td>
</tr>
<tr>
<td>Third Month</td>
<td>50% of first and second month deliveries</td>
</tr>
<tr>
<td>Fourth Month</td>
<td>75% of first and third month deliveries</td>
</tr>
<tr>
<td>Fifth Month</td>
<td>100% of first four months deliveries</td>
</tr>
</tbody>
</table>

A daily average shall be computed by dividing the deliveries by the number of days in the period. Apply to this computed daily base the above percent which is applicable in order to arrive at the daily base which will apply for a particular month. Provided, however, a base established in accordance with the above plan shall not exceed 3,000 pounds per day for producers who commence business under this Rule after June 7, 1967.

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

(1) For a producer establishing base under the three year moving average the base built under the new producer rule shall be considered the first year history. After making this computation, if a producer delivers 9+ days or more during the regular base building period the deliveries thus made shall be used to compute a second year history which will be averaged with the history established for the first year and such base shall remain in effect until the producer has delivered.
through a full base making period. After a producer has delivered through the next full base making period the deliveries shall be used to determine the third year history which will be averaged with the prior two histories to determine the next base for such producer. All subsequent bases shall be computed in accordance with the provisions in effect for all other producers.

(2) For a producer shipping to a plant under a special base plan, the base computed under the new producer provision shall be considered the first year history for such producer and shall remain in effect under such producer ships 30 days or more during a regular base building period after having made the computation for the first base. The next base for a producer under a special base plan shall be determined in accordance with the provisions of such plan.

(3) To qualify to build base under this provision, a producer must petition the commission in writing at least 90 days prior to the date he desires to commence building base and provide information which will show that such producer has not been a base holder or active participant in any market for a period of 36 months and that such producer during this 36 month period had less than one percent ownership either directly or indirectly nor has been an officer or director of a corporation nor has had a debtor or creditor relationship in any other dairy operation and must further certify that the proposed new operation is not in cooperation with a previous base holder who could not certify to the same circumstances and is not in anyway tied to a present Grade A dairy operation.

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

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

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

(e) Transfer of Base

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

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

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

(5) Use of Average Daily Base for Payment Purposes: All plants shall use the daily average in effect for individual producers multiplying this average times the number of days in a monthly payment period to determine the base to be
used for each producer for
the allocation of classes
during such payment period.
(2) Adjustment of Base
during Payment Period: When
a producer is off the market
during a period; the base
for such producer shall be
reduced by the number of
days such producer is off
the market in order to
determine the base which
will be used for this
producer for such payment
periods.
(3) A producer who has
established a base in any
marketing area in accordance
with the foregoing
paragraphs of this Rule
shall have the right to
retain in such base when his
daily deliveries of milk are
transferred to another
distributor within any
marketing area. A producer
who transfers from one
distributor to another
distributor during a base
forming period shall have
his base computed from his
total deliveries to both or
ally receiving distributors.
(4) A producer who has
established a base in any
marketing area shall be
entitled to continue to ship
all his milk to the milk
distributor where such base
is established provided
that the total milk
production less that
retained for family user is
derivered regularly and
meets the requirements of
the local and state laws and
regulations.
(5) Bases established each
year shall be used for
allocating classes of milk
until new bases become
effective.
(6) Transfer of Bases
between Producers and loss of
Base: A base shall be applied
only to deliveries of milk by
the producer for whose account
milk was delivered during the
base-forming period; except that
bases may be transferred; either
with or without the sale of
cattle; under the following
conditions:
(1) When the entire
base is sold or transferred
to a single producer; or
(2) When a minimum of
150 pounds of daily base is
sold or transferred to a
single producer; provided
that when a producer's
remaining base reaches a
level of less than 150
pounds; such base shall then
be considered his base and
may be sold as a single lot;
or
(3) When a base is held
jointly and such joint
holding is terminated; the
entire base may be
transferred or divided
between the joint holders
according to the ownership
of the base.
(4) A base established by
a new producer as provided
for in these rules shall not
be transferable under the
conditions set forth in this
Rule until the producer has
been an active shipper for
56 consecutive months from
the time such producer began
the establishment of the
base except in the event of
total disability or death of
the base holder. Should a
producer who has established
base under this provision
discontinue shipping prior
to being active for 56
months; then the base for
such producer shall expire.
(5) In all cases of
transfer of any base; the
owner of the base and the
person acquiring base must
notify; to the commission as
to the transaction no later
than 15 days following the
effective date of the
transfer.
(6) All such transfers
shall be made in the
following manner:
(A) Transfer Dates: Bases
sold shall be transferred
effective the first day of
the month in which a
transaction occurs. (For
example: if a transaction
occurs on the 15th or 30th
of a month; the effective
date of transfer will be the
first of the following
month.)
(B) Transfer of Base
History: Base history
shall be transferred in
the same proportion as the
"base in use" is
transferred.
(6) Transfer of Production
Credits: A producer who
purchases base shall be
entitled to his comparable
part of the seller's
production during the base
building period. The
production credits will be
transferred in the same
proportion as the "base in
use" is transferred.
(7) Retention of or
loss of Base: A producer who has an established base which is eligible for transfer shall be entitled to retain such base for a period of 12 months commencing on the first day of the month following the month during which the producer discontinues delivering milk to a Grade A milk plant subject to the provisions as outlined in this Subsection.

If the base is transferred during this 12-month period for base computation purposes a base history will be created equal to the base in effect without regard to whether the deliveries of the seller are above or below the base in effect subject to the following:

During the first six months of the 12-month period the full base and the history created under this Paragraph may be transferred. Commencing with the seventh month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by five percent. Commencing with the 12th month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by an additional five percent for a total reduction of ten percent.

Should a producer fail to transfer his base within the allotted time then such base shall become null and void. Any producer who has ceased to ship Grade A milk since December 1, 1975, shall be eligible to transfer base under the provisions of this Paragraph. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have 12 months from the time such producer discontinues to transfer base under the provisions of this Subsection.

The provisions of this Subsection shall be applicable only to a producer who discontinues the production of milk to a Grade A milk plant and shall not be applicable to a producer who transfers a part of his base and remains as an active shipper.

Any base and base history transferred under the provisions of the previous inactive base rules shall be adjusted in accordance with this revised Subsection.

(6) Exception: The provisions outlined in this Subsection (6) shall apply to all producers except where modified by the provisions of a special base plan approved by the commission; provided however a complete or partial transfer of base shall be null and void under any of the base rules if the seller of base changes markets (pools) and continues to ship milk to any Grade A plant wherever located and participates in the Class I payoff of such plants and any time within 12 months from the date of the sale of such base unless the seller of base files a request with the commission and shows that he has purchased base to restore base to the level of the total base held at the time of sale or the base held 12 months prior to sale whichever is higher. Should a producer who is changing markets find it necessary to reduce the size of his existing base the commission will consider situations such as retirement of a partner, illness, or other special considerations in determining the amount of base that a producer must reduce. Further a distributor and/or producer association licensed by the commission shall not pool or permit any milk to share in the Class I payoff which is received or purchased from a producer who has sold his base until such producer is fully qualified to reenter the market in any pool as a base holder under the provisions outlined in this Subsection.

(7) Base Hardship: Effective with the computation of bases which take effect on and after January 1, 1976, producers experiencing a loss in base may receive relief as provided or may petition for special consideration based upon the provisions as specified.

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

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

(2) When a producer whose base is established on a three-year moving average has his current base computed under the provisions of (1) of this Rule there shall be no adjustment in the base history for prior years.

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

(a) Acts of nature beyond the control of operator such as lightning, floods, disease by acts of nature or due to weather storm, failure, electrocution, rabies, epidemic disease of unusual occurrence, fire, etc.

(b) Death or serious illness of the owner-operator or a member of the owner-operator's family whose service is essential in the dairy operation.

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

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

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

-5+ PLANT RECORDS AND REPORTS

(a) Books and Records to be Maintained. Each distributor shall at all times keep such "Books and Records" as will enable the commission or its designated representative to determine accurately all receipts, sales, transfers, production, and bottling records, use and disposition of all milk and milk products in accordance with the authority vested in said commission.

These records shall include detailed producer payroll records showing total producer receipts, butterfat test, classification, and payment by classes, gross amount, all deductions and charges and net payment and a copy of computations used in arriving at classes and allocations of classes to producers. These records shall also show the source and quantity of all other milk cream, condensed or powdered milk. The sales records must include the sales by units, the value of each group of units showing retail and wholesale sales by daily transactions, summarized into a monthly total. A detailed record shall show all transfers of bottled or bulk products sold to other distributors or buyers.

(b) Reports to be Filed. Each distributor shall furnish to the commission not later than the 10th day of each month on forms furnished by the commission a detailed record showing the total receipts of milk from producers and other sources; all sales; transfers; use and disposition of milk handled in the previous month. Such reports shall show the receipts by classes, butterfat differentials, total dollars paid to each producer and total quantity of dairy products manufactured. This report shall
include a complete accounting for all milk received from producers and other sources each month. The information reported must be compiled from records of a permanent nature and kept on file by the distributor.
(c) Inspection of Records: The procedure regarding the production of records by milk distributors for examination by representatives of the Commission is as follows:
(1) All licensees will be notified of the names of Milk Commission auditors and investigators authorized to examine distributor's records.
(2) Each licensee shall notify the Milk Commission of the persons at each location in his custody of and authorization to provide all records to representatives of the Milk Commission. These persons must be normally available since no prior notice of the examination will be given.
(3) All records shall be made available for the representative's examination upon his request. Such records may include but are not restricted to the profit and loss or operating statement ledger and supporting information such as invoices, vouchers, and any other records or documents necessary to verify entries made in the distributor's profit and operating statement.
(4) Representatives will maintain the confidentiality of all records examined. Information which is not related to the purpose of the investigation or examination of Milk Commission records nor will any information which might reflect the profit or loss or financial condition of a plant or company be copied.
(5) When the profit and loss or operating statement is examined the Milk Commission representatives, prior to the examination of the statement, will select at least two expense categories in each month or accounting period which may be blocked out along with the net profit figure for such month or accounting period in order that the net profit or loss for such month or accounting period may not be determined in later computations.

0512 ASSESSMENT
(a) For the purpose of defraying the expenses of the Milk Commission there is hereby levied an assessment of two cents ($0.02) per hundredweight on all milk handled from all sources by the distributor and two cents ($0.02) per hundredweight on all milk sold by producers. Each distributor shall pay such assessments levied on him and shall deduct from producer payments the assessment of two cents ($0.02) per hundredweight on all producer milk and pay all such assessments to the Milk Commission.
(b) The distributor assessments on all milk sold or transferred to other distributors where both the shipping and receiving distributor are located in an established marketing area shall be paid by the receiving distributor. Milk received by a distributor from sources where no assessment by the Milk Commission is in effect shall be included in such distributor assessments.
(c) All assessments shall be paid to the Milk Commission not later than the 10th day of each month following the delivery period and shall be deposited immediately in the designated State Depository to the Treasurer of North Carolina for credit to the "Milk Commission Account."

0513 METHOD OF SETTLEMENT
(a) On or before the eighth working day following the end of each month the Milk Commission shall notify all handlers and/or cooperatives of the following information:
(1) The announcement of a monthly uniform price per hundredweight to be paid producers for milk classified as Class I and Class II allocation.
(2) The Class I and Class II allocation of the producer receipts and other source milk and the amounts due producers in each Class after making the pool
computations. The Commission shall furnish a schedule showing the Class I and Class II allocations and the amounts due in each class.

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

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

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

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

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

(1) A handling allowance may be deducted on the sale or transfer of bulk milk diverted directly from farm routes to a pool plant but such allowance shall not exceed fifteen cents ($0.15) per hundredweight. On milk received in the pool plant and reloaded for sale or transfer, a handling allowance may be deducted but such allowance shall not exceed twenty-five cents ($0.25) per hundredweight.

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

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

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

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

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

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

(1) the identity of the handler or association of producers;

(2) the delivery period.
(3) producer base for period,
(4) butterfat test,
(5) pounds of milk in each class,
(6) class prices,
(7) gross amount for each class,
(8) each deduction made by the handler or association of producers,
(9) net amount paid.

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

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

1. receiving producer milk on the basis of weights determined from the measurement at the farm - five cents ($0.05) per hundredweight.
2. receiving producer milk on the basis of butterfat tests determined from farm bulk tank samples - five cents ($0.05) per hundredweight.
3. receiving producer milk on regular seven day per week delivery schedule including deliveries on weekends and holidays - three cents ($0.03) per hundredweight.

(m) Purchasing milk from an association of producers based upon a preordered specified minimum daily volume for a designated period of not less than a month; provided, no reimbursement shall be made on the daily volume of deliveries which exceeds the specified minimum daily volume or on any portion of the daily volume when the deliveries fall below the minimum specified daily volume - seven cents ($0.07) per hundredweight.

(n) Performing butterfat, bacteria and antibiotic tests for individual producers or members of a producer association - three cents ($0.03) per hundredweight.

(6) Preparing and compiling receipts, payrolls, filed reports, preparing payroll checks on behalf of a business entity marketing milk on behalf of producers - three cents ($0.03) per hundredweight.

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

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

(n) The contract required in (m) of this Rule shall contain the following provisions and shall specify the method
utilized for compensation for services performed, whether by deduction or reimbursement.

"AGREEMENT REGARDING PERFORMANCE OF AND COMPENSATION FOR COST SAVINGS

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

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

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

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

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

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

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

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

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

.0514 FINANCIAL RESPONSIBILITY FOR MILK RECEIVED BY BULK TANKER

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

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

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

.0515 ESTABLISHMENT OF CLASS BASES FOR PRODUCERS

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

(1) North Carolina Base

Holding Producers. To qualify as a North Carolina base holding producer such
producer must have held a North Carolina Milk Commission base for the date the pooling rules became effective and must be shipping to a North Carolina regulated processor or association of producers.

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

(3) Base Building Period.
The base building period shall be September through December each year.

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

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

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

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

After determining the percentage of base to be allocated, multiply the average daily production of each producer by this percentage to determine his base for 1987.

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

This allocation process shall be followed whether bases are increased or decreased.

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

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

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

(1) Qualifications. The establishment of a base for a new producer who enters or has entered the market after June 1, 1981, and who meets the qualifications outlined in this subsection shall be calculated under the following plan:

First Month
No Base

Second Month
25 percent of first month's deliveries

Third Month
50 percent of first and second months' deliveries

Fourth Month
75 percent of first, second and third months' deliveries
Fifth Month

100 percent of first four months' deliveries.

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

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

(2) Base for a New Producer.

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

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

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

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

(c) Transfer of Base Holding Producers from Other States or Federal Order Markets. The Commission will recognize the transfer of base for a producer in another state or federal order market who has established such base under the state or federal order regulations in effect in such state or market, provided such producer will become an active shipper to a North Carolina handler or association or producers.

Further, the base to be transferred shall be adjusted to conform with the manner bases were computed for the producers already in the pool.

(d) Use of the Base Plan.

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

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

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

(2) Adjustment of Bases during Payment Period. When a producer is off the market during a period, the case for such producer shall be reduced by the number of days such producer is off the market in order to
(3) A producer who has established a base in accordance with the requirements of this Rule shall have the right to retain such base when his entire deliveries of milk are transferred to another handler within any marketing area. A producer who transfers from one handler or association of producers to another handler or association of producers during a base forming period shall have his base computed from his total deliveries to both, or all, receiving handlers or association of producers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

During the first six months of the 18-month period the full base and the history created under this Paragraph may be transferred. Commencing with the seventh month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by five percent. Commencing with the 13th month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by an additional five percent for a total reduction of 10 percent. Should a producer fail to transfer his base within the allotted time, then such base shall become null and void. Any producer who has ceased to ship Grade A milk since December 1, 1973, shall be eligible to transfer base under the provisions of this Paragraph. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have 18 months from the time such producer quit producing Grade A milk to transfer base under the provisions of the subsection.

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

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

(8) Exception. The provisions outlined in this Subsection (g) shall apply to all producers; provided, however, a complete or partial transfer of base shall be null and void under any of the base rules if the seller of base changes markets - (pools) - and continues to ship milk to any Grade A handler or association of producers wherever located and participates in the Class 1 payoff of such handler or association of producers anytime within 30 months from the date of the sale of such base, unless the seller of base files a request with the commission and shows that he has purchased base to restore base to the level of the total base held at the time of sale or the base held 12 months prior to sale whichever is higher. Should a producer who is changing markets find it necessary to reduce the size of his milking herd, the commission will consider situations such as retirement of a partner, illness, or other special considerations in determining the amount of base that a producer must reacquire. Further, a handler and/or producer association licensed by the commission shall not pool or permit any milk to share in the Class 1 payoff unless it is received or purchased from a producer who has sold his base, until such producer is duly qualified to reenter the market in any pool as a base holder under the provisions outlined in this subsection.

(h) Base Hardships.

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

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

(2) Special requests for base adjustment may be made directly to the Milk Commission whether such loss is above or below 10 percent based upon the following circumstances:
(A) acts of nature beyond the control of operator such as lightning, floods, drought, loss of cattle due to weather, storm, power failure, electrocution, epidemic disease of unusual occurrence, fire, etc.;
(B) death or serious illness of the owner-operator, or a member of the owner-operator's family whose service is essential in the dairy operation;
(C) induction into the armed services of a member of the owner-operator's family whose service is essential in the dairy operation.

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

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

0.0516 PLANT RECORDS AND INSPECTION OF RECORDS

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

(b) Reports to be filed. Each distributor shall furnish to the commission not later than the 10th day of each month on forms furnished by the commission a detailed record showing the total receipts of milk from producers and other sources; all sales; transfers; use and disposition of milk handled in the previous month. Such reports shall show the receipts by classes, butterfat differentials, total dollars paid to each producer and total quantity of dairy products manufactured. This report shall include a complete accounting for all milk received from producers and other sources each month. The information reported must be compiled from records of a permanent nature and kept on file by the distributor for 3 years. The procedure regarding the production of records by milk distributors handlers or associations of producers for examination by representatives of the Commission is as follows:
(1) All licenses will be notified of the names of Milk Commission auditors and investigators authorized to examine distributor's handler's or associations of producer's records.
(2) Each licensee shall notify the Milk Commission of the persons at each location having custody of and authorization to provide all records to representatives of the Milk Commission. These persons must be normally available since no prior notice of the investigation will be given.

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

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

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

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

0517 ASSESSMENT

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

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

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

TITLE 10 - HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Health Services intends to adopt and amend regulations cited as 10 NCAC 7A .0101; 10 NCAC 7A .0401; 10 NCAC 7B .0102, .0103, .0212, .0335, and .0406; 10 NCAC 10A .0306, .0307, .0448, .0507, .1008, and .2205; 10 NCAC 10A .1954; 10 NCAC 10D .0702, .1005, .1616, .1625, and .2512; 10 NCAC 10F .0001, .0002, .0029, .0030, .0031, .0032, .0033, .0034, .0035, .0039, and .0041; 10 NCAC 11 .0705; 10 NCAC 12 .0236 and .0239. The purpose of the proposed regulations is to 10 NCAC 7A .0101 updates the list of reportable diseases; 10 NCAC 7A .0401 updates immunization requirements; 10 NCAC 7B .0102, .0103, .0212, .0335 and .0406 make changes to the Highway Safety rules; 10 NCAC 10A .0306, .0307, .0448, .0507, .1008, and .2205 amend sanitation grading rules; 10 NCAC 10A .1954 allows the use of polypropylene fibers as a reinforcing material in the manufacture of concrete septic tanks; 10 NCAC .0702, .1005, .1616, .1625, and .2512 amend
procedures for determining maximum contaminant levels for water supplies, and amend the standards for hydropneumatic storage tanks; 10 NCAC 10F .0001, .0002, .0029, .0030, .0031, .0032, .0033, .0034, .0035, .0039, and .0041 adopt by reference Federal EPA hazardous waste regulations, and change closure and postclosure trust fund requirements; 10 NCAC 11 .0705 excludes bodies donated to medical schools in North Carolina from the required medical examiner's inquiry into the cause and manner of death before cremation or burial at sea; 10 NCAC 12 .0236 and .0239 delete a provision in the rule requiring water supply sanitarians to attend a food protection course, and establish the frequency of inspections by sanitarians for temporarily Closed Establishments.

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

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

The public hearing will be conducted at 1:50 p.m. on August 14, 1986 at Highway Building, Auditorium (First Floor), 1 South Wilmington Street, Raleigh, North Carolina.

Comment Procedures: Any person may request information or copies of the proposed rule by writing or calling John P. Barkley, Agency Legal Specialist, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602-2091, (919) 733-3151. Written comments on these subjects may be sent to Mr. Barkley at the above address. Written and oral (for no more than ten minutes) comments on these subjects may be presented at the hearing. Notice should be given to Mr. Barkley at least three days prior to the hearing if you desire to speak.

SUBCHAPTER 7A - ACUTE COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

.0101 REPORTABLE DISEASES

The following named diseases are declared to be dangerous to the public health and are hereby made reportable:

14) Chlamydial infection;
15) Hemophilus influenzae, invasive disease;
16) Lyme disease;
17) meningitis: Hemophilus influenzae;
18) Nuchocutaneous Lymph Node Syndrome (Kawasaki);
19) nongonococcal urethritis, cervicitis, and pelvic inflammatory disease (PID);

SECTION .0400 - IMMUNIZATION

.0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

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

1. diphtheria, tetanus, and whooping cough-- four doses: three doses by age one year; and one booster dose on or after the fourth birthday;

2. oral poliomyelitis vaccine, trivalent type -- three doses by age two years; or monovalent type -- one dose of each type by age two years; oral poliomyelitis vaccine -- three doses of trivalent type by age two years and a booster dose of trivalent type on or after the fourth birthday; or one dose of each of the three monovalent types by age two years and a dose of trivalent type after the fourth birthday;

5. mumps vaccine-- one dose of live attenuated vaccine by age two years;

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

6. The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine, and oral poliomyelitis vaccine on or after the fourth birthday and for mumps vaccine shall not apply to children who enrolled for the first time in the first grade before July 1, 1987.
shall apply throughout 10 NCAC 7B:

(8) "Breath-testing Instrument" shall mean an instrument for performing a chemical analysis and giving the resultant alcohol concentration on the basis of an alveolar air/blood ratio of 1:270.4 grams of alcohol per 210 milliliters of breath; the reading given by an instrument that reports a breath-test result as a blood-alcohol concentration on the basis of an alveolar air/blood ratio of 2,100:1 shall be interpreted as reporting alcohol concentration with a reading of 0.10 per cent by weight of alcohol in a person's blood being the same as 0.10 alcohol concentration.

(20) "Simulator Solution" shall mean a water-alcohol solution made by preparing a stock solution of 60.5 grams of alcohol per liter of water solution (77.0 ml. of absolute alcohol diluted to one liter of distilled water, or equivalent ratio) and then preparing for simulator use as a control sample by using 10 ml. of stock solution and further diluting to 500 ml. with distilled water, which then corresponds to the equivalent alcohol concentration of 0.01.

.0103 CONSULTANT PANEL AND REVIEW BOARD

(a) The highway safety branch shall provide for the professional services of the Medical Evaluation Consultant Panel for the purposes set forth in Rule .0101(1) of this Subchapter:

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

(b) The highway safety branch shall provide for the professional services of the physician members of the Driver License Medical Review Board in accordance with the purposes set forth in Rule .0101(1) of this Subchapter:

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

SECTION .0200 - BLOOD ALCOHOL TEST REGULATIONS

.0212 REPORTING OF ALCOHOL CONCENTRATIONS BY BLOOD ANALYSTS

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

SECTION .0300 - BREATH ALCOHOL TEST REGULATIONS

.0335 BREATHE-TESTING INSTRUMENTS - REPORTING OF SEQUENTIAL TESTS

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

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

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

NORTH CAROLINA REGISTER 171
(a) The standards for the approval of breath-testing instruments are as follows:

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

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

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

<table>
<thead>
<tr>
<th>Model</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>4011AS</td>
<td>Unspecified</td>
</tr>
<tr>
<td>5000</td>
<td>Unspecified</td>
</tr>
<tr>
<td>5000</td>
<td>Unspecified</td>
</tr>
<tr>
<td>5000</td>
<td>Unspecified</td>
</tr>
</tbody>
</table>

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

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

SECTION 0.0400 - CONTROLLED DRINKING PROGRAMS

.0406 RESTRICTED USE OF ALCOHOLIC BEVERAGES

(b) Alcoholic beverages procured for use in a controlled-drinking program shall be used only for this purpose. Spirituous liquor or fortified wine, Malt beverages, unfortified wine, fortified wine or spirituous liquor shall not be given or otherwise administered to anyone under 21 years of age. Malt beverages and unfortified wine shall not be given or
otherwise administered to anyone under 49 years of age.

SUBCHAPTER 10A - SANITATION

SECTION .0300 - SANITATION OF LODGING PLACES

.0306 GRADING
(a) The sanitation grading of all hotels, motels, inns, and tourist homes shall be based on a system of scoring wherein all establishments receiving a score of at least 90% shall be awarded Grade A; all establishments receiving a score of at least 80% and less than 90% shall be awarded a Grade B; all establishments receiving a score of at least 70% and less than 80% shall be awarded Grade C; and no establishment receiving a score of less than 70% or Grade C. shall operate.
(b) The grading of lodging places shall be based upon the standards of construction and operation set out in .0308 - .0314 of this Section.

.0307 APPROVED LODGING PLACES

INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS
The sanitation grading of all hotels, motels, inns, and tourist homes shall be based on a system of scoring wherein all establishments receiving a score of at least 90% shall be awarded Grade A; all establishments receiving a score of at least 80% and less than 90% shall be awarded a Grade B; all establishments receiving a score of at least 70% and less than 80% shall be awarded Grade C; and no establishment receiving a score of less than 70% or Grade C shall operate.
(a) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.
(b) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .0400 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.0448 GRADING
INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS
(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.
(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.
(e) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SECTION .0500 - SANITATION OF MEAT MARKETS

.0507 GRADING
INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS
(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.
(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.
(c) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

NORTH CAROLINA REGISTER 173
SECTION 1000 - SANITATION OF SUMMER CAMPS

.1008 GRADING

. INSPECTION OF TEMPORARILY CLOSED ESTABLISHMENTS

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

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

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

SECTION 1900 - SEWAGE DISPOSAL SYSTEMS

.1954 MINIMUM STANDARDS FOR PREFABRICATED SEPTIC TANKS

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

(7) All tanks shall be manufactured with a cast-in-place partition so that the tank contains two compartments. The partition shall be located at a point not less than two-thirds nor more than three-fourths the length of the tank from the inlet end. The top of the partition shall terminate two inches below the bottom side of the tank top in order to leave space for air or gas passage between compartments. The top and bottom halves of the partition shall be cast in such manner as to leave a water passage slot four inches high for the full width of the tank. The partition shall be reinforced by the placing of six-inch by six-inch No. 10 gage welded reinforcing wire. The reinforcing wire shall be bent to form an angle of 90 degrees on the ends in order to form a leg not less than four inches long. When the wire is placed in the mold, the four-inch legs should be in parallel with the sidewalk wire and adjacent to it. In lieu of using the six-inch by six-inch No. 10 gage welded steel reinforcing wire, reinforcing may be made by use of a polypropylene fiber reinforcing material. The polypropylene fiber reinforcing shall not be less than three-fourths inch in length and more than two inches in length. The polypropylene fiber must be added to the concrete mix at a minimum rate of 1.5 pounds per cubic yard of concrete or a rate recommended by the fiber manufacturer, whichever is greater. Further, the rate and time of mixing as recommended by the fiber manufacturer must be followed. It is recognized that there are other methods of constructing a partition for two-compartment tanks. Any method other than the one described will be considered on an individual basis for approval by the Division of Health Services. However, the tank wall thickness must remain not less than two and one-half inches thick throughout the tank except for blockouts.

(9) The tank shall be reinforced by using a minimum reinforcing of six-inch by six-inch No. 10 gage welded steel reinforcing wire in the top, bottom, ends, and sides of the tank. The reinforcing wire shall be lapped at least six inches. In lieu of using the six-inch by six-inch No. 10 gage welded steel reinforcing wire, reinforcing may be made by use of a polypropylene fiber reinforcing material. The polypropylene fiber reinforcing shall not be less than three-fourths inch in length and more than two inches in length. The polypropylene fiber must be added to the concrete mix at a minimum rate of 1.5 pounds per cubic yard of concrete or a rate recommended by the fiber manufacturer, whichever is greater. Further, the rate and time of mixing as recommended by
the fiber manufacturer must be followed. The tank top must be able to withstand a uniform loading of 150 pounds per square foot. If additional reinforcing is required to accomplish this, it is the responsibility of the manufacturer to install the added reinforcing.

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

.2205 GRADING: TEMPORARILY CLOSED ESTABLISHMENTS
(c) The owner or operator of an establishment that is closed for a period of 60 days or more shall notify the local health department at least 30 days prior to the expected date of reopening. A local health department sanitarian shall make an unannounced inspection within 30 days after notification.
(d) The permit for any establishment receiving a grade of less than A from the inspection required by this Rule shall be suspended. The owner or operator of the establishment shall be notified in writing of the intent to suspend and of the owner's or operator's right to a hearing to contest suspension.
(e) If a permit is suspended pursuant to this Rule, the permit shall remain suspended until a reinspection shows that the establishment has obtained a Grade A.

SUBCHAPTER 10D - WATER SUPPLIES

SECTION .0700 - PROTECTION OF PUBLIC WATER SUPPLIES

.0702 DEFINITIONS
As used in this Subchapter, the term:
(39) "Performance evaluation sample" means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the Department. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

SECTION .1000 - WATER SUPPLY DESIGN CRITERIA

.1005 STORAGE OF FINISHED WATER
(c) Hydropneumatic Storage Tanks (Pressure Tanks)

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

SECTION .1600 - WATER QUALITY STANDARDS

.1616 MAXIMUM CONTAMINANT LEVELS FOR INORGANIC CHEMICALS
(c) When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following the maximum contaminant levels for fluoride are:

<table>
<thead>
<tr>
<th>Temperature</th>
<th>Degrees Fahrenheit</th>
</tr>
</thead>
<tbody>
<tr>
<td>53.7 and below</td>
<td></td>
</tr>
<tr>
<td>53.8 to 56.9</td>
<td></td>
</tr>
<tr>
<td>57.0 to 63.9</td>
<td></td>
</tr>
<tr>
<td>64.0 to 70.6</td>
<td></td>
</tr>
<tr>
<td>70.7 to 79.2</td>
<td></td>
</tr>
<tr>
<td>79.3 to 90.5</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Degrees Celsius</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.0 and below</td>
</tr>
<tr>
<td>10.1 to 17.6</td>
</tr>
<tr>
<td>17.7 to 21.4</td>
</tr>
<tr>
<td>21.5 to 26.2</td>
</tr>
<tr>
<td>26.3 to 32.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Levels</th>
<th>Milligrams Per Liter</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.4</td>
<td>2.8</td>
</tr>
<tr>
<td>2.9</td>
<td>3.2</td>
</tr>
<tr>
<td>3.3</td>
<td>4.0</td>
</tr>
</tbody>
</table>

Fluoride at optimum levels in drinking water has been shown to have beneficial effects in reducing the occurrence of tooth decay.
(c) The maximum contaminant level for fluoride is 4.0 mg/l.

.1625 INORGANIC CHEMICAL SAMPLING AND ANALYSIS
(b) If the result of analysis made pursuant to (a) or (f) of this Rule indicates that the level of any contaminant

NORTH CAROLINA REGISTER 175
listed in .1616 of this Section, exceeds the maximum contaminant level, the supplier of water shall report to notify the Department Division within seven days and initiate three additional analyses at the same sampling point within one month.

(c) Analyses conducted to determine compliance with .1616, .1619, .1620, and .1621 of this Section shall be made in accordance with methods adopted by the United States Environmental Protection Agency and codified as 40 C.F.R. 140.23 (f) through (i), and 40 C.F.R. 143.4(b)(5), (6), and (8), which are hereby adopted by reference as amended through March 4, 1982 May 2, 1982.

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

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

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

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

(A) Reported concentrations from previously required monitoring;

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

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

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

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

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

SECTION .2500 - VARIANCES AND EXEMPTIONS

.2512 VARIANCES FOR FLUORIDE

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

(1) Activated alumina absorption, centrally applied;

(2) Reverse osmosis, centrally applied;

(b) The division shall require a community water system to install and/or use any treatment method identified in (a) of this Rule as a condition for granting a variance unless it is determined that such a treatment method is not available and effective for fluoride control.
for the system. A treatment method shall not be available and effective for a water system if the method would not be technically applicable and technically feasible. If upon application for a variance it is determined that no treatment method is available and effective then the water system shall be entitled to a variance. A determination of availability and effectiveness of treatment methods shall be based upon studies by the water system and other relevant information. A finding shall be made by the division whether the information supports a decision that a treatment method is not available and effective before requiring installation and use of the treatment method.

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

(1) Modification of lime softening;
(2) Alum coagulation;
(3) Electro dialysis;
(4) Anion exchange resins;
(5) Membrane management;
(6) Alternate source; and
(7) Regionalization.

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

SUBCHAPTER 10F - HAZARDOUS WASTE MANAGEMENT

.0001 GENERAL

(d) Copies of all material adopted by reference in this Subchapter may be inspected in the Solid and Hazardous Waste Branch Office, Division of Health Services, 306 N. Wilmington Street, P. O. Box 2091, Raleigh, N. C. 27602. Copies may be obtained from the Solid and Hazardous Waste Branch for a fee of ten cents ($0.10) per page at the actual cost to the Branch.

.0002 DEFINITIONS


.0029 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261


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


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

(3) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference: "Deleted"

(4) The following shall be substituted for the provisions of 40 CFR 264.143(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the
current closure cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

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

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

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

(8) The following shall be substituted for the provisions of 40 CFR 264.145(a)(6) which were not adopted by reference: "After the trust fund is established, whenever the current post-closure cost estimate changes during the operation or removal of the facility, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference."

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

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

(g) The provisions for "Closure and Post-Closure" contained in 45 Fed. Reg. 33,242 and 33,243 (1980) to be codified in 40 CFR 265.110 to 265.120 (Subpart G) have been adopted by reference as amended by 46 Fed. Reg. 2,875, 2,876, 2,877, and 2,896 (1981); and 51 Fed. Reg. 16,451 to 16,455 (1986); except that 40 CFR 265.121(a) is rewritten as follows: "If at any time the owner or operator or any subsequent owner of the land upon which a hazardous waste facility was located removes the waste and waste residues, the liner, if any, and all contaminated underlying and surrounding soil, he may add a notation on the deed to the facility property or other instrument normally examined during title search, indicating the removal of the waste."


(1) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not adopted by reference: "The owner or operator must deposit the full amount of the post-closure cost estimate at the time the fund is established. Within 60 days of the effective date of these Regulations, an owner or operator using a post-closure trust fund established prior to the effective date of these Regulations shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current post-closure cost estimate, or shall obtain other financial assurance as specified in this Section."

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

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

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

0034 INTERIM STATUS STANDARDS FOR PERMITTING PART 270

(a) The following provisions for permitting requirements contained in 48 Fed. Reg. 16,228 to 14,233, 130,113, and 30,114 (1983) to be codified in 40 CFR 270 (Subpart A, General Information) have been adopted by reference as amended by 48 Fed. Reg. 39,622 (1983); and 49


However, the date "November 8, 1985" contained in 40 CFR 270.73(c) shall be deleted and replaced with the date "January 1, 1986".

.0035 PERMITTING PROCEDURES

PART 124


(15) 40 CFR 124.20 Computation of Time

.0039 RECYCLABLE MATERIALS

PART 266

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

.0041 REQUIREMENTS: HAZARDOUS WASTE PROGRAM - PART 271

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

CHAPTER 11 - MEDICAL EXAMINER

SECTION .0705 CREMATION FEE

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

CHAPTER 12 - HEALTH: OFFICES OF LOCAL SERVICES

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENT

.0236 INDIVIDUAL (ON-SITE) WATER SUPPLY

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

(1) Initial field training for newly employed sanitarians;

(2) CDC Homestudy Course 3010-G or its equivalent as approved by the division;

(3) North Carolina State University Food Protection Short Course or its equivalent as approved by the division; and

(4) Registration by the Board of Sanitarian Examiners.

NORTH CAROLINA REGISTER 181
.0239 FOOD; LODGING; AND INSTITUTIONAL SANITATION

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

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

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

Notice is hereby given in accordance with G.S. 150B-12 that the DHR - Division of Medical Assistance intends to amend regulation cited as 10 NCAC 26D .0012. The purpose of the proposed regulation is to extend the time frame for requesting adjustment of a claims payment from 90 days after initial payment or denial to 180 days.

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

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

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

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

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION AND SCOPE

.0012 TIME LIMITATION

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

(1) Within 365 days of the first date of service for services other than inpatient hospital services;

(2) Within 365 days of the date of discharge for inpatient hospital services or not to exceed the limitations as specified in 42 C.F.R. 447.45;

(3) Within 90 days of the Medicare or other third party payor.

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

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

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


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

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

SUBCHAPTER 26G - PROGRAM INTEGRITY

SECTION .0400-AGENCY RECONSIDERATION AND EXECUTIVE DECISIONS

.0403 EXECUTIVE DECISION FOR PROGRAM ABUSE

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

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

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

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

(e) The Executive Decision shall be sent to the provider by certified mail within ten working days following the date the provider's written position statement is received. The decision shall contain a statement of the provider's right to request a contested case hearing in accordance with the provisions of 10 NCAC 18 .0500. The provider shall have fifteen working days to request a contested case hearing. Unless the request is received within the time provided, the Executive Decision will become the Division's final decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the Secretary's designee and shall be responsible for making the final agency decision.

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

SECTION .0500 - PEER REVIEW
.0504 COMPOSITION OF PEER REVIEW BOARD
(a) The Medicaid Agency will establish five standing committees representing the various professions, which shall act as Peer Review Boards.

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

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

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

.0511 PEER REVIEW PROCEDURES
(a) The Chief Hearing Officer chairman of the peer review board shall have complete control over the conduct of the review proceedings and will be responsible for:

(1) calling the review to order;
(2) stating the purpose of the review;
(3) recognizing speakers and witnesses;
(4) ensuring that presentations are pertinent and nonrepetitious;
(5) ensuring that the provider has a full and fair opportunity to present his defense and question or rebut the person(s) presenting the Medicaid Agency's case;
(6) having a record made of the proceedings which must include the peer review board's findings, conclusions, and recommendations, and
(7) proceedings where oral evidence is presented shall be tape recorded, but need not be transcribed unless a party requests a transcript. The party requesting a transcript, or part thereof, must pay for the transcript. Either party may provide a court reporter at its expense.

(f) The provider shall have fifteen days from receipt of the findings, conclusions, and recommendations in which to file with the Deputy Director of the Division of Medical Assistance a written rebuttal or comment. This response may not contain new evidence. The deputy director must consider the rebuttal before making a decision on the board's recommendation. Only the division deputy director shall make a determination as to what, if any, sanctions, remedial measures and/or recoupment actions shall be imposed on a provider. Only the division Deputy Director shall have the authority to impose sanctions, remedial measures and/or recoupment actions against a provider. The division Deputy Director is not bound by the board's recommendations; he is bound by the board's findings of fact and conclusions regarding medical issues. The division's Deputy Director's decision shall be in writing and shall contain a statement of the provider's right to request a contested case hearing in accordance with the provisions of 10 NCAC 18 .0200. The provider shall have fifteen working days to request a contested case hearing. Unless the request is received within the time prescribed, the Deputy Director's decision will become the division's final decision. In processing the contested case request, the Director of the Division of Medical Assistance shall serve as the Secretary's designee and shall be responsible for making the final agency decision.

SECTION .0600 - HEARINGS
CONCERNING QUESTIONS OF SUSPENSION OR TERMINATION

184 NORTH CAROLINA REGISTER
.0601 AUTHORITY AND PURPOSE

Hearings shall be conducted according to in accordance with the provisions of Subchapter 26 of Title 22 10 NCAC 18 .0200 of the North Carolina Administrative Code, whenever the division has recommended suspension or termination of the provider.

.0602 ORGANIZATION AND FUNCTION

(a) As used in Subchapter 26 of Title 22 of the North Carolina Administrative Code 10 NCAC 18 .0200, the word agency "department" shall mean the North Carolina Department of Human Resources, Division of Medical Assistance.

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

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

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

(2) The hearing officer as the chairman of the board of presiding officers per Title 22 NCAC 26 Rule -0504 (a).

(3) Whenever a peer review is conducted according to the procedures provided for in this Section, the Peer Review Board may recommend in its proposed decision and the division may impose in the final agency decision suspension or termination of the provider, in accordance with the standards established by law or regulations for the suspension of termination (sometimes called "look out") of Medicaid providers.

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

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

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

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

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

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0100 - REIMBURSEMENT

FOR SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES

.0106 APPEALS

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

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0204 ADMINISTRATIVE APPEALS

(a) Appeals of rate determinations will be processed in accordance with the provisions of 10 NCAC 26J .0200.
Appels must be submitted to the Division of Medical Assistance within sixty days after rate notification, unless unexpected conditions causing intense financial hardship arise, in which case an appeal may be considered at any time.

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0304 PROVIDER APPEALS
Rate appeals must be filed in writing within 60 days after a provider receives notification of its prospective rate. Such appeals are subject to the Reimbursement and Administrative Review process as set forth in 10 NCAC 286.

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

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

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

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

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

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

SECIGN .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0202 RATE SETTING METHODS
(f) Out-of-state hospital services are reimbursed according to the rates established by the Medicaid Agency of the State in which the hospital is located. If a

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

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

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

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

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

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

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

.0302 ALLOWABLE COST FINDING: REPORTING AND VERIFICATION
(a) Annual cost reports are required from all providers within 90 days after their fiscal year end. These reports shall be presented on forms and in a format approved by the state agency. A 30-day extension of the due date may, for good cause, be granted by the state.

(b) These cost reports shall
detail the providers cost for the entire reporting period, or for the period of participation in the plan if less than a full cost reporting year, for allowable costs. The allowable reasonable, and necessary costs of any services are determined in accordance with regulations (HIM-15) establishing the method or methods to be used and the items included. consistent with the applicable provisions of SNF ICF MR 26H 10-0102. ALLOWABLE COST IDENTIFICATION of this Subchapter.

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

(d) Each cost report will be verified by the state agency or its representative for completeness, accuracy and reasonableness through a desk review. Desk reviews are to be completed within six months from the date of submission. A desk audit or field audit of the cost report will be performed as required, in 42 CFR 447.221 and 447.222.

All cost reports will be desk reviewed in accordance with standard procedures. On-site audits will be performed in accordance with applicable state and federal laws and regulations. Onsite audit policies and procedures shall follow those set forth in Rules 10 NCAE 26H 10-0102 (2) (f) (9) of this Subchapter.

0303 METHODS AND STANDARDS FOR DETERMINING RATES

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

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

(c) The base year per diem rate for each provider will be inflated from the base year to the year in which the rate will apply using inflation factors for each intervening year computed as follows:

1. Cost data from the base year cost reports will be aggregated to determine the proportion (percent of total) of cost in each of the following categories:
   (A) Labor;
   (B) Utilities;
   (C) Other Operating;
   (D) Capital which includes the cost for use or ownership of physical plant and movable equipment.

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

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

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

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

(D) Capital cost shall not be inflated. The annual capital cost or lease expense shall be limited to the sum of (c) (2) (D) (1) and (11) as follows:

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

(ii) An interest allowance equal to 10 percent of the maximum allowed historical cost used to compute the annual depreciation in (c) (2) (D) (i) of this Rule.

(iii) This capital/lease limit does not apply to leases in effect prior to April 30, 1983.

(iv) The State may waive this capital/lease limit for group homes established pursuant to the provisions of Chapter 85B of the 1983 Session laws provided that the per diem rate of any such group home does not exceed the per diem of the institution from which certified beds are transferred.

(3) Rates determined in 10 NCAC 26H .0303(c) (2) will be multiplied times the percentages determined in 10 NCAC 26H .0303(c) (1) to obtain a weighted inflation rate for each category of cost.

(4) The weighted rates determined in 10 NCAC 26H .0303(c) (3) will be added to obtain the composite inflation rate.

(5) No inflation factor for any provider will exceed the maximum amount permitted for that provider by federal or state law or regulation.

(d) The prospective rate established in Paragraph (c) of this Rule, will be paid to the provider for every Medicaid eligible day during the year in which it will apply. These prospective rates may be determined after the date in which they are to go into effect and paid retroactively to that date. During such a period the preceding prospective rates shall be paid to the providers until the new rates are determined.

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

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

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

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

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

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

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

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

SECTION .0200 - RATE REVIEW PROCESS

.0201 ADMINISTRATIVE CONFERENCE
(a) Rates are set for providers pursuant to the applicable provisions of 10 NCAC 26H.
(b) Following receipt of the rate
notice a provider may file a request for an administrative conference with the Division of Medical Assistance to request a change to its rate. 

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

.0202 REQUEST FOR ADMINISTRATIVE CONFERENCE

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

Assistant Director, 
Financial Operations 
Division of Medical Assistance 
North Carolina Department of Human Resources 
1905 Umstead Drive 
Raleigh, North Carolina 27603

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

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

.0203 REPRESENTATIVE FOR THE PROVIDER

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

(b) The representative may exercise any and all of the rights given to parties in the conference process on behalf of the provider he is representing. Notice of meeting date, request for information, the administrative conference decision and final decision shall be sent to such authorized representative. Copies of such documents will be sent to the provider only if written request is made to the assistant director.

.0204 ADMINISTRATIVE CONFERENCE TO BE HELD

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

.0205 PROPOSED DIVISION DECISION

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

.0206 FINAL DECISION

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

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-12 that the Boiler and Pressure Vessel Division intends to amend regulation cited as 13 NCAC 13...
.0402(a). The purpose of the proposed regulations is to exempt ASME Code constructed pressure vessels which were operated by an owner in another jurisdiction prior to January 1, 1979 and are transferred for operation in this State from the additional stamping requirements of 13 NCAC .0402(a) as long as there has been and is no change in ownership of the vessel.

TITLE 15 - NATURAL RESOURCES
AND COMMUNITY DEVELOPMENT

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

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

Statutory Authority: G.S. 143-214.1.

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

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

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAMS CLASSIFICATION

.0304 FRENCH BROAD RIVER BASIN
(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:
(1) September 22, 1976;
(2) March 1, 1977;
(3) August 12, 1979;
(4) April 1, 1983;
Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend regulation cited as 15 NCAC 2B .0305(c). The purpose of the proposed regulation is to reclassify the Watauga River "From source to U.S. Hwy 321 Bridge" from Class C-trout to Class B-trout. This change will protect this portion of the river for frequent swimming.

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


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

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

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATION

.0305 WATAUGA RIVER BASIN

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

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

Notice is hereby given in accordance with G.S. 150B-12 that the NC Marine Fisheries Commission intends to amend regulations cited as 15 NCAC 3B .0101 (a); .0401; .0402 (4); .0404; .0504; .0902; 1111; .1501; .1502; .1505. The purpose of the proposed regulations is to clarify jurisdiction, amend striped bass regulations to allow other fisheries to operate, restrict the taking of small flounder in the ocean; adjust areas designated for use of pots; include mussels in restrictions for polluted areas and clarify process for designation of polluted/prohibited areas.

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

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

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

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

SUBCHAPTER 3B - FISHERIES REGULATIONS FOR COASTAL WATERS

SECTION .0100 - GENERAL REGULATIONS

.0101 SCOPE AND FUNCTION

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

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

(1) From January 1 through May 31, no gill net shall be used which has a mesh length less than three inches in Albemarle Sound and tributaries, between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds.

(2) From June 1 through September 30, no gill net shall be used with a mesh length less than five inches in the Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds, except gill nets may be used with a mesh length not exceeding of three inches or less with the floating line visible and floating at the water's surface and reaching no further than 200 yards from the shoreline. Nets with a mesh length not exceeding three inches shall be attended by the fisherman who shall not be more than 100 yards from such nets at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three inches or less.

(3) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches in Albemarle Sound and tributaries between the mouth of Roanoke, Middle, Eastmost, and Cashie Rivers and the U.S. 64-264 bridges at across Roanoke and Croatan Sounds except attended gill nets as described in (2) of this Rule may be used. Gill nets which has a mesh length between two and one-half inches and four and one-quarter inches must be sunk to the bottom set in no more than eight feet of water, and be no more than 25 meshes deep.

.0402 ATLANTIC OCEAN

(4) From October 1 through April 30, it shall be unlawful to take or possess aboard a vessel flounder taken with a trawl in the Atlantic Ocean until the secretary, acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources, shall open the season by proclamation. The secretary is further empowered at his discretion to impose any or all of the following restrictions:

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

No trawl with a cod end (tail bag) mesh length of less than four and one half inches and less than 36 meshes long may be used to take flounder in a directed flounder fishery. It shall be contained in a directed flounder fishery when the catch consists of 60 percent or more flounder.

.0404 CURRITUCK SOUND AND ITS TRIBUTARIES

(3) From January 1 through May 31, no gill net shall be used which has a mesh length less than three inches.

(4) From June 1 through September 30, no gill net shall be used with a mesh length less than five inches, except gill nets with a mesh length of three inches or less and attended by the fisherman who shall not be more than 100 yards from such nets at all times. No fisherman shall use more than 400 yards of nets with a mesh length of three inches or less.

(5) From October 1 through December 31, no gill net shall be used which has a mesh length less than three and one-half inches and set within 300 yards of the shoreline, except attended gill nets as described in (4) of this Rule.

SECTION .0500 - OTHER FISHING DEVICES

.0504 EEL: CRAB: FISH: SHRIMP POTS

(a) (2) Pots may be used from May 1 through October 31, it shall be unlawful to use any pots in the following areas: coastal fishing waters of North Carolina except pots may be used north and east of the Highway 58.
Bridge at Emerald Isle in areas described in this Rule.

(a) (2) (E) (v) In that area bound by a line beginning at a point on the southeast shore of Indian Island 35°deg. 21' 32" N 76°deg. 39' 40" W running 35°deg. M 500 yards to a point 35°deg. 21' 25" N 76°deg. 36' 39" W thence westerly parallel to the shoreline at a distance of 500 yards to a point 35°deg. 21' 39' 45" W.

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

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

(ix) In that area on the south side of Pamlico River bound by a line beginning at a point on Hickory Point 35°deg. 21' 44" N 76°deg. 41' 36" W running 115°deg. M to Beacon #4 at the mouth of South Creek 35°deg. 21' 28" N 76°deg. 40' 37" W thence running 304°deg. M +000 yards to a point in Pamlico River 35°deg. 21' 59" N 76°deg. 41' 35" W; thence westerly parallel to the shoreline at a distance of 500 yards to a point in Pamlico River 35°deg. 22' 35" N 76°deg. 42' 59" W; thence running 242°deg. M to a point on shore near Long Point 35°deg. 22' 36" N 76°deg. 43' 06" W. Beginning at a point on shore 35°deg. 22' 30" N - 76°deg. 44' 27" W; running 355°deg. M to a point offshore 35°deg. 22' 40" N - 76°deg. 45' 51" W; thence westerly parallel to the shoreline at a distance of 500 yards to a point 35°deg. 22' 53" N - 76°deg. 45' 00" W; thence running 255°deg. M to a point on shore 35°deg. 22' 46" N - 76°deg. 45' 14" W.

(x) On the south side of Pamlico River bound by a line beginning at a point on shore 35°deg. 22' 36" N 76°deg. 44' 27" W running 355°deg. M to a point in Pamlico River 35°deg. 22' 40" N 76°deg. 44' 26" W; thence running westerly parallel to the shoreline at a distance of 500 yards to a point in Pamlico River 35°deg. 22' 56" N 76°deg. 45' 24" W; thence running 224°deg. M to a point on shore 35°deg. 22' 52" N 76°deg. 45' 29" W; Beginning at a point on shore 35°deg. 22' 54" N - 76°deg. 45' 43" W; running 003°deg. M to a point offshore 35°deg. 23' 03" N - 76°deg. 45' 43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gun Point 35°deg. 25' 09" N - 76°deg. 45' 33" W; running 210°deg. M to a point on the south shore 35°deg. 23' 28" N - 76°deg. 46' 26" W.

(xi) On the south side of Pamlico River bound by a line beginning at a point on shore 35°deg. 22' 06" N
SECTION .0900 - CLAMS

.0902 PROHIBITED AREAS

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

SECTION .1100 - OYSTERS

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

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

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

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

†† In the Albemarle and Currituck Sound Areas

†† Currituck Sound:

All those waters in Currituck Sound upstream of a line beginning at a point on the east shore at 36Deg. 09' 46" W. to include all creeks and tributaries.

†† North River:

All waters upstream of a line drawn from a point on the west shore of North River at 36Deg. 14' 50" N — 35Deg. 41' 26" W. to include all tributaries upstream from said line.

†† Pasquotank River:

All waters upstream of a line beginning on the southwest shore 36Deg. 14' 42" N — 35Deg. 56' 54" W at Miller Point.

†† Little River and Flatty Creek:

All waters upstream from a line beginning on Stevenson Point at 36Deg. 05' 06" N — 35Deg. 41' 42" W. to include all tributaries upstream from the sound beginning at a point on the north shore at 36Deg. 01' 29" N — 36Deg. 04' 47" W. to the south shore at 35Deg. 56' 25" N — 76Deg. 04' 03" W.

†† Albemarle Sound:

All waters upstream from a line beginning near the mouth of Goose Creek at 35Deg. 59' 20" N — 75Deg. 03' 44" W. to the north shore at 36Deg. 05' 30" N — 75Deg. 50' 44" W. by mouth of Milltail Creek. All those waters of Morris Pritchett Marina on Highway No. 64 will remain closed.

†† Edenton Sound Area:

All those waters east of a line beginning on Shellbank Point at 36Deg. 03' 22" N — 75Deg. 44' 50" W. to channel marker #5 at 36Deg. 04' 10" N — 76Deg. 45' 50" W. to Stumpy Point at 35Deg. 50' 14" N — 75Deg. 40' 04" W.

†† Perquimans River:

All waters upstream of a line beginning on the north shore at 36Deg. 01' 52" N — 36Deg. 33' 32" W. to the south shore.
at 35Deg- 00° 42" N - 75Deg- 36° 00" W to include all creeks and tributaries.

d) All those waters bounded by a line beginning at a point on Ballast Point at 35Deg- 54° 33" N - 75Deg- 50° 40" W thence in a straight line to the east side of the causeway draw bridge at 35Deg- 53° 40" N - 75Deg- 36° 07" W thence to Channel Marker #24 at 35Deg- 53° 22" N - 75Deg- 57° 50" W thence across the channel to marsh at 35Deg- 53° 20" N - 75Deg- 37° 55" W thence across John's Creek in a northerly direction along shore back to the point of beginning. This will close Pirates Cove and all other tributaries within said boundary.

e) In Roanoke Sound Area:

(a) All waters in Shallowbay Basin and its tributaries southwest of a straight line from Baum Point to Ballast Point.

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

(c) All those waters within a line beginning at the south side of the mouth of Broad Creek and running to channel marker F at R 40° 45" thence to channel marker R 40° 45" thence due southwest to a point on the shore thence along the shore in a northerly direction to the point of beginning; to include Mills Creek and its tributaries.

(d) All those waters around the Villa Condominium SEF outfall beginning at a point 35Deg- 57° 54" N - 75Deg- 59° 46" W thence 200 yards in a southerly direction to a point in the sound at 35Deg- 58° 54" 40" N - 75Deg- 58° 50" 50" W thence 400 yards in a southerly direction to a point in the sound at 35Deg- 57° 30" N - 75Deg- 58° 39" W thence in a northeasterly direction to a point on shore at 35Deg- 57° 45" N - 75Deg- 36° 36" W.

(e) All those waters in Roanoke Sound bounded by a line beginning at a point on the east shore near Whalebone at 35Deg- 54° 30" N - 75Deg- 36° 40" W thence in a westerly direction 2700 yards to a point in the sound at 35Deg- 54° 02" N - 75Deg- 57° 40" W thence in a northerly direction 3450 yards to a point at 35Deg- 53° 04" N - 75Deg- 37° 11" W thence in an easterly direction 2290 yards to the shore at 35Deg- 53° 26" N - 75Deg- 36° 00" W to include all creeks and tributaries.

e) In Croatan Sound Area:

(a) All waters within a line beginning at a point near Baum Point at 35Deg- 56° 40" N - 75Deg- 59° 44" W thence 775 yards to marker #11 at 35Deg- 56° 26" N - 75Deg- 40° 60" W thence 650 yards to a point on an island at 35Deg- 50° 05" N - 75Deg- 59° 56" W thence 975 yards to a point on the shore at 35Deg- 56° 16" N - 75Deg- 59° 26" W to include all creeks and tributaries within said boundary.

(c) All waters upstream of a line beginning at a point near north shore of Spencer Creek at 35Deg- 51° 45" N - 75Deg- 44° 53" W thence 250 yards in an easterly direction to a point at 35Deg- 51° 45" N - 75Deg- 44° 43" W thence south 1,500 yards to a point 35Deg- 50° 56" N - 75Deg- 44° 43" W thence 750 yards west to a point on shore at 35Deg- 50° 50" N - 75Deg- 44° 53" W.

d) All those waters upstream of a line across the mouth of Mann's Harbor beginning at a point on the north shore at 35Deg- 54° 36" N - 75Deg- 46° 02" W thence in a straight line to a point on the south shore at 35Deg-
54° 20' N - 75° Deg. 46° 06' W

e) All those waters near the south end of Roanoke Island north and east of a line beginning at a point at 35° Deg. 35° 30' N - 75° Deg. 37° 00' W, thence in a southerly direction to a point at 35° Deg. 45° 20' N - 75° Deg. 37° 30' W, on marsh island. Thence in a northwesterly direction to a point at 35° Deg. 45° 20' N - 75° Deg. 37° 30' W, thence northwesterly to a point on marsh at 35° Deg. 45° 24' N - 75° Deg. 39° 12' W, thence northerly to a point at 35° Deg. 50° 06' N - 75° Deg. 39° 26' W, to connect with the Baum Creek closure.

4) In the Stumpy Point Area:
Beginning at a point on the west shore at 35° Deg. 41° 40' N - 75° Deg. 39° 55' W, thence in a straight line to a point in the bay at 35° Deg. 41° 56' N - 75° Deg. 46° 18' W, thence in a straight line to a point in the bay at 35° Deg. 42° 05' N - 75° Deg. 49° 30' W, thence in a straight line to a point in the bay at 35° Deg. 41° 20' N - 75° Deg. 44° 42' W, thence to a point off Brain Point at 35° Deg. 40° 56' N - 75° Deg. 44° 45' W, thence to a point on shore at Brain Point at 35° Deg. 40° 56' N - 75° Deg. 44° 26' W, thence along the shore back to the point of beginning.

5) In the Outer Banks Area:
(a) All of the Rodanthe Boat Harbor within a line drawn across the mouth of the harbor.
(b) All those waters in Salvo Creek bounded by a line drawn across mouth of creek.
(c) All those waters within Avon Harbor, bounded by a line drawn from Beacon No. 1 to westermost tip of north shore.

6) In the Engelhard Area:
(a) In Far Creek: All those waters upstream from a line drawn from the eastern point of Gibbs Point at 35° Deg. 29° 37' N - 75° Deg. 57° 42' W, across Far Creek to a point 35° Deg. 31° 21' N - 75° Deg. 57° 12' W.
(b) In Patsy Bay: All those waters upstream from a straight line drawn across the Bay beginning at a point on the east shore at 35° Deg. 35° 10' N - 75° Deg. 40° 45' W, thence to a point on the west shore at 35° Deg. 35° 26' N - 75° Deg. 49° 12' W.
(c) In Otter Creek: All those waters in Otter Creek upstream from a straight line drawn from a point on the east shore at 35° Deg. 35° 10' N - 75° Deg. 55° 00' W, thence to a point on the west shore at 35° Deg. 33° 14' N - 75° Deg. 55° 14' W.
(d) Berrys Bay: All those waters upstream from a straight line beginning at a point on shore at 35° Deg. 32° 10' N - 75° Deg. 56° 24' W, thence in a westerly direction to a point at 35° Deg. 52° 03' N - 75° Deg. 56° 15' W.

7) In the Hyde County Area:
(a) Middletown Creek Area: All those waters in Wysocking Bay upstream off a straight line drawn from a point on the northeast shore at 35° Deg. 26° 00' N - 75° Deg. 59° 20' W, thence across the Bay to a point on the southeast shore at 35° Deg. 25° 44' N - 75° Deg. 59° 46' W.
(b) All those waters in Wysocking Bay: upstream off a straight line drawn from a point on the northeast shore at 35° Deg. 26° 00' N - 75° Deg. 59° 20' W, thence across the Bay to a point on the southwest shore at 35° Deg. 25° 44' N - 75° Deg. 59° 46' W.
(c) In Swan Quarter Bay: beginning at a point on land at 35° Deg. 24° 2' N - 76° Deg. 29° 46' W, thence in a southeasterly direction to a point at channel marker 40' N 35° Deg. 25° 55' N - 76° Deg. 28° 30' W, thence in an easterly direction to a point on the shore at 35° Deg. 24° 0' N - 76° Deg. 20° 16' W.
(d) In Rose Bay: All those waters bounded by a line beginning at a point on the shore at 35° Deg. 25° 16' N - 76° Deg. 24° 14' W, thence 300 yards in a WSW direction to a point in the bay at 35° Deg. 26° 14' N - 76° Deg. 24° 19' W, thence 825 yards in a SSE direction to a point in the bay at 35° Deg. 25° 55' 10' N - 76° Deg. 23° 55' W, thence 300 yards ENE to a point on the shore at 35° Deg. 25° 54' N - 76° Deg. 23° 49' W, thence along the shore back to the point of beginning.
(a) In Oyster Creek: All waters upstream from a line across the creek beginning at a point on the east shore at 35 Deg. 23° 10' N - 76 Deg. 40° 49' W to include all tributaries.

(c) All those waters of Oyster Creek upstream from a line beginning at a point at 35 Deg. 19° 32' N - 76 Deg. 52° 53' W on the north shore thence to a point at 35 Deg. 32° 16' N - 76 Deg. 32° 54' W on the south shore.

(d) In the South Creek Area:

(i) All of the waters of South Creek and its tributaries upstream from a line beginning at Hickory Point 35 Deg. 21° 43' N - 76 Deg. 41° 30' W thence 44° 35' E to Reedy Point 35 Deg. 21° 00' N - 76 Deg. 40° 53' W.

(ii) In the Bay River Area:

(a) All waters in Bear Creek upstream from a line drawn from a point 35 Deg. 19° 56' N - 76 Deg. 57° 06' W on the south shore proceeding to a point 35 Deg. 42° 05' N - 76 Deg. 57° 09' W on the north shore.

(c) All waters in the Intracoastal Waterway near Hobucken bounded on the north by a line beginning at a point on the east shore at 35 Deg. 14° 14' N - 76 Deg. 35° 42' W thence across the canal to a point on the west shore at 35 Deg. 14° 10' N - 76 Deg. 35° 44' W and bounded on the south by a line beginning on the east shore at 35 Deg. 14° 54' N - 76 Deg. 35° 20' W thence to the west shore at 35 Deg. 14° 46' N - 76 Deg. 35° 32' W to include all of Oaie Creek and all waters in Jones Bay upstream from a line beginning at a point on the west shore at 35 Deg. 14° 25' N - 76 Deg. 34° 44' W thence across the bay to a point on the south shore at 35 Deg. 14° 12' N - 76 Deg. 54° 44' W.
(12) In the Oriental Area:
All waters upstream of a line from Windmill Point at 35Beg 01° 03' N — 76Beg 42° 04' W, thence proceeding northwesterly to point at 35Beg 01° 36' N — 76Beg 40° 56' W, on Whittaker Point; to include Greens Creek, Kershaw Creek, Smith Creek, Camp Creek, Oriental Harbor, and Whittaker Creek.

(13) In the Neuse River Area:
(a) All waters upstream from a line across the mouth of Clubfoot Creek beginning at a point 34Beg 56° 21' N — 76Beg 12° 45' W, thence to a point 34Beg 57° 54' N — 76Beg 13° 13' W on Wilkinson Point.
(b) All waters in South River, up to a point on the west shore of South River at 34Beg 56° 01' N — 76Beg 53° 25' W, thence across the river to a point at 34Beg 56° 22' N — 76Beg 53° 55' W to include all tributaries.
(c) All those waters in Pierce Creek, upstream from a straight line across the mouth of the Creek beginning at a point on the west shore of the Creek at 34Beg 56° 01' N — 76Beg 53° 27' W, thence to a point at 35Beg 02° 27' N — 76Beg 33° 34' W.

(14) In the Hatteras Area:
(a) All waters within a boundary beginning at a point on land west of the Hatteras Ferry landing at 35Beg 42° 50' N — 75Beg 42° 24' W, thence to a point in the ferry channel at 35Beg 42° 57' N — 75Beg 42° 20' W, thence to a point on shore at 35Beg 42° 59' N — 75Beg 42° 04' W.
(b) All waters in creek beginning at a point near mouth at 35Beg 42° 15' N — 75Beg 41° 40' W, on the west end and proceeding to a point on the east end at 35Beg 42° 13' 35' N — 75Beg 40° 51' W, near entrance to Sandy Bay.
(c) All waters upstream of a line beginning at a point on the north shore at 35Beg 13° 10' N — 75Beg 42° 42' W, thence to the south shore at 35Beg 13° 10' N — 75Beg 42° 42' W, to include all creeks and tributaries.

(15) In the Cedar Island Area:
(a) Cedar Island Area: All waters within the Cedar Island Ferry Harbor.
(b) Occra Creek Area: In any of the waters of Silver Lake.

(16) In the Core Sound Area:
(a) All waters upstream of a line beginning on shore at 34Beg 55° 33' N — 76Beg 20° 44' W to a point in Core Sound at 34Beg 54° 36' N — 76Beg 20° 40' W, thence to a point on the north shore at 34Beg 53° 41' N — 76Beg 20° 40' W, to include all waters of Willis Texaco Marina.
(b) All waters within the harbor at Clayton Fitcher's Sons' Fish House at Atlantic.
(c) All waters within the harbor at Clayton Fitcher's Fish House at Atlantic.

(d) All waters upstream of a line from the east shore at 34Beg 55° 09' 0' N — 76Beg 53° 57' W to a point on the west shore at 34Beg 52° 03' N — 76Beg 28° 02' W, to include all of the waters of Atlantic Boat Harbor.

(e) All waters upstream of a straight line across Williston Creek beginning at a point on the north shore at 34Beg 47° 12' N — 76Beg 50° 05' W, thence to the south shore at 34Beg 46° 52' N — 76Beg 30° 17' W.
(f) All waters upstream from a line across Middens Creek beginning at a point on the north shore at 34Beg 45° 32' N — 76Beg 30° 46' W, thence to a point on the south shore at 34Beg 45° 14' N — 76Beg 30° 54' W.
(g) All waters upstream of a line beginning at a point on the west shore of Smyrna Creek at 34Beg 40° 07' N — 76Beg 26° 56' W, thence in a straight line to a point on the east shore at 34Beg 40° 13' N — 76Beg 20° 53' W.
(h) All waters upstream of a line across Hade Creek beginning at a point on the north shore at 34Beg 40° 17' N — 76Beg 30° 41' W, thence to the south shore at
34 deg 46' 10" N - 76 deg 30' 42" W

1) All those waters in the
Knuckles Landing Harbor
upstream from a line
beginning on the north side
of entrance channel at
34 deg 46' 34" N - 76 deg 35' 0' W
then across channel through Marker "22",
to a point on the south
shore at 34 deg 42' 33' N - 76 deg 35' 0" W

2) All those waters at Goats
landing upstream of a line
beginning at a point on the
shore at 34 deg 42' 21" N - 76 deg 35' 0" W
then in a southerly direction to a
point on shore at 34 deg 42' 13' N - 76 deg 35' 0" W

3) In the Nelson Bay Area:

Off Gore Sound:
(a) In any of the waters north
to the east side of entrance
30 deg 39' 7" N from the foot of
the U.S. Coast Guard dock to the
western side of Nelson Bay
to include Mingo Creek, Salters Creek and the Salters Creek
Canal to the long bay entrance.

(b) In Broad Creek:
All waters upstream of a
straight line beginning at a
point on the north shore at
34 deg 52' 44" N - 76 deg 24' 56" W
then across the creek to a point at 34 deg 52' 36" N - 76 deg 24' 27" W

(c) Lewis Creek:
All waters upstream of a straight line
beginning at a point on the north
shore at 34 deg 51' 42" N - 76 deg 24' 36" W

(d) Willis Creek:
All waters upstream of a line
beginning at a point on the north
shore at 34 deg 51' 0" N - 76 deg 24' 36" W
then in a straight line to a
point on the south shore at 34 deg 51' 42" N - 76 deg 24' 36" W

(e) North River Area:
All those waters upstream of a
line beginning on the east
shore at 34 deg 48' 05" N - 76 deg 36' 26" W
then across the river to a point on the west shore at 34 deg 47' 49" N - 76 deg 37' 14" W

(f) In the Morehead City City:

Beaufort-Newport River Areas:
(a) Beaufort Area:
All the
waters enclosed by a line
beginning at a point at 34 deg 42' 22" N - 76 deg 40' 42" W

North Carolina Register 199
to the southernmost point of the Newport Marshes at 34° Deg. 42° 40' N — 76° Deg. 41° 42' W, thence across 1000' to southern tip of Phillips Island at 34° Del. 43° — 76° Deg. 41° 21', W, thence in a straight line to the east end of the Newport River Bridge, thence westerly along the bridge to the mainland; thence proceeding north along the shoreline of the yacht basin; Galileo Creek, and Willis Creek back to the point of beginning.

All the waters of the Newport River west of a line beginning at a point on the south shore 34° Deg. 44° 45' N — 76° Deg. 45° 02', W, thence 3500' to a point on the north shore 34° Deg. 43° 57° 72', W, 76° Deg. 45° 06', W, those waters of Harlowe Creek north of a line beginning at a point on the west shore 34° Deg. 46° 41' N — 76° Deg. 46° 25', W, thence 9000' to a point on the east shore 34° Deg. 46° 41', N — 76° Deg. 42° 15', W.

Those waters bounded on the south by a line beginning at 34° Deg. 46° 58', N — 76° Deg. 41° 47', W, on the west shore thence to a point at 34° Deg. 46° 55', N — 76° Deg. 41° 08', W, on the east shore and bounded on the north by a line beginning at a point on the east shore of Adams Creek at 34° Deg. 55° 06', N — 76° Deg. 52° 26', W, thence in a straight line through marker 33 to a point on the west shore at 34° Deg. 55° 09', N — 76° Deg. 46° 03', W, to include the 560' and all tributaries.

Town Creek back to the point of beginning.

Petetier Creek Area.
All the waters enclosed by a line beginning at a point on shore 34° Deg. 43° 34', N — 76° Deg. 47° 07', W, thence 1000' to a point 34° Deg. 43° 34', 06', N — 76° Deg. 47° 07', W, thence 1000' to a point 34° Deg. 43° 34', 06', N — 76° Deg. 47° 07', W, thence 1000' to a point 34° Deg. 43° 34', 06', N — 76° Deg. 47° 07', W, thence 1000' to a point 34° Deg. 43° 34', 06', N — 76° Deg. 47° 07', W, including all of Petetier Creek.

Spooner Creek Area.
All the waters enclosed by a line beginning at a point on the shore at 34° Deg. 43° 50', N — 76° Deg. 40° 06', W, thence 1000' to a point at 34° Deg. 43° 50', N — 76° Deg. 40° 06', W, thence 1000' to a point at 34° Deg. 43° 50', N — 76° Deg. 40° 06', W, to include all of Spooner Creek.

In Bogue Sound.
Atlantic Beach Area.
(1) Beginning at a point on the west shore of Bogue Sound:
34° Deg. 42° 42', N — 76° Deg. 44° 51', W, thence in a straight line to a point at the south end of the Atlantic Beach Bridge at 34° Deg. 42° 40', N — 76° Deg. 44° 15', W, to include all Moonlight Bay and Causeway Canal on the west side of the causeway and on the east side of the causeway; Central Canal, East Canal, Money Island Shoal, Anchorage Mariner, 1/2 Mile Mariner, and Triple E E Mariner.

All those waters upstream from a point near the west end of Pond Drive on Atlantic Beach at 34° Deg. 42° 41', N — 76° Deg. 44° 46', W, thence in a straight line 200' in a westerly direction to a point on the shore at 34° Deg. 42° 41', N — 76° Deg. 44° 46', W.

In Goose Creek. Upstream from a line drawn from a point on the east shore 34° Deg. 41° 51', N — 77° Deg.
(c) In Broad Creek: Upstream from a line drawn from the east bank at a point 34°48'10" N — 76°07'56" W, extending to a point on the west bank at 34°48'42" W.  

(d) Jumping Run Creek Area:

Beginning at a point on the shore 34°48'42" W — 76°07'56" N — 76°07'52" W — 76°06'44" W — 76°06'49" W — 76°06'54" W to include all of Jumping Run Creek.  

(e) Soundview Creek Area:

All waters upstream of a line across the mouth of the Soundview Creek at a point 34°48'42" W — 76°07'56" N — 76°07'52" W — 76°06'44" W — 76°06'49" W — 76°06'54" W.  

(f) Salters Path:

South of a line beginning at a point on the shore 34°48'41" W — 76°07'56" N — 76°07'52" W — 76°06'44" W — 76°06'49" W — 76°06'54" W — 76°06'59" W to include all of the Salters Path.  

(g) Hunting Island Creek Area:

All waters upstream of a line running from the mouth of Hunting Island Creek at a point 34°48'41" W — 76°07'56" N — 76°07'52" W — 76°06'44" W — 76°06'49" W.  

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

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

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

(k) All waters bounded by a line beginning at a point 34°48'41" W — 76°07'56" N — 76°07'52" W — 76°06'44" W.  

(l) In Bear Creek Area:

All waters upstream of a line drawn from the creek beginning at a point on the north shore at 34°48'42" W — 76°07'56" N — 76°07'52" W — 76°06'44" W — 76°06'49" W.  

(21) In the White Oak River Area:

(a) All waters upstream of the White Oak River beginning at a point on the west shore at 34°48'42" W — 76°07'56" N — 76°07'52" W.  

(b) All waters upstream of the White Oak River beginning at a point on the east shore at 34°48'42" W — 76°07'56" N — 76°07'52" W.  

(c) All waters upstream of the White Oak River beginning at a point on the east shore at 34°48'42" W — 76°07'56" N — 76°07'52" W.
(23) In the New River-Sneads Ferry Area:

(a) Fannie Creek and Wheeler Creek Areas: All waters of Fannie Creek and Wheeler Creek south of a line drawn from the northwest shore of Fannie Creek at 34° 10' N - 77° Deg. 23' 30" W, thence in a straight line to a point on Poverty Point at 34° Deg. 34' 02" N - 77° Deg. 25' 05" W.

(b) Williams Bluff: All waters bounded by a line beginning at a point at 34° Deg. 37' N - 77° Deg. 24' 55" W, thence in a straight line to a point at 34° Deg. 34' 26" N - 77° Deg. 22' 06" W in the bay, thence to a point at Williams Bluff at 34° Deg. 34' 12" N - 77° Deg. 21' 40" W, thence north along the shore line to the point of beginning.

(c) Everett Creek and its tributaries south and west of the creek drawn from a point on the west shore of Intracoastal Waterway at 34° 10' N - 77° Deg. 24' 55" W, thence 09° Deg. 04' W, 550 yards to a point on the east shore of Intracoastal Waterway at 34° Deg. 34' 10' N - 77° Deg. 24' 55" W.

(d) Slocum Bay:

(i) All waters bounded by a line beginning at a point on the west shore at 34° Deg. 35' 10" N - 77° Deg. 26' 05" W, thence 675 yards in a northeasterly direction to a point in the bay at 34° Deg. 35' 31" N - 77° Deg. 25' 51" W, thence 500 yards in a northerly direction to a point 34° Deg. 35' 45" N - 77° Deg. 25' 51" W, thence 800 yards in a northeasterly direction to a point on shore at 34° Deg. 35' 52" N - 77° Deg. 26' 12" W, thence along the shore in a southerly direction to the point of beginning.

(ii) Stonos Creek: All waters upstream of a line near the mouth of Stonos Creek beginning at a point on the south shore at 34° Deg. 36' 33" N - 77° Deg. 26' 44" W, thence to a point on the north shore at 34° Deg. 36' 52" N - 77° Deg. 26' 56" W.

(e) New River: All waters upstream of a line drawn across New River beginning at a point on the west shore at 34° Deg. 34' 09" N - 77° Deg. 22' 55" W, thence through Channel Marker 42 to the east shore at 34° Deg. 39° 44" N - 77° Deg. 21' 29" W.

(f) All waters of Bumps Creek upstream of a line drawn 22° Deg. (M) from a point on the east side of the mouth of Bumps Creek 34° Deg. 32' 10" N - 77° Deg. 22' 50" W, thence running 200 yards to a point on the west side of the mouth of Bumps Creek 34° Deg. 32' 10" N - 77° Deg. 22' 50" W.

(g) Fahlard Creek and Charles Creek: All waters upstream of a straight line drawn from a point on the east shore of Fahlard Creek at 34° Deg. 32' 02" N - 77° Deg. 22' 44" W, thence to a point on the west shore at 34° Deg. 32' 13" N - 77° Deg. 22' 51" W, to include all of Charles Creek.

(h) Hurst Beach Area:

Beginning at a point on the north shore of the Intracoastal Waterway at 34° 44' N - 77° Deg. 15' 54" W, thence 120 yards at 14° Deg. (N) to a point on the south shore 34° Deg. 43' 9' N - 77° Deg. 15' 52" W, thence in a southerly direction along the south shore to a point 34° Deg. 33' 36" N - 77° Deg. 17' 20" W, thence 110 yards at 35° Deg. (N) to a point on the north shore 34° Deg. 35' 0" N - 77° Deg. 17' 29" W, thence along the north shore to the point of beginning, to include the Intracoastal Waterway and its tributaries.

(i) Browns Creek Area: All those waters upstream from a line beginning at a point 100 yards in a northeasterly direction to a point on shore at 34° Deg. 35' 52" N - 77° Deg. 16' 52" W, thence along the shore in a southerly direction to a point on the Intracoastal Waterway.

(j) French Creek: All waters bounded by a line beginning on the shore south of French Creek at 34° Deg. 36' 05" N - 77° Deg. 13' 03" W, thence to a point on land at 34° Deg. 37' 10" N - 77° Deg. 13' 50" W, thence to a point on the north shore at 34° Deg. 37' 13" N - 77° Deg. 13' 05" W.

(k) In Mill Creek (Alligator Bay): Beginning at a point on the shore in...
Alligator Bay 34Deg. 30' 42" N - 77Deg. 25' 05" W then thence 225Deg. 4M 700 yards to a point on the shore 34Deg. 30' 24' N - 77Deg. 25' 25" W to include all the waters upstream of this line.

(a) All those waters in King Creek upstream of a line drawn from a point on the north shore at 34Deg. 29' 46' N - 77Deg. 23' 45" W thence in a straight line to a point on the south shore at 34Deg. 29' 50' N - 77Deg. 29' 44" W.

(b) All those waters on the northeast by a line beginning at a point at 34Deg. 27' 00' N - 77Deg. 30' 22" W near the end of Utopia Street off Hwy. 5210 then thence following the shore of the ICW in a southwesterly direction crossing all tributaries to a point on the shore at 34Deg. 26' 15' N - 77Deg. 32' 36" W thence a cross the ICW to a point on the mainland at 34Deg. 26' 22' N - 77Deg. 32' 47" W thence proceeding in a southwesterly direction along the shoreline crossing Hwy. 210 Bridge to the south shore at ICW thence in a northeasterly direction following the shoreline back to the point of beginning to include all waters within said boundary.

(c) All waters upstream of a line beginning at a point on shore at 34Deg. 25' 49' N - 77Deg. 32' 56" W near Hwy. 210 Bridge at Su. of City thence across Bay to a point at 34Deg. 25' 45' N - 77Deg. 33' 07" W.

(d) All waters in Virginia Creek: All waters upstream of a line beginning at a point on the northeast shore at 34Deg. 25' 27' N - 77Deg. 36' 06" W thence across the Creek to the southwest shore at 34Deg. 25' 09' N - 77Deg. 36' 15" W to include all of Mullet Run Creek.

(27) In the Wrightsville Beach Area:

(a) In all of the waters of Page and Pibbs Creek north and west of a line drawn from a point on the east shore of Page Creek 34Deg. 16' 50' N - 77Deg. 46' 43" W thence 264Deg. 4M 400 yards to a point on the west shore of Page Creek 34Deg.

(b) In Middle Sound within 200 feet of Harrelson's Marina.

(c) All those waters in Middle Sound and the ICW bounded on the southwest by a straight line beginning at Money Point 34Deg. 11' 50' N - 77Deg. 49' 27" W thence to a point on the northwest shore of Banks Channel at 34Deg. 12' 05' N - 77Deg. 46' 08" W and bound ed on the northeast by a line beginning at a point 34Deg. 13' 14" N - 77Deg. 47' 21" W thence in a straight line to 34Deg. 13' 24' N - 77Deg. 47' 22" W thence in a straight line to the east shore of the Intracoastal Waterway at 34Deg. 13' 35' N - 77Deg. 47' 57" W near ICW FL Beacon 4125 thence in a northeasterly direction along the shoreline across the mouth of Stokley Out and proceeding at ong the shoreline in a northeasterly direction to 34Deg. 14' 42" N - 77Deg. 47' 10" W thence in a straight line to 34Deg. 14' 47" N - 77Deg. 47' 47" W to include Bradley Creek and all other tributaries.

(d) All waters in Johnson Marina upstream of the mouth of the marina.

(28) In Masonboro Sound Area:

(a) Beginning at a point on the mainland at 34Deg. 00' 36' N - 77Deg. 51' 41" W near ICW Marker #139 thence in a straight line to ICW Marker #139 at 34Deg. 00' 55' N - 77Deg. 51' 57" W thence in a northeasterly direction following southeast side of ICW channel to a point approximately 350 yards northeast of ICW Marker #136 at 34Deg. 09' 37' N - 77Deg. 50' 59" W thence in a straight line to mainland at 34Deg. 09' 42' N - 77Deg. 51' 05" W thence southerly along mainland shoreline back to the point of beginning. This is to include Purvisance (Whiskey) Creek, Channel Haven, and all other tributaries within said boundary.

(b) All the waters upstream of a line beginning at a point on the northeast shore of Hewitts Creek at 34Deg. 11' 18' N - 77Deg. 50' 59" W thence in a straight line to a point on the southwest.
shore at 34Deg. 11° 07' N — 77Deg. 50° 52' W.

(29) In the Myrtle Grove Sound Area:
(a) All those waters south and west of a straight line drawn from a point on the beach at 34Deg. 04° 00' N — 77Deg. 52° 49' W, thence on the sound through 16 W Marker #157, to a point on the mainland at 34Deg. 04° 07' N — 77Deg. 53° 20' W, to include all of Snow's Cut and the Carolina Beach Boat Basin.

(b) All those waters within an area beginning at a point on Peden Point at 34Deg. 07° 37' N — 77Deg. 52° 00' W, thence to a point on the east side of the ICW at 34Deg. 07° 35' N — 77Deg. 52° 04' W, thence southerly along the east side of the ICW Channel to a point at 34Deg. 06° 02' N — 77Deg. 52° 56' W, thence back to the mainland at 34Deg. 06° 03' N — 77Deg. 52° 43' W, to include Everett Creek and all other tributaries within said boundaries.

(c) All those waters within the Carolina Inlet Marina from the entrance to the harbors westward.

(30) In the Cape Fear River and Southport Area:
All those waters north and west of a line beginning at Federal Point at 33Deg. 57° 54' N — 77Deg. 56° 42' W, thence in a west-northwesterly direction to Ft. Bragg at 33Deg. 57° 42' N — 77Deg. 57° 04' W, thence in a southwesterly direction to Ft. Bragg at 33Deg. 55° 29' N — 77Deg. 55° 36' W, and then in a west-southwesterly direction to Ft. Bragg at 33Deg. 54° 45' N — 77Deg. 56° 06' W, thence to a point near Fort Caswell at 33Deg. 53° 45' N — 77Deg. 04° 10' W, and all waters in the Intracoastal Waterway.

Elizabeth River:
(a) All those waters north and west of a line at 33Deg. 54° 45' N — 77Deg. 06° W, thence through a point on the north shore of the ICW at 33Deg. 53° 12' N — 77Deg. 09° W, and all waters of the Intracoastal Waterway.

Shallotte River Area:
(a) Lockwoods Folly River:
All those waters upstream from a line beginning at a point on the east shore at 33Deg. 56° 15' N — 77Deg. 12° 45' W, thence to the west shore at 33Deg. 56° 15' N — 77Deg. 12° 46' W, to include all tributaries.

(b) All those waters in the Shallotte River upstream of a line drawn across the river beginning at a point on the west shore at 33Deg. 56° 34' N — 77Deg. 25° 05' W, thence to the west shore at 33Deg. 56° 39' N — 77Deg. 21° 49' W.

(c) Ocean Isle Beach:
All waters upstream (south) of a straight line drawn from a point at 33Deg. 55° 49' N — 77Deg. 25° 29' W, thence to a point at 33Deg. 53° 56' N — 77Deg. 25° 29' W, to include all tributaries.

(d) Long Beach:
All waters upstream (east) from a straight line beginning at Pinner Pt. at 33Deg. 55° 10' N — 77Deg. 41° W, thence southerly and thence in a southerly direction to a point at 33Deg. 55° 05' N — 77Deg. 41° 41' W on the south shore of Davis Creek to include all tributaries.

(e) All waters in the Intracoastal Waterway bounded on the northeast by a straight line drawn from a point at 33Deg. 55° 26' N — 77Deg. 11° 32' W on the south shore to the north shore at 33Deg. 55° 20' N — 77Deg. 11° 36' W, and bounded on the southwest by a straight line beginning at 33Deg. 55° 09' N — 77Deg. 11° 53' W on the south shore, thence to the north shore at 33Deg. 55° 13' N — 77Deg. 11° 55' W.

(32) In the Calabash Area:
(a) All waters west of a line drawn from a point on the south shore of the ICW at 33Deg. 53° 14' N — 77Deg. 29° 06' W, thence through a point on the north shore of the ICW at 33Deg. 53° 10' N — 77Deg. 29° 09' W, and all waters north of a line drawn in Jinks Creek from a point on the west shore at 33Deg. 52° 46' N — 77Deg. 29° 50' W to a point on the east shore at 33Deg. 52° 51' N — 77Deg. 29° 45' W. This includes the waters of Calabash Creek, Boneparte Creek, Deep Backwater Creek, Salt Boiler Creek, Blaine Creek, the Big Narrows, a portion of Jinks Creek, and the ICW to the South Carolina line.

SECTION .1500 - STRIPED BASS
.1501 COMMERCIAL SEASON AND EQUIPMENT

(a) In internal coastal waters, it shall be unlawful to take striped bass using commercial fishing equipment except during the open season which shall be from November 15 through March 31 that the secretary, acting upon the advice of the director, based on reasonable and prudent management of marine and estuarine resources, may proclaim, open and close the season between October 1 and April 30. The secretary is further empowered at his discretion, to impose any or all of the following restrictions:

1. specify number of days;
2. specify areas;
3. specify means and methods which may be employed in taking;
4. specify time period;
5. limit the quantity and size;
6. require submission of statistical and biological data.

.1502 HOOK-AND-LINE FISHING

(a) It shall be unlawful for any person to possess more than three take striped bass taken from coastal waters by hook-and-line except during the open season as established in 15 NCAC 38 .1501 in any one day.

(b) Striped bass taken by hook-and-line fishing operations may not be sold.

(c) Striped bass taken in compliance with this Section may be possessed and transported at any time.

.1505 SIZE LIMIT

(a) Effective October 1, 1985, it shall be unlawful to possess striped bass harvested from the internal coastal waters of North Carolina less than 14 inches long (total length). Such fish which do not meet the minimum size limit shall immediately be returned to the waters where taken regardless of condition of the fish.

(b) Effective October 1, 1986, it shall be unlawful to possess striped bass harvested from the internal coastal waters of North Carolina less than 14 inches long (total length). Such fish which do not meet the minimum size limit shall immediately be returned to the waters where taken regardless of condition of the fish.

(c) It shall be unlawful to possess a striped bass imported from other states less than 14 inches long (total length). Effective October 1, 1985, less than 16 inches long (total length) effective October 1, 1986.

WILDLIFE RESOURCES

Notice is hereby given in accordance with G.S. 150B-12 that the Wildlife Resources Commission intends to amend regulation cited as 15 NCAC 10F .0305(a)(4). The purpose of the proposed regulation is to add the portion of the Intracoastal Waterway within 100 yards of Tanglewood boat ramp in Brunswick County to those waters on which boats are limited to no-wake speed.

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

Statutory Authority: G.S. 75A-3; 75A-15.

The public hearing will be conducted at 9:00 a.m. on August 18, 1986 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, NC.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from August 19, 1986, to 5:00 p.m. on September 19, 1986. Such written comments must be delivered or mailed to the Wildlife Resources Commission, 512 N. Salisbury Street, Archdale Bldg., Raleigh, NC 27611.

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

.0305 BRUNSWICK COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

(4) Intracoastal Waterway:

(D) Tanglewood Area Boat Ramp. That portion of the Intracoastal Waterway within 100 yards of the Tanglewood Area boat ramp located on the north side of the said waterway opposite Holden Beach.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.
TITLE 21 - LICENSING BOARD

CPA EXAMINERS

Notice is hereby given in accordance with G.S. 150B-12 that the CPA Examiners intends to adopt regulations cited as 21 NCAC 8G .0212 and .0408 and amended 21 NCAC 8G .0407. The purpose of the proposed regulations is: .0212 - to adopt by reference professional accountancy standards promulgated by the national professional membership society in order to promote uniformity of standards throughout the nation: .0407 and .0408 - to establish a requirement for continuing education in accountancy laws of North Carolina.

The proposed effective date of this action is: .0212 - November 1, 1986; .0407 - January 1, 1988; .0408 - January 1, 1987.

Statutory Authority: G.S. 55B-12; 93-12(8b); 93-12(9).

The public hearing will be conducted at 9:00 a.m. on August 14, 1986 at the N.C. State Board of CPA Examiners, 1101 Oberlin Road, Suite 104, Raleigh, N.C. 27605.

Comment Procedures: Any person interested in this rule may present written or oral comments relevant to the action proposed at the Public rule-making hearing. Anyone planning to present comments at the hearing should notify the Executive Director at the Board offices by August 11, 1986. Written statements not presented at the public hearing should be delivered to the Board offices not later than 9:30 a.m., September 15, 1986.

CHAPTER 8 - CPA EXAMINERS .0212 ATTESTATION STANDARDS

(a) A person admitted to practice as a certified public accountant in North Carolina shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant unless he has complied with the applicable attestation standards.

(b) The Statements on Standards for Attestation Engagements issued by the American Institute of Certified Public Accountants are hereby adopted by reference as amended through September 30, 1986, and shall be considered attestation standards for the purposes of 21 NCAC 8G .0212(a).

(c) Departures from such statements must be justified by those who do not follow them.

(d) Copies of the Statements on Standards for Attestation Engagements may be inspected in the offices of the board, as described in 21 NCAC 8A .0102. Copies may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036 at cost, which approximates two dollars ($2.00).

.0407 EXEMPTION AND SUBSEQUENT REINSTATEMENT

(b) Any applicant for reinstatement must furnish to the Board evidence of satisfactory completion of 40 hours of acceptable CPE courses during the twelve-month period immediately preceding the licensee's application for reinstatement to active status. Eight of the required hours must be credits derived from a course in North Carolina Accountancy Law and Accountancy Regulations (including the Code of Ethics contained therein). Any CPE course hours used to satisfy the reinstatement may also be used to satisfy the CPE renewal requirement.

.0408 REQUIRED COURSES ON ACCOUNTANCY LAW AND REGULATIONS

Eight of the hours required for each three year period of licensure must be credits derived from courses in North Carolina Accountancy Law and Accountancy Regulations (including The Code of Ethics contained therein).

N C BOARD OF OCCUPATIONAL THERAPY

Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board of Occupational Therapy intends to amend and repeal regulations cited as 21 NCAC 38 .0104, .0201, .0202, .0204, .0302 and .0303. The purpose of the proposed regulations is to amend and repeal regulations to conform with recent changes to American Occupational Therapy Association guidelines and to update according to current practice.
The proposed effective date of this action is November 1, 1986.

Statutory Authority: G.S. 90-270.

The public hearing will be conducted at 3:30 p.m. on August 18, 1986 at Suite 1921, Center Plaza Building, 411 Fayetteville Street Mall, Raleigh, N.C.

Comment Procedures: Data, opinions and arguments concerning these rules must be submitted by August 15, 1986 to the North Carolina Board of Occupational Therapy, P.O. Box 2280, Raleigh, N.C. 27605, Attn. Charles Wilkins.

CHAPTER 38 - OCCUPATIONAL THERAPY

.0104 RULEMAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) The Model Administrative Procedures for Rulemaking and Hearings, codified as Title 22, Subchapters 2B and 2C of the NCAC, Effective September 29, 1986 as amended February 1, 1986, are hereby adopted by reference to apply to actions of the North Carolina Board of Occupational Therapy.

(b) The definitions contained in 22 NCAC 2A .0005 are adopted by reference and shall apply to the North Carolina Board of Occupational Therapy with the following modifications:

(4) "Examination" means the certification examination administered by the American Occupational Therapy Association Certification Board.

(c) Copies of 22 NCAC, Subchapters 2B and 2C, and 22 NCAC 2A .0005 may be inspected at the agency address. Copies may also be obtained from the Administrative Procedures Section of the Attorney General's Office, 10 E. Jones Street, Raleigh, N.C. 27602 Office of Administrative Hearings, Raleigh, N.C.

.0201 APPLICATION PROCESS

Each applicant, including those trained outside the United States or its territories, for an occupational therapist or occupational therapist assistant license shall complete an application form provided by the board. This form shall be submitted to the board and shall be accompanied by:

(5) a form provided by the board containing signed statements preferably from at least two (2) residents of the State of North Carolina attesting to the good moral character; and

.0204 FILING FEES

(b) Fees are as follows:

(1) a request for an initial application for licensure as an occupational therapist, occupational therapist assistant or provisional licensee is ten dollars ($10.00);

(2) consideration of the application for issuance of a license or re-issuance of a license is one hundred dollars ($100.00);

(3) annual renewal of a license is fifty dollars ($50.00);

(4) late renewal of a license is an additional fifty dollars ($50.00) twenty-five dollars ($25.00);

(5) issuance of a provisional license is thirty five dollars ($35.00). This thirty five dollars ($35.00) shall apply towards the one hundred dollar ($100.00) fee for a permanent license in Paragraph (b)(2) of this Paragraph provided the applicant pays the additional sixty-five dollars ($65.00) within the period before their provisional license is revoked;

(6) for copies of board rules and licensure standards, charges not exceeding the actual cost of printing and mailing.

.0302 LICENSE RENEWAL

(a) Any licensee desiring the renewal of a license who is currently certified by the American Occupational Therapy Association and is in good standing with the board shall apply for same and shall submit the required fee.

(b) Show proof of such continuing education efforts as may be required by the board, if any.

(c) Any person who engages in any occupational therapy activities governed by the occupational therapy law while their license is lapsed will be subject to the penalties prescribed in the law.

(d) Licenses lapsed in excess of 24 months shall not be renewable. Persons whose licenses have been lapsed in excess of 24 months and who
.0303 PROVISIONAL LICENSE
An applicant for a provisional license must have completed the educational course work and field work experience requirement of the license for which they apply, must have made application to take the certification exam administered by the American Occupational Therapy Association Certification Board and must have filed their application with the board in accordance with G.S. 150B-12 and these Rules. The provisional license shall be valid for nine months from date of issuance or until revoked by the board, whichever occurs first. A provisional license shall not be issued to an applicant who has failed the examination in this State or another jurisdiction.

N.C. BOARD OF PHARMACY

Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Board of Pharmacy intends to amend regulations cited as 21 NCAC 46 .1503 and .2001 and adopt 21 NCAC 46 .2201-.2003. The purpose of the proposed regulations is to: .1503-increase minimum required experience levels of licensure applicants from 600 hours to 640 hours to meet national standards; .2001-updates 21 NCAC .2001, which adopts by reference 22 NCAC Subchapter 2C and part of 22 NCAC 2A .0005; .2201-whereby in registered nurses employed by a health department may dispense certain prescription drugs and/or devices; .2202 - to set out training standard for health department nurses who dispense medication pursuant to G.S. 90-85.34.1 and 21 NCAC 46 .2201; .2203 - is to list drugs and devices which may be dispensed by registered nurses employed by health departments pursuant to G.S. 90-85.34.1.

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

Statutory Authority: G.S. 90-85.6; 90-85.34.1.

The public hearing will be conducted at 2:00 p.m. on August 19, 1986 at the Institute of Pharmacy, 109 Church St., Chapel Hill, N.C. 27514.

Comment Procedures: Persons desiring to present oral data, views, or arguments must submit a written summary thereof at least 10 days prior to the hearing date. Presentations of up to 10 minutes will be allowed during the hearing and written comments will also be received for 30 days after the hearing. All such written comments will be incorporated into the hearing record.

.1503 EXPERIENCE IN PHARMACY
An applicant for license must show that he has received 1500 hours of practical experience under the supervision of a licensed pharmacist which has been acquired after the satisfactory completion of two years of college work, 600 640 hours of which may be acquired concurrent with pharmacy college attendance in clinical pharmacy programs or demonstration projects which have been approved by the board.

.2001 ADMINISTRATIVE HEARING
   (a) Subchapter 2C of the Model Administrative Procedures for Administrative Hearing Procedures, codified as Title 22, NCAC, effective September 29, 1966-February 1, 1986, are hereby adopted by reference. In applying 22 NCAC, Subchapter 2C to this board, the definitions contained in 22 NCAC 2A .0005 shall apply as modified herein:
   (1) "Agency" means the North Carolina Board of Pharmacy.
   (2) "Agency Address" means: North Carolina Board of Pharmacy, Post Office Box H, Carrboro, North Carolina 27510.
   (3) "Agency Head"
   (A) In the context of final agency decisions, "agency head" means the board.
   (B) In the context of the board granting administrative authority, "agency head" means the
maintained by the pharmacist-manager. The pharmacist-manager shall verify the accuracy of the records at least weekly, and where health department personnel dispense to 30 or more patients in a 24-hour period, the pharmacist-manager shall verify the accuracy of the records within 24 hours after dispensing occurs;

(h) All drugs and/or devices shall be stored according to federal requirements as set out in the most recent United States Pharmacopoeia.

.2202 TRAINING OF HEALTH DEPARTMENT NURSES AND PHARMACIST-MANAGER

No registered nurse may dispense drugs or devices nor may the pharmacist-manager perform any duties pursuant to G.S. s. 90-85.34.1 prior to satisfactory completion of training acceptable to the Board. The Board may also require registered nurses and pharmacist-managers to complete in-service training at appropriate intervals.

Proposed curricula for initial and/or supplemental in-service training for registered nurses and/or pharmacist-managers employed by health departments must be submitted to the Board for its approval no later than 60 days prior to the date training is to commence. No registered nurses or pharmacist-managers may be enrolled in any such proposed training course until written Board approval is obtained. Initial training must include, but need not be limited to, instruction in labelling and packaging of prescription drugs and devices.

Proposals for initial and supplemental in-service training courses shall be sent to the Board’s offices, in writing, and shall include the following information:

(a) description of topics or courses to be covered;
(b) instructor for each topic or course, and his or her qualifications and credentials;
(c) anticipated duration of each topic or course;
(d) location of training;
(e) cost of program, if any, to participants.

.2203 DRUGS TO BE DISPENSED

Pursuant to G.S. s. 90-85.34.1,
registered nurses employed by local health departments may dispense the following drugs and/or devices during clinics conducted by the health department:

(a) Anti-tuberculosis drugs, as defined by Facts and Comparisons, or as recommended by the Tuberculosis Control Branch of the North Carolina Division of Health Services, during clinics for the treatment and/or control of tuberculosis;

(b) Anti-infective agents recommended by the United States Centers for Disease Control, for the purpose of treatment and control of sexually-transmitted diseases, during health department clinics for sexually-transmitted diseases;

(c) Artificial or synthetic hormones used for the prevention of pregnancy and/or contraceptive devices when dispensed during health department birth control clinics;

(d) Vitamin and mineral supplements;

(e) Topical preparations for the treatment of lice, scabies, impetigo, diaper rash, vaginitis, and related skin conditions;

(f) Over-the-counter drugs or preparations.

Regardless of the provisions set out above, no drug defined as a controlled substance by the United States Controlled Substances Act, 21 U.S.C. et seq., or regulations enacted pursuant to that Act, 21 CFR s. 1300, et seq., or by the North Carolina Controlled Substances Act, G.S. s. 90-85.6, G.S. s. 113.8, may be dispensed by registered nurses pursuant to G.S. s. 90-85.34.1.

STATE BOARD OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Community Colleges intends to adopt and amend regulations cited as 23 NCAC 2C .0301 and 23 NCAC 2C .0305. The purpose of the proposed regulations is to: 2C .0301 - to separate the general admission statement from services made available to persons less than 18 years old and set forth admission procedure for the emancipated minor; 2C .0305 - sets forth the types of services available to persons less than 18 years old and the conditions under which these services may be provided.

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

Statutory Authority: N.C.G.S. 115D-5.

The public hearing will be conducted at 10:00 a.m. on August 28, 1986 at the Third Floor Conference Room, Education Building, Raleigh, NC 27603-1712.

Comment Procedures: Any interested person may present written or oral statements relevant to proposed rules 23 NCAC 2C .0301 and 23 NCAC 2C .0305. A time limit of ten minutes per person may be imposed for oral presentations depending upon the number of persons making presentations. Individuals who plan to make oral presentations must give their remarks in writing to the hearing officer. Written statements not to be presented at the hearing should be directed before August 25, 1986, to the following address: Bobby L. Anderson, Hearing Officer, Department of Community Colleges, State Education Building, Raleigh, North Carolina 27603-1712.

TITLE 23 - COMMUNITY COLLEGES

SUBCHAPTER 2C - INSTITUTIONS: ORGANIZATION AND OPERATIONS

.0301 ADMISSION TO INSTITUTIONS

(») Each institution shall maintain an open door admission policy to all applicants who are high school graduates or who are at least 18 years of age. Student admission and placement shall be determined by the officials of each institution. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older.

(b) The state board shall encourage individuals to complete high school before seeking admission to an institution.

(«) A minor 16 years old or older may be considered a student with special needs and may be admitted to an appropriate program at an institution if the local public or private educational agency
determines that admission to the program is the best educational option for the student and is approved by the institution. This requirement may be waived if the student has been out of school at least six months and his application is supported by a notarized petition of his parent, legal guardian or other person or agency having legal custody and control. The petition shall certify the student’s residence date of birth, date of leaving school, and the petitioner’s legal relationship to the student.

(d) A high school student 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to appropriate courses concurrently under the following conditions, and other appropriate provisions of this Rule:

(1) Upon recommendation of the chief administrative school officer and the approval of the president of the institution;

(2) Upon approval of the student’s program by the principal of the school and the president of the institution; and

(3) Upon certification by the principal that the student is taking at least three high school courses and is making appropriate progress toward graduation.

(e) College level courses taken at an institution shall earn valid credit. A student may earn credit toward high school graduation if appropriate.

(f) No high school students shall not displace adults but may be admitted any quarter on a space-available basis to any curriculum or continuing education course. Upon admission, they shall be treated the same as all other students.

(g) Institutions shall not start classes. Offer summer school courses or offer regular high school courses for high school students.

(h) An institution may approve the enrollment of high school students only when no more than five percent of the enrollment from that high school is or has been enrolled in post-secondary education during the regular ten month public school year. Exceptions to this maximum will require approval of the State Board of Education.

.0305 EDUCATION SERVICES

FOR MINORS

(a) The State Board shall encourage individuals to complete high school before seeking admission to an institution.

(b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at an institution if the local public or private educational agency determines that admission to the program is the best educational option for the student and the admission of such student to the program is approved by the institution. This requirement may be waived if the student has been out of school at least six months and his application is supported by a notarized petition of his parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student’s residence date of birth, date of leaving school, and the petitioner’s legal relationship to the student.

(c) A high school student 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to appropriate courses concurrently under the following conditions:

(1) Upon recommendation of the chief administrative school officer and the approval of the president of the institution;

(2) Upon approval of the student’s program by the principal of the school and the president of the institution; and

(3) Upon certification by the principal that the student is taking at least three high school courses and is making appropriate progress toward graduation.

(d) High school students taking courses pursuant to paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any quarter on a space-available basis to any curriculum or continuing education course. Upon admission, they shall be treated the same as all other students.

(e) Unless specifically authorized by state law, institutions shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(f) An institution may...
make available to persons of any age non-remedial, enrichment courses during the summer quarter. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the institution or high school.

(g) At the request of the Director of a training school having custody of juveniles committed to the Division of Youth Services, Department of Human Resources, an institution may make available to such juveniles any course offered by that institution if they meet the course admission requirements. The Director's request shall include his approval for each juvenile to enroll in the course. Courses made available to such juveniles shall follow the approval process for immured groups as set forth in rule 2E.0403.
FOLLOWING RULES

When the text of any adopted rule differs from the text of that rule as proposed, the text of the adopted rule is published in this section.

When the text of any adopted rule is identical to the text of that as proposed, adoption of the rule will be noted in the "List of Rules Affected" and the text of the adopted rule will not be republished.

Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication of proposed rules.

TITLE 5 -CORRECTIONS

SUBCHAPTER 2B -INMATE CONDUCT

RULES: DISCIPLINE

SECTION .0100 -GOOD TIME AND GAINED TIME

.0104 PROCEDURE

(a) Recording sentence reduction credits. Good time will be computed automatically on the inmate's record. Gained time, meritorious time, and restored good time awards must be initiated by the unit superintendent or institution head upon the designated reduction credit form and shall be approved as provided in Paragraphs (b) and (c) in this Rule. Transfers automatically terminate regular and fair sentence gain time status for inmates in the custody of the Division of Prisons. Meritorious time awards will be accumulated and recorded on an hour-for-hour basis and submitted monthly in whole days, except such credits may be authorized for an exemplary act at a rate not to exceed 30 days for each act. A whole day is defined as eight hours. In the case of inmates confined to local confinement facilities, pursuant to court commitment, the sheriff or administrator shall establish procedures for granting, approving, and documenting sentence reduction credits. In the case of inmates confined to local confinement facilities, pursuant to a contractual agreement with the Department of Correction, the sheriff or administrator shall forward recommendations for granting sentence reduction credits to the Division of Prisons' designated approving authority as listed in .0104(b). The Division of Prisons' approving authority will either approve, modify, or disapprove the award. All Division of Prisons' authorized credits shall be recorded upon the sentence reduction credit form.

History Note: Statutory Authority G.S. 148-11; 148-13; 15A-1340.7; Amended Eff. August 1, 1986; September 1, 1983.

TITLE 19A - TRANSPORTATION

SUBCHAPTER 2B - HIGHWAY PLANNING

SECTION .0300 - PLANNING AND RESEARCH

.0312 MATCHING - PL FUNDS

The federal share payable on account of work performed using PL funds shall be 85 percent. The remaining 15 percent is local money provided by the urbanized area and may be in the form of "like work".


.0412 REST AREAS AND WELCOME CENTERS - AUTHORITY


.0413 APPROVAL FOR USE - REST AREAS: WELCOME CENTERS


.0407 CONTROL AND REGULATION OF ROADSIDE PARKS AND REST AREAS

It shall be unlawful, within any scenic overlook, rest area, or other designated parking area on the primary and secondary roads and highways of
the state, for any person, firm or corporation to erect tents, booths, or structures of any kind for camping or any other activity; to create loud music or other objectionable noise; to solicit contributions, names, support or for any other purpose; to conduct or participate in public or private auctions; and other ceremonies; to distribute tracts, pamphlets, favors or any material, product or literature; to erect displays, signs, or carry on any commercial activity; to use public address systems; to distribute or use alcoholic beverages; to engage in disorderly conduct or use vulgar, obscene or profane language; or, to commit any nuisance producing a material annoyance, inconvenience, hurt, discomfort, or that is dangerous to the life, property and welfare of the traveling public.

History Note: Statutory Authority G.S. 136-18(9); 136-125; Eff. July 1, 1978; Amended Eff. August 1, 1986.

SECTION .0800 - SOLICITATION OF CONTRIBUTIONS FOR RELIGIOUS PURPOSES AT REST AREAS

.0801 PERMIT TO SOLICIT CONTRIBUTIONS
In recognition of the right of citizens to the free exercise of religion which includes the right to solicit for contributions for religious purposes, and in recognition of the State of North Carolina's legitimate concern for the safety and well-being of the traveling public, all solicitation of contributions for religious purposes along North Carolina's interstate highway system or in highway rest areas, wayside parks and visitor welcome centers on all of North Carolina's highways shall be in accordance with these Regulations. All other forms of solicitation are prohibited.

History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. August 1, 1986.

.0802 PERMITS REQUIRED
(a) All organization desiring to solicit under the provisions of this Section must first obtain a permit from the Department of Transportation for the stated purpose of allowing their members to solicit at designated areas on the state highway system.

(b) Written requests for permits for religious solicitation shall be sent to the Office of the State Highway Administrator of the North Carolina Department of Transportation.

(c) Written requests must include all of the following:
(1) copy of certificate showing that the applicant is exempt from federal income tax as a religious, educational or charitable organization as provided in 26 USC 501(c)(3) together with the applicant's tax exemption number;
(2) a statement indicating the locations where the organization intends to solicit contributions;
(3) the name and address of each individual authorized to solicit for the applicant;
(4) the name of an officer of the applicant, together with an address, to whom the permit is to be sent and complaints are to be directed.
(5) if the request for a permit is from a non-religious educational or charitable organization; a detailed written description of the organization's past efforts serving and promoting the safety of the traveling public.

(d) Within 30 days after the permit is issued, the organization shall submit all appropriate information required in Paragraph (c) of this Rule has been provided by the applicant, a permit shall be issued by the State Highway Administrator, or his duly authorized representative, and said permit will be effective for a period of six months from the date of issuance.
(e) Each permit issued shall describe the activity authorized, the specific location at which such activity be conducted, and the period of time for which the permit is issued.

History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. August 1, 1986; September 1, 1985.
RESTRICTIONS AND REQUIREMENTS

(a) Any member of an organization duly permitted under these Regulations actually engaged in soliciting contributions must provide and prominently display an identification tag or badge containing all of the following information:
   (1) a photograph;
   (2) name;
   (3) organization; and
   (4) DOT permit number.

(b) While actually engaged in the solicitation of contributions, individual solicitors shall orally identify themselves and state which organization they represent.

(c) Individual solicitors operating under a permit from the department shall be permitted to engage in their solicitation activities between the hours of 9:00 a.m. and 5:00 p.m., except on Saturdays of each calendar day, provided however, that solicitation shall be allowed at any time on legal holidays, State or Federal.

(d) Individual solicitors are prohibited from soliciting on any portion of a highway not designated as a rest area or welcome center.

(e) Individual solicitors are restricted from soliciting inside any building or within a distance of fifty feet of the following areas:
   (1) entrances to or on stair rails;
   (2) doors of public circulation;
   (3) restrooms;
   (4) phone booths;
   (5) motor vehicles; and
   (6) a queue or line of persons waiting for a service at any of the above listed areas.

(f) Individual solicitors may not use utility services provided at highway rest areas or visitor centers for the furtherance of solicitation activities.

(g) A permittee shall be limited to one individual solicitor actually engaged in solicitation activities at each site, and this individual may have the assistance of no more than two other members of the permittee's organization.

(h) Individual solicitors shall not persist in soliciting after solicitation has been declined, and solicitors shall not solicit State employees who are identifiable as such.

(i) Individual solicitors shall not harass persons by demanding, threatening or intimidating conduct.

(j) While individual solicitors may solicit donations for religious paraphernalia from the general public which shall be used in the furtherance of their religion, the individual solicitors must inform the person solicited if a minimum donation is required.

(k) All transfers of money or funds, either resulting from the sale of printed matter or donations solicited from a person acting pursuant to a permit issued by the State Highway Administrator or his duly authorized representative, shall take place in or at location specifically identified in the permit.

(1) Individual solicitors may not engage in dancing, chanting, the use of music or other noise producing instruments, megaphones, microphones or any other similar devices.

(m) Individual solicitors shall cease activities in the event of emergency situations involving dangers to the general public.

(n) Individual solicitors shall not interfere with pedestrian or vehicular traffic.

(o) No more than two organizations, one religious and one charitable or educational, may solicit at highway rest areas, wayside parks or visitor welcome centers at the same time.

History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. August 1, 1986; September 1, 1985.

.0804 REVOCATION OF PERMIT

(a) Any of the following shall be grounds for revoking a permit issued under the provisions of these Regulations:
   (1) failure to renew the license issued to the organization;
   (2) loss of federal income tax exemptions;
   (3) violations of the restrictions on solicitations contained in Rule .0803 of this Section;
   (4) substantiated complaints of harassment of travelers by individual solicitors;
   (5) any action which adversely affects the health or safety of the traveling public;
   (6) fraud or
misrepresentation in application on the part of the permittee.

(b) Any organization which applies for a permit for solicitation and is refused such a permit, or any organization which has its permit revoked, may make a written appeal within 30 days of the department's decisions to the Secretary of Transportation whose decisions shall be final.

History Note: Statutory Authority G.S. 20-175; 136-18; Eff. November 1, 1984; Amended Eff. August 1, 1986; September 1, 1985.
## NORTH CAROLINA ADMINISTRATIVE CODE

### LIST OF RULES AFFECTED

**EDITION X, NO. 4**

**AGENCY**

<table>
<thead>
<tr>
<th>AGRICULTURE</th>
<th>NCAC 43F .0003</th>
<th>Amended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>48A .0611</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>48D .0003</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>52B .0501</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0505</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0601</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>52D .0001</td>
<td>Amended</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>HUMAN RESOURCES</th>
<th>NCAC 4C .0102</th>
<th>Amended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>.0202</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0402</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0207</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0208</td>
<td>Adopted</td>
</tr>
<tr>
<td></td>
<td>7D .0405</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>8C .1106</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1203</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1207</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>8D .0101-.0102</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0201-.0207</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0301-.0302</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0307-.0308</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0401</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0403-.0404</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0406-.0408</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0502</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0506</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0510</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0513-.0515</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0601-.0602</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0606-.0607</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0701</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0703</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0801-.0804</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1003-.1005</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1101</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1202-.1203</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.1206-.1211</td>
<td>Amended</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>8G .0601</th>
<th>Amended</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>10A .0303</th>
<th>Amended</th>
</tr>
</thead>
</table>

**ACTION TAKEN**

**EFFECTIVE:** July 1, 1986
<table>
<thead>
<tr>
<th>INSURANCE</th>
<th>NCAC 4</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>45H</td>
<td>0202</td>
<td>Amended</td>
</tr>
<tr>
<td>5</td>
<td>.0101-.0104</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0201-.0202</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0301-.0303</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0401-.0402</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0501</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0503</td>
<td>Amended</td>
</tr>
<tr>
<td>6</td>
<td>.0101</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0202-.0203</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0208-.0209</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0212</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0218</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0301</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0303</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0401-.0402</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0404</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0408</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0410</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0501</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0505</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0601-.0602</td>
<td>Amended</td>
</tr>
<tr>
<td>10</td>
<td>.0101</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0202-.0203</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0205</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0207</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0209</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0301</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0305-.0307</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0402-.0405</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0501</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0505</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0604</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0702-.0707</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0708-.0710</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0711-.0715</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0716</td>
<td>Adopted</td>
</tr>
<tr>
<td></td>
<td>.0802</td>
<td>Amended</td>
</tr>
<tr>
<td>11B</td>
<td>.0102-.0104</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0107-.0111</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0113</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0115</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0116</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0120</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0122</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0124-.0151</td>
<td>Repealed</td>
</tr>
<tr>
<td>12</td>
<td>.0302</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0306</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0449</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0457</td>
<td>Adopted</td>
</tr>
<tr>
<td></td>
<td>.0505</td>
<td>Repealed</td>
</tr>
<tr>
<td></td>
<td>.0514</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0551-.0553</td>
<td>Adopted</td>
</tr>
<tr>
<td>13</td>
<td>.0315</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0318</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0324</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0410</td>
<td>Amended</td>
</tr>
<tr>
<td></td>
<td>.0516</td>
<td>Adopted</td>
</tr>
</tbody>
</table>

<p>| NATURAL RESOURCES AND COMMUNITY DEVELOPMENT |
| NCAC 9C | 0902 | Amended |
| 10B | .0115 | Amended |
| | .0202-.0211 | Amended |
| | .0214 | Amended |
| 10C | .0305 | Amended |</p>
<table>
<thead>
<tr>
<th>Section</th>
<th>Amended/Adopted/Repealed</th>
</tr>
</thead>
<tbody>
<tr>
<td>10D</td>
<td>Amended</td>
</tr>
<tr>
<td>10F</td>
<td>Amended</td>
</tr>
<tr>
<td>EDUCATION</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amended</td>
</tr>
<tr>
<td>NCAC</td>
<td>Adopted</td>
</tr>
<tr>
<td>1A</td>
<td>Repealed</td>
</tr>
<tr>
<td>.0001-.0002</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Repealed</td>
</tr>
<tr>
<td>.0003-.0005</td>
<td></td>
</tr>
<tr>
<td>1B</td>
<td>Repealed</td>
</tr>
<tr>
<td>.0101-.0109</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Repealed</td>
</tr>
<tr>
<td>.0201-.0202</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Repealed</td>
</tr>
<tr>
<td>.0301-.0311</td>
<td></td>
</tr>
<tr>
<td>1C</td>
<td></td>
</tr>
<tr>
<td>.0001-.0002</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Repealed</td>
</tr>
<tr>
<td>2</td>
<td>Repealed</td>
</tr>
<tr>
<td>5</td>
<td>Repealed</td>
</tr>
<tr>
<td>6</td>
<td>Adopted</td>
</tr>
<tr>
<td>REVENUE</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amended</td>
</tr>
<tr>
<td>NCAC</td>
<td>Amended</td>
</tr>
<tr>
<td>6B</td>
<td>Adopted</td>
</tr>
<tr>
<td>.0605</td>
<td></td>
</tr>
<tr>
<td>.3202</td>
<td></td>
</tr>
<tr>
<td>6C</td>
<td>Adopted</td>
</tr>
<tr>
<td>.0122</td>
<td></td>
</tr>
<tr>
<td>.0301-.0304</td>
<td></td>
</tr>
<tr>
<td>TRANSPORTATION</td>
<td></td>
</tr>
<tr>
<td>19A</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amended</td>
</tr>
<tr>
<td>NCAC</td>
<td>Amended</td>
</tr>
<tr>
<td>2E</td>
<td>.0207</td>
</tr>
<tr>
<td>.0215</td>
<td></td>
</tr>
<tr>
<td>BOARD OF NURSING</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Amended</td>
</tr>
<tr>
<td>NCAC</td>
<td>Amended</td>
</tr>
<tr>
<td>36</td>
<td>.0109</td>
</tr>
<tr>
<td>.0217</td>
<td></td>
</tr>
</tbody>
</table>
### TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

<table>
<thead>
<tr>
<th>TITLE</th>
<th>DEPARTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Administration, Department of</td>
</tr>
<tr>
<td>2</td>
<td>Agriculture, Department of</td>
</tr>
<tr>
<td>3</td>
<td>Auditor, Department of State</td>
</tr>
<tr>
<td>4</td>
<td>Commerce, Department of</td>
</tr>
<tr>
<td>5</td>
<td>Corrections, Department of</td>
</tr>
<tr>
<td>6</td>
<td>Council of State</td>
</tr>
<tr>
<td>7</td>
<td>Cultural Resources, Department</td>
</tr>
<tr>
<td>8</td>
<td>Elections, State Board of</td>
</tr>
<tr>
<td>9</td>
<td>Governor</td>
</tr>
<tr>
<td>10</td>
<td>Human Resources, Department of</td>
</tr>
<tr>
<td>11</td>
<td>Insurance, Department of</td>
</tr>
<tr>
<td>12</td>
<td>Justice, Department of</td>
</tr>
<tr>
<td>13</td>
<td>Labor, Department of</td>
</tr>
<tr>
<td>14A</td>
<td>Crime Control, Department of</td>
</tr>
<tr>
<td>15</td>
<td>Natural Resources and Community Development</td>
</tr>
<tr>
<td>16</td>
<td>Education, Department of</td>
</tr>
<tr>
<td>17</td>
<td>Revenue, Department of</td>
</tr>
<tr>
<td>18</td>
<td>Secretary of State</td>
</tr>
<tr>
<td>19A</td>
<td>Transportation, Department of</td>
</tr>
<tr>
<td>20</td>
<td>Treasurer, Department of State</td>
</tr>
<tr>
<td>21</td>
<td>Occupational Licensing Boards</td>
</tr>
<tr>
<td>22</td>
<td>Administrative Procedures</td>
</tr>
<tr>
<td>23</td>
<td>Community Colleges, Department of</td>
</tr>
<tr>
<td>24</td>
<td>Independent Agencies</td>
</tr>
<tr>
<td>25</td>
<td>Personnel, Department of State</td>
</tr>
<tr>
<td>26</td>
<td>Office of Administrative Hearings</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>LICENSING BOARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Architecture, Board of</td>
</tr>
<tr>
<td>4</td>
<td>Auctioneers, Commission for</td>
</tr>
<tr>
<td>6</td>
<td>Barber Examiners, Board of</td>
</tr>
<tr>
<td>8</td>
<td>Certified Public Accountant Examiners</td>
</tr>
<tr>
<td>10</td>
<td>Chiropractic Examiners, Board of</td>
</tr>
<tr>
<td>12</td>
<td>Contractors, Licensing Board for</td>
</tr>
<tr>
<td>14</td>
<td>Cosmetic Art Examiners, Board of</td>
</tr>
<tr>
<td>16</td>
<td>Dental Examiners, Board of</td>
</tr>
<tr>
<td>18</td>
<td>Electrical Contractors, Board of Examiners</td>
</tr>
<tr>
<td>20</td>
<td>Foresters, Board of Registration for</td>
</tr>
<tr>
<td>21</td>
<td>Geologists, Board of</td>
</tr>
<tr>
<td>22</td>
<td>Hearing Aid Dealers and Fitters Board</td>
</tr>
<tr>
<td>26</td>
<td>Landscape Architects, Licensing Board of</td>
</tr>
<tr>
<td>28</td>
<td>Landscape Contractors, Registration Board of</td>
</tr>
<tr>
<td>30</td>
<td>Law Examiners, Board of</td>
</tr>
<tr>
<td>31</td>
<td>Martial &amp; Family Therapy Certification Board</td>
</tr>
<tr>
<td>32</td>
<td>Medical Examiners, Board of</td>
</tr>
<tr>
<td>33</td>
<td>Midwifery Joint Committee</td>
</tr>
<tr>
<td>34</td>
<td>Mortuary Science, Board of</td>
</tr>
<tr>
<td>36</td>
<td>Nursing, Board of</td>
</tr>
<tr>
<td>37</td>
<td>Nursing Home Administrators, Board of</td>
</tr>
<tr>
<td>38</td>
<td>Occupational Therapist, Board of</td>
</tr>
<tr>
<td>40</td>
<td>Opticians, Board of</td>
</tr>
<tr>
<td>42</td>
<td>Optometry, Board of Examiners in</td>
</tr>
<tr>
<td>44</td>
<td>Osteopathic Examination and Registration</td>
</tr>
<tr>
<td>46</td>
<td>Pharmacy, Board of</td>
</tr>
<tr>
<td>48</td>
<td>Physical Therapy, Examining Committee of</td>
</tr>
<tr>
<td>50</td>
<td>Plumbing and Heating Contractors, Board of</td>
</tr>
<tr>
<td>52</td>
<td>Podiatry Examiners, Board of</td>
</tr>
<tr>
<td>53</td>
<td>Practicing Counselors, Board of</td>
</tr>
<tr>
<td>54</td>
<td>Practicing Psychologists, Board of</td>
</tr>
<tr>
<td>56</td>
<td>Professional Engineers and Land Surveyors</td>
</tr>
<tr>
<td>58</td>
<td>Real Estate Commission</td>
</tr>
<tr>
<td>60</td>
<td>Refrigeration Examiners, Board of</td>
</tr>
<tr>
<td>62</td>
<td>Sanitarian Examiners, Board of</td>
</tr>
<tr>
<td>64</td>
<td>Speech and Language Pathologists and Audiologists, Board of Examiners of</td>
</tr>
<tr>
<td>66</td>
<td>Veterinary Medical Board</td>
</tr>
</tbody>
</table>
CUMULATIVE INDEX
(April 1, 1986 - March 31, 1987)

1986

Pages Issue
1 - 73 . . . . . . . . . April
74 - 97 . . . . . . . . . May
98 - 132 . . . . . . . June
133 - 222 . . . . . . July

AO - Administrative Order
E - Errata
EO - Executive Order
FR - Final Rule
GS - General Statute
JO - Judicial Order
LRA - List of Rules Affected
PR - Proposed Rule
SO - Statements of Organization
TR - Temporary Rule

ADMINISTRATIVE ORDERS
Beecher Reynolds Gray, 47 AO
Fred Gilbert Morrison, Jr., 48 AO
Angela Rebecca Bryant, 49 AO
Thomas R. West, 50 AO
Abraham Penn Jones, 98 AO

AGRICULTURE
Food and Drug Protection Division, 99 PR

COMMERCE
Milk Commission, 74 PR, 135 PR
Savings and Loan, 78 PR

COMMUNITY COLLEGES
Community Colleges, 210 PR

CORRECTION
Division of Prisons, 213 FR

CULTURAL RESOURCES
Archives and History, 78 PR

EXECUTIVE ORDERS
Chapter 7A, 21-22 GS
Chapter 150B, 3-21 GS

GENERAL STATUTES
Children Services, 103 PR
Food Assistance, 103 PR
Health Services, 169 PR
Individual and Family Support, 103 PR
Medical Assistance, 181 PR
Medical Services, 101 PR
Mental Health Retardation and Substance Abuse, 80 PR
Youth Services, 85 PR

HUMAN RESOURCES

JUDICIAL ORDERS
Appointment
Robert A. Melott, 45 JO

JUSTICE

NORTH CAROLINA REGISTER  221
Police and Information Network, 107 PR

LABOR

Boiler and Pressure Vessel, 86 PR, 189 PR

LICENSING BOARD

CPA Examiners, 112 PR
Medical Examiners, 92 PR
Occupational Therapy, 206 PR
Pharmacy, 208 PR
Plumbing and Heating Contractors, 116 PR

LIST OF RULES AFFECTED

Volume 10, No. 1
(April 1, 1986), 71 LRA
Volume 10, No. 2
(May 1, 1986), 94 LRA
Volume 10, No. 3
(June 1, 1986), 127 LRA
Volume 10, No. 4
(July 1, 1986), 217 LRA

NATURAL RESOURCES AND COMMUNITY DEVELOPMENT

Coastal Management, 112 FR
Departmental Rules, 109 PR, 118 FR
Employmental and Training, 111 PR
Environmental Management, 88 PR, 190 PR
Forest Resources, 126 FR
Marine Fisheries, 191 PR
Soil and Water, 90 PR
Wildlife Resources and Water Safety, 110 PR, 205 PR

OFFICE OF ADMINISTRATIVE HEARINGS

General, 52 PR
Hearings Division, 61 PR
Rules Division, 52 PR

SECRETARY OF STATE

Notary Public, 91 PR

STATEMENTS OF ORGANIZATION

CPA Examiners, 133 SO
Natural Resources and Community Development, 133 SO
Office of Administrative Hearings, 51 SO

TRANSPORTATION

Department of Transportation, 213 FR
Please enter my subscription for the North Carolina Register to start with the ____________ issue. ($95.00/year subscription)

Please enter my subscription for the NCAC in microfiche form starting with the ____________ edition. (Published in March and October: $40.00 per edition)

Renew North Carolina Register □ Renew NCAC

Check Enclosed □ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME ___________________________________________ ADDRESS ________________________________

Y _________________________ STATE _______ ZIP _______________________________________

( Please return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)
### CHANGE OF ADDRESS:

1. **Present Address**

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>CITY</th>
<th>STATE</th>
<th>ZIP</th>
</tr>
</thead>
</table>

2. **New Address**

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>CITY</th>
<th>STATE</th>
<th>ZIP</th>
</tr>
</thead>
</table>

---

**Office of Administrative Hearings**  
P. O. Drawer 11666  
Raleigh, North Carolina 27604