

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0101

DEADLINE FOR RECEIPT: September 9, 2022

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

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

In reviewing this Rule, the staff recommends the following changes be made:

Generally, to the Rule: Consider adopting any definitions in G.S. 106-65.95.

Page 1, Line 6: Strike "these Rules" and replace with "the rules of this Chapter". Otherwise, specify which rules.

Page 1, Lines 7 and 8: Is the disinfectant registered by the EPA or with the EPA? Registered pursuant to what?

Page 1, Lines 9 - 11: This is confusing. Shouldn't there be a comma after "sells" on line 10? In the alternative shouldn't there be either and "and" or an "or" after "sanitizes,"? Shouldn't there be a comma after "State" in line 11? Consider re-writing this for clarity.

Page 1, Line 11: By "state" does the agency mean North Carolina, or the state of being sanitized? The agency capitalizes the first "state" but not the second time in one sentence.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

02 NCAC 61 .0101 is amended as published in 36:20 NCR 1607 as follows:

CHAPTER 61 - SANITATION OF BEDDING

02 NCAC 61 .0101 DEFINITIONS

The following definitions shall apply throughout these Rules:

(1) "Chemical Method" means a process accomplished by application of a disinfectant registered by the U.S. Environmental Protection Agency and labeled as a disinfectant for bedding.

~~(1)(2)~~ "Chief Financial Officer" means the officer or employee with primary bookkeeping responsibility for a business that ~~manufactures~~ manufactures, or sanitizes sanitizes, sells or offers to sell bedding in this State or manufactures and sells or offers to sell bedding to be sold in this state.

(3) "Division" means the Structural Pest Control and Pesticides Division of the N.C. Department of Agriculture and Consumer Services.

(4) "Dry Heat Method" means a process accomplished by conduction, where heat is absorbed by the exterior surface of an item and then passed inward to the next layer.

~~(2)(5)~~ "Person" means an individual, corporation, company, partnership, or other legal entity.

History Note: Authority G.S. 106-65.107;

Eff. April 1, 1984;

Amended Eff. January 1, 1988;

Transferred from 15A NCAC 18B .0201 Eff. May 1, 2012;

Readopted Eff. January 1, 2021;

Amended Eff. September 1, 2022.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0102

DEADLINE FOR RECEIPT: September 9, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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

In reviewing this Rule, the staff recommends the following changes be made:

Consider: Adding “(a) Sanitization pursuant to G.S. 106-65.96 shall be done by one of three methods provided in this Rule: the dry heat process, the chemical method, or the washing process.” The current (a) becomes (b) and so forth.

Consider: Adopting the definition of “bedding” as provided in G.S. 106-65.95 and using this term for purposes of sanitization.

Page 1, Lines 16-22: Consider: If it does not change the intent of the agency, combining (a)(1) and (a)(2) as “To be sanitized by the dry heat method, all items to be sanitized shall be placed upon on a rack or other device which provides a minimum distance of six inches from the floor and in an arrangement that provides even distribution of heat throughout the items, and placed in a sealed chamber. All items to be sanitized shall be separated a minimum distance of six inches from the walls, floors, and ceilings of the chamber and every other item being sanitized. The temperature in the chamber shall be raised to 230 degrees Fahrenheit and that temperature shall be maintained for two hours.”

Page 1, Lines 23-25: When and how often does the thermometer need to be checked for accuracy? Strike or define “easily”. Is anyone required to monitor the temperature during the process? Consider: “A thermometer accurate to within one-degree Fahrenheit shall be placed in the chamber during each dry heat process. The thermometer shall be checked every ____ minutes by the operator of the chamber to ensure the chamber maintains the temperature set forth in Subparagraph 1. Should the temperature fall below 230 degrees during the process, the dry heat process shall re-start for an additional two hours.”

Page 1, Lines 26-31: Consider re-writing (b) more concisely.

Page 1, Line 27: Where would the regulated public go to determine if the product has been “evaluated and registered” by the EPA and the Division?

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

Page 1, Line 28: Define or delete “clearly”.

Page 1, Line 30: Consider stating that which is prohibited rather than that which would be a violation of the Rule. E.g., No product shall be used in a manner inconsistent with its labeling or instructions in the sanitization process.

Page 1, Line 33: Does the bedding need to be boiled and then washed with soap or detergent or boiled in water with soap or detergent? As written this standard only applies to the washing process. Is that the agency’s intention? Consider: “Bedding is not sanitized until it is free of marks, stains, and odors.”

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

02 NCAC 61 .0102 is amended as published in 36:20 NCR 1607-1608 as follows:

02 NCAC 61 .0102 AUTHORIZED SANITIZING PROCESSES

~~(a) In the dry heat process, secondhand or previously used bedding must be heated at a temperature of 230 degrees F. for a period of two hours. The chamber in which this process is performed must be insulated sufficiently to ensure maintenance of a uniform temperature of 230 degrees F. Articles to be sanitized must be placed on racks, or other devices provided therein so that a minimum space of six inches is left around each item being sanitized, and between the item and the walls, floor, ceiling, and other items. Loose materials to be sanitized must be placed on tiers or slats, or in other arrangements that permit an even distribution of heat throughout the material. A thermometer that has been checked for accuracy within one degree F. must be placed within the chamber at a point where it can be read at all times through a window for that purpose.~~

~~(b) In the washing process, the bedding shall be boiled for two hours and washed with a soap or detergent. After drying, the bedding shall be free from dirt, marks, stains, or other offensive odors or materials.~~

(a) The dry heat process may be used to sanitize secondhand mattresses, innersprings, or similar covered in whole or in part by a porous material or fabric. In order to properly sanitize using the dry heat process:

(1) The bedding must be heated to a temperature of 230 degrees F. for a period of two hours. All chambers shall be insulated to ensure maintenance of uniform temperature of 230 degrees Fahrenheit and shall be tightly sealed to prevent any leakage of gases. Materials to be sanitized must be placed on racks, or other devices provided therein so that a minimum space of six inches is left around each item being sanitized, and between the item and the walls, floor, ceiling, and other items.

(2) Loose materials to be sanitized must be placed on tiers or slats, or in other arrangements that permits an even distribution of heat throughout the material; and

(3) A thermometer that has been checked for accuracy within one-degree Fahrenheit must be placed within the chamber at a point(s) where it can always be easily read to determine the temperature accuracy of the equipment.

(b) The chemical method of sanitizing is authorized if performed in accordance with the requirements of this rule. Only those products evaluated and registered by the US Environmental Protection Agency (EPA) and the Division, as approved for use as disinfectants of articles of bedding shall be used. The product used must clearly state, on the label or on printed materials included on each container or package, detailed instructions for its use in disinfecting articles of bedding. It is a violation of this Rule to use an unregistered product, or to use a registered product in a manner inconsistent with its label or accompanying printed material, in the sanitizing process.

(c) In the washing process, the bedding shall be boiled for two hours and washed with a soap or detergent. After drying, the bedding shall be free from dirt, marks, stains, or other offensive odors or materials.

History Note: Authority G.S. 106-65.107;

Eff. April 1, 1984;

Amended Eff. January 1, 1985;

- 1 *Transferred from 15A NCAC 18B .0202 Eff. May 1, 2012;*
- 2 *Readopted Eff. January 1, 2021.*
- 3 *Amended Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0104

DEADLINE FOR RECEIPT: September 9, 2022

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

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

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 4: Add "as defined by G.S. 106-65.95(7)," after "sanitize".

Page 1, Line 5: Strike that is available for inspection by the Division" as this is addressed in (b).

Page 1, Line 6: Strike "and/or". Pick one.

Page 1, Line 15: Strike "and/or". Pick one.

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

02 NCAC 61 .0104 is adopted as published in 36:20 NCR 1608 as follows:

02 NCAC 61 .0104 RECORDKEEPING FOR SANITIZATION

(a) A person who sanitizes previously used material or bedding shall keep a record of the kind of material and bedding which has been sanitized, that is available for inspection by the Division.

(b) The record shall be retained on the business premises and/or with each mobile unit for not less than 2 years and shall be made available for inspection by the Division upon request.

(c) The record shall include the following:

(1) the date of sanitization;

(2) the sanitization method used;

(3) the kind of materials and types of items sanitized;

(4) the unit number of bedding articles sanitized;

(5) a list of all chemicals, including EPA Reg. numbers, total amount applied per application used in the pre- and post-sanitizing process; and

(6) the name of the person and/or company performing the sanitization.

History Note: Authority G.S. 106-65.107;

Eff. September 1, 2022.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: Generally, to Rule .0106, .0109, .0111

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In reviewing this Rule, the staff recommends the following changes be made:

With regard to the rule numbers, please flip the underline and strike through on the above captioned rules. For example, "02 NCAC 61 .0106:0105" should be 02 NCAC:0105.0106.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0106

DEADLINE FOR RECEIPT: September 9, 2022

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 6: Change "must" to "shall".

Page 1, Lines 4-10: Does not G.S. 106-65.98 provide a third option? To wit: storing them in a sperate room? Consider paralleling the statutory language and then adding (1) and (2). Or should "or" in line 5 be "and"?

Page 1, Line 7: Explain the necessity for "at all times".

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

02 NCAC 61 .0105 is amended as published in 36:20 NCR 1608 as follows:

02 NCAC 61 ~~.0106-.0105~~ STORAGE OF SECONDHAND OR PREVIOUSLY-USED MATERIALS

When secondhand bedding or previously-used materials that have not been sanitized are stored in a bedding manufacturing establishment, a sanitizing business, a retail outlet, a distribution warehouse, or in the same room with new or sanitized bedding or bedding materials, the secondhand bedding or previously-used materials must be segregated at all times from the new or sanitized bedding or bedding ~~materials~~ materials:

(1) by partitions that are free of holes, cracks, or other openings. The top of the partitions must be at least one foot higher than the level of the unsanitized ~~materials~~ materials; or

(2) by complete separation by a minimum of six feet.

*History Note: Authority G.S. 106-65.98; 106-65.107;
Eff. April 1, 1984;
Transferred from 15A NCAC 18B .0205 Eff. May 1, 2012;
Readopted Eff. January 1, 2021.
Amended Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0109

DEADLINE FOR RECEIPT: September 9, 2022

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In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 4, (a): The use of the word "include" implies that there might be additional information required. Strike "include" and replace with "contain". All required information necessary to complete the application should be in the code.

Page 1, Lines 10-15, (b): Does the agency require a particular format for the verification? If the agency has ever rejected a verification for a deficiency that is not covered by the rule, the rule should address that which was required but not in the rule.

What information is required by G.S. 106-65.103? G.S. 106-65.103 states:

(h) The Board of Agriculture shall adopt rules for the proper enforcement of this section. The rules shall include provisions governing the type and amount of proof which must be submitted by the applicant to the Department of Agriculture and Consumer Services in order to establish the number of bedding units that were, during the preceding calendar year: (1) Manufactured and sold in this State; (2) Manufactured outside of this State and sold in this State; and (3) Manufactured in this State but not sold in this State. (i) The Board of Agriculture may provide in its rules for additional proof of the number of bedding units sold during the preceding calendar year when it has reason to believe that the proof submitted by the manufacturer is incomplete, misleading or incorrect.

Has the Board adopted such rules?

Under what circumstances would the Division have "reason to believe"? What criteria would the agency use in determining whether an applicant was required to receive a certification by a CPA?

Page 1, Lines 17-19, (c): The sentence beginning with "Applicants who have not operated ..." is facially ambiguous.

Page 1, Line 19, (c): If the applicant is required to use the form referenced in Line 19, the substantive requirements of the form need to be defined in a rule and adopted pursuant to the APA. Are the applicants seeking a refund required to submit the form

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or any of the information solicited on the form? If not, how does the agency make its determination?

Page 1, Line 21, (c): What “option” is available under G.S. 106-65(b)?

Page 1, Line 23, (d): By “apply” does the agency mean “request” or is there an application? If there is an application, have the substantive requirements of the application been adopted pursuant to the APA?

Page 1, Line 24, (d): What is “verified proof”? Verified by whom? What specifically is required? Is there a form?

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

02 NCAC 61 .0108 is amended as published in 36:20 NCR 1608-1609 as follows:

02 NCAC 61 ~~.0109-.0108~~ LICENSE FEES AND APPLICATIONS

(a) Applications for a license shall be on a form provided by the Division and shall include the following information:

- (1) the name of the business;
- (2) the physical address for the plant or operation;
- (3) the name, title, mailing address, and telephone number and email address if available, for the contact person for the license; and
- (4) the type of bedding items the business ~~manufactures~~ manufactures, sanitizes or renovates.

(b) The applicant shall submit a verification from the applicant's chief financial officer that he has examined the records of the applicant and that the information provided in accordance with G.S. 106-65.103 correctly reflects the information contained in the records of the applicant. However, if the Division has reason to believe that the information provided is incomplete, misleading or incorrect, the Division may require the applicant to obtain a certification of the required information by an independent Certified Public Accountant licensed to practice in North Carolina.

(c) License fees, in accordance with G.S. 106-65.103, shall be paid in full on March 1 of each year or in quarterly installments on March 1, June 1, September 1, and December 1 of each year. Applicants who have not operated for a full calendar year may owe additional fees or be due a refund for the first year's operation, depending on the business volume eligible for stamp exemption fee payment. Application forms for making the determination of fee payment owed or refunded shall be furnished by the Division. When the requirements of G.S. 106-65.103(a) can be met, the option described by G.S. 106-65.103(b) will no longer be available to the applicant.

(d) Applicants who have gone out of business in the initial year of their operation and who have paid the license fee in accordance with G.S. 106-65.103 may apply for a refund for the remainder of the calendar year upon providing verified proof of the bedding units sold or manufactured in North Carolina during the operating portion of the calendar year.

(e) All forms may be obtained from the Division at www.ncagr.gov/SPCAP/Sleep/beddinglicense.htm.

*History Note: Authority G.S. 106-65.103; 106-65.107;
Eff. April 1, 1984;
Amended Eff. September 1, 1990; January 1, 1988;
Transferred from 15A NCAC 18B .0208 Eff. May 1, 2012;
Readopted Eff. January 1, 2021.
Amended Eff. September 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Agriculture

RULE CITATION: 02 NCAC 61 .0111

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

In reviewing this Rule, the staff recommends the following changes be made:

Page 1, Line 5: What criteria will be used in determining whether a tag material is “of comparable quality”? G.S. 106-65.99 already requires that the tags be made of durable material. What does the language “that will not flake when abraded and shall not easily be torn” add?

Page 1, Line 5: Define or delete “easily”.

Page 1, Line 8: G.S. 106-65.99 requires that the tags be “sewed” to all bedding. The agency lacks the authority to permit tags to be “attached”.

Page 1, Line 9: Why is the sentence “Tags shall not be altered or defaced in any manner” necessary? Does G.S. 106-65.100 not already prohibit this?

Page 1, Line 10: “Unit” should be plural.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: September 1, 2022

02 NCAC 61 .0110 is amended as published in 36:20 NCR 1609 as follows:

02 NCAC 61 ~~.0111-.0110~~ DURABLE MATERIALS FOR TAGS

In addition to the requirements set forth in G.S. 106-65.99, identifying tags shall be of linen, muslin, white vellum cloth, or other durable ~~cloth~~ material of comparable quality that will not flake when abraded and shall not be easily torn, abraded. Paper or plastic face tags shall not be allowed. Tags shall be printed or stamped on one side only in colorfast black letters that will not fade or wash out. Tags shall be so located that the information contained thereon is visible to the purchaser at all times and shall be securely attached or sewn ~~sewn~~ to the ~~pillows, mattresses, sleeping bags, comforters, and other articles of bedding~~. Tags shall not be altered or defaced in any manner. The labeling requirements of another governmental unit may appear on the tag.

History Note: Authority G.S. 106-65.99; 106-65.107;
Eff. April 1, 1984;
Amended Eff. January 1, 1988;
Transferred from 15A NCAC 18B .0210 Eff. May 1, 2012;
Readopted Eff. January 1, 2021;
Amended Eff. September 1, 2022.