

## SECTION .2000 - GRADE A MILK SANITATION

### 02 NCAC 09G .2001 GENERAL - ADOPTION BY REFERENCE

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

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

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

(a) The provisions of this Rule make amendments, additions, and deletions to the Milk Ordinance adopted by reference in Rule .2001 of this Section.

(b) In the Milk Ordinance, several blank spaces are identified by three periods ("..."). The following provisions identify the location of the blank spaces in the Milk Ordinance and provide the words to be inserted in the blanks:

- (1) On page 31, the second paragraph, the word "State" is inserted in the first blank, and the words "North Carolina" are inserted in the second blank.
- (2) On page 36, Section 1, Item X, the words "delegated representative" are inserted in the first blank, the words "Division of Environmental Health" are inserted in the second blank, and the rest of the sentence is deleted.
- (3) On page 37, Section 2, the first paragraph, the word "State" is inserted in the first blank, and the words "North Carolina" are inserted in the second blank.
- (4) On page 42, Section 5, the first paragraph, the words "North Carolina" are inserted.
- (5) On page 46, Section 6, second column, the fourth paragraph, the word "current" is inserted in the first blank and the word "current" is inserted in the second blank.
- (6) On page 76, Section 7, Item 6p, the first paragraph, the word "State" is inserted in the first blank, and the words "North Carolina" are inserted in the second blank.
- (7) On page 77, Section 7, Item 6p, Administrative Procedures, the word "State" is inserted in the first blank, and the words "North Carolina" are inserted in the second blank.
- (8) On page 122, Section 11, the first paragraph, the word "State" is inserted in the first blank, and the words "North Carolina" are inserted in the second and third blanks.

(c) The Milk Ordinance is amended by:

- (1) Deleting the words "or its jurisdiction" wherever the words appear in the Milk Ordinance.
- (2) Deleting the words "twelve months from the date this ordinance is adopted" as they appear on page 121, Section 9 of the Milk Ordinance, and substitute the words "January 1, 1985".
- (3) Adding the following paragraph to the end of Section 9 of the Milk Ordinance: "No restaurant, soda fountain, other food service establishment, retail outlet, milk distribution plant, or grocery store shall serve, sell or offer for sale any Grade "A" milk or milk products which have not been properly handled; which are in soiled cartons or containers; which have not been stored in clean refrigerated storage rooms or display cases; and which have not been maintained at a temperature of 45 degrees F. (7 degrees C.) or less".
- (4) Deleting the words "every 3 years" as they appear on page 61A, Section 7, Item 8r, Administrative Procedure No. 7, and substituting the words "once every year".
- (5) Deleting the words "every 3 years" as they appear on page 199, Appendix G, paragraph entitled "frequency", line No. 6, and by substituting the words "once every year".
- (6) Deleting Appendix C and all of Appendix D except Part V and VI.
- (7) Deleting the last sentence of Administrative Procedure No. 1 in Item 7r, Section 7, page 60A and by substituting the sentence "All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system".
- (8) Deleting the words "Appendix D, p. 155," as they appear on page 61A, Section 7, Item 8r, Administrative Procedure No. 1, by substituting the words "the Commission for Public Health's Rules

governing water supplies", and by adding the following sentence at the end of Administrative Procedure No. 1: "Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division."

- (9) Deleting the words "(see Appendix D, p. 155)" as they appear on page 61A, Section 7, Item 8r, Administrative Procedure No. 6.
- (10) Deleting the words "(see Appendix D)" as they appear on page 78, Section 7, Item 7p, Administrative Procedure No. 6.
- (11) Deleting the words "Appendix D, p. 155," as they appear on page 77, Section 7, Item 7p, Administrative Procedure No. 2, and by substituting the words "The Commission for Public Health' Rules governing water supplies".
- (12) Deleting Section 3 and the accompanying Administrative Procedures, and by deleting Sections 15 through 18.
- (13) Deleting the seventh paragraph of Section 5 on page 42, which begins with the words "should the violation" and by substituting the following paragraph: "Should the violation of any requirement set forth in Section 7, or in the case of a milk hauler also Section 6, be found to exist on an inspection, the posting of the inspection report shall serve as notice of intent to suspend the permit if the violation noted is not in compliance at the time of the next inspection. The finding of violation may be appealed by requesting a hearing within the time specified in the notice. If the violation is not in compliance at the time of the next inspection and a hearing is not requested within the time period stated in this Paragraph, the permit will be suspended".
- (14) Deleting the first sentence following the words "ENFORCEMENT PROCEDURE." which are found in the Administrative Procedures of Section 5 on page 44.

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

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

- (a) The following definitions shall apply throughout this Section:
  - (1) "Division" means the Division of Environmental Health or its delegated representative.
  - (2) "Independent Milk Distributor" means any person who is not under the control or ownership of a milk plant and sells or offers for sale to another any Grade "A" pasteurized milk or milk products.
- (b) All definitions contained in the Milk Ordinance shall apply throughout this Section.

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

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

- (a) No person shall produce, process, transport, or distribute Grade "A" milk without first obtaining a permit from the Division. A person who complies with the requirements of this Section shall be issued a permit. Permits shall not be transferable with respect to persons or locations.
- (b) The following shall be exempt from the permit requirements of Paragraph (a) of this Rule:
  - (1) grocery stores;
  - (2) restaurants;
  - (3) soda fountains; and
  - (4) other establishments where milk or milk products are only served or sold at retail.
- (c) The following shall not be required to obtain a hauler's permit:
  - (1) milk producers who transport milk or milk products only from their own dairy farm;
  - (2) employees of a milk distributor or milk plant operator that has a valid permit; and
  - (3) employees of a milk transportation company that has a valid permit and transports milk from a milk plant, receiving station, or transfer station.

*History Note: Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Amended Eff. December 1, 1990;  
Transferred from 15A NCAC 18A .1204 Eff. May 1, 2012.*

#### **02 NCAC 09G .2005 PROCEDURE FOR ISSUANCE OF PERMIT: SAMPLING: EMBARGO**

- (a) Milk plants shall be issued a North Carolina permit by the Division. This permit shall cover the milk plant and plant-owned distributors. The Division shall assure that a minimum of four samples of raw milk for pasteurization shall be taken and recorded from each milk plant after receipt of the milk by the plant and prior to pasteurization every consecutive six months, and shall sample Grade "A" pasteurized milk and milk products a minimum of four times every consecutive six months. Samples shall be collected from the milk plant or plant-owned distributors.
- (b) Independent milk distributors, out-of-state milk plants and milk distributors, and milk haulers shall be issued a North Carolina permit by the Division.
- (c) A local health department without a milk plant or independent milk distributor located in its jurisdiction is authorized, but is not required to sample Grade "A" pasteurized milk or milk products. The local health department shall maintain a record of temperature and cleanliness in retail stores, grocery stores, milk delivery trucks, and similar establishments to determine compliance with Sections 2, 4, 9, and 10 of the Milk Ordinance.
- (d) Dairy farms shall be issued a North Carolina permit by the Division. Dairy farms transferring from one milk plant or bulk tank unit to another shall not be issued a new permit, but the dairy farm records shall be transferred to the appropriate Division representative maintaining the records for the new milk plant or bulk tank unit. The Division shall assure that a minimum of four samples of raw milk for pasteurization are recorded every consecutive six months.

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

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

- (a) The Division may suspend a permit:
- (1) when it has reason to believe that an imminent health hazard exists;
  - (2) when the permit holder has violated any of the requirements of this Section; or
  - (3) when the permit holder has obstructed the Division in the performance of its duties.
- (b) The permit issuing agency may forego suspension of the permit if the product or products in violation are not sold or offered for sale until the conditions of Paragraph (e) are met.
- (c) Except where an imminent health hazard exists, the Division shall serve upon the permit holder a written notice of intent to suspend a permit. The written notice shall meet the following requirements:
- (1) specify with particularity the violations in question;
  - (2) afford the permit holder such time to correct the violations as may be agreed to by the parties or, in the absence of agreement, fixed by the Division; and
  - (3) notify the permit holder that an administrative hearing will be held prior to suspension of the permit if the permit holder requests a hearing within the time given for correcting the violations.
- (d) Where an imminent health hazard exists, the permit may be suspended immediately and a hearing scheduled thereafter.
- (e) A permit suspension shall remain in effect until the violations have been corrected. Permit suspension may be lifted as follows:
- (1) If a permit suspension is due to a violation of any of the bacterial, coliform, or cooling-temperature standards, the Division may, within one week after the receipt of notification of the correction of the violations, temporarily lift the suspension after determining by an inspection of the facilities and operating methods that the conditions responsible for the violation have been corrected. If a permit suspension is due to a violation of the somatic cell count standard, the Division may temporarily lift the suspension whenever a resampling of the herd milk supply indicates the milk supply to be within acceptable limits as prescribed in Section 7 of the Milk Ordinance. In both cases, samples shall then be taken at the rate of not more than two per week on separate days within a three-week period. The Division shall lift any suspension upon compliance with the appropriate standard as determined in accordance with Section 6 of the Milk Ordinance.

- (2) If a permit suspension is due to a violation of a requirement other than bacteriological, coliform, somatic cell count, or cooling-temperature standards, the permit holder may notify the Division that the violations have been corrected. Within one week of the receipt of such notification, the Division shall make an inspection of the permit holder's establishment and make as many additional inspections thereafter as are necessary to determine that the permit holder's establishment is complying with the requirements. If the establishment is in compliance, the suspension of the permit will be lifted.
- (f) Upon repeated violations, the Division may revoke a permit in accordance with G.S. 130A-23. This Rule is not intended to preclude the institution of court action as provided in Rule .2007 of this Section.
- (g) If a local health department issues the permit, the local health department is responsible for suspending or revoking the permit. The local health department shall utilize information submitted by the Division or another local health department.

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

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

- (a) The rules of this Section shall be enforced by the Division.
- (b) Any provision contained in the Administrative Procedures sections of the Milk Ordinance or the Appendices to the Milk Ordinance which have been adopted by reference and which specifies mandatory compliance shall be enforced as a requirement of the rules of this Section.
- (c) A person who violates a provision of the rules of this Section is subject to the penalty provisions contained in G.S. 130A-18 and 130A-25.
- (d) Milk may be embargoed in accordance with the provisions of G.S. 130A-21.

*History Note: Authority G.S. 106-266.31;  
Eff. January 1, 1985;  
Transferred from 15A NCAC 18A .1207 Eff. May 1, 2012.*

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

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

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

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

Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B.

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

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

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

*History Note: Authority G.S. 106-266.31;  
Temporary Adoption Eff. April 2, 2001;*

*Temporary Adoption Expired January 11, 2002;*  
*Temporary Adoption Eff. June 1, 2003;*  
*Eff. February 1, 2004;*  
*Transferred from 15A NCAC 18A .1210 Eff. May 1, 2012.*